

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 43/1993
and
M.A.No. 577/93
in
O.A. No. 313/89
~~P.A.No.~~

DATE OF DECISION 3-12-1993.

The General Manager, Telephones **Petitioner s**
Ahmedabad & Ors. **(Orig. Respondents)**

Mr. Akil Kureshi, **Advocate for the Petitioner(s)**

Versus

Shri V.G. Desai, **Respondent**
 (Orig. Applicant)
 Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

- 2 -

1. The General Manager,
Telephones, Ahmedabad.
2. The Divisional Engineer,
Telegraphs, Rajkot.
3. The Divisional Engineer,
Telegraphs, Jamnagar.
4. The Union of India
(Through the Secretary,
Ministry of Communications,
Post & Telegraphs, New Delhi). Applicants.
(Orig. Respondents)

Versus.

V.G. Desai,
Residing at 12, Budhia Building,
Mankodia, Navsari - 396 445
District : Valsad.

..... Respondent.
(Orig.Applicant)

ORDER

R.A.No. 43/1993
AND

M.A.No. 577/93
in

O.A.No.313/89

Date: 3-12-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

This review application filed by the original respondents is disposed of by circulation. The present review application is filed by the original respondents for review of our judgment dated 27th August, 1992 passed in O.A. 313/89 on the grounds that there is an error apparent on the face of the record and there is substantial question of law which has not been taken into account while delivering the judgment.

..... 3/-

- 3 -

The review application dated 25th June, 1993 is filed before the Registry on 9th July, 1993. There is a delay in filing this review application and hence the respondents have filed M.A. 577/93 for condonation of delay in filing this application.

2. The original respondents in M.A. 577/93 have contended that the judgment in O.A. 313/89 was given on 27th August, 1992. It is contended that the certified copy of the said judgment was received by the counsel of the original respondents, who are applicants before us, and the same was forwarded to the respondents with a letter dated 4th September, 1992 and eventually the judgment was received by the respondents on 15th September, 1992.

The respondents ought to have filed review application atleast by 15th October, 1992 but they have filed it on 9th July, 1993, therefore, there is a delay of 9 months in filing this review application. The grounds for delay mentioned in the M.A are that the legal opinion with respect to the said judgment was received by the respondents on 13th November, 1992, then the matter was thereafter taken up with the higher authorities for filing S.L.P or for taking other necessary steps with the relevant papers were sent to the Chief General Manager Telecom, Gujarat circle Ahmedabad on 4th/7th December, 1992 that

- 4 -

thereafter, the counsel for the respondent was requested for moving the Tribunal for extension of time limit and on 18th March, 1993, such application was filed for extension of time, that thereafter the matter was referred by the Department of Telecom, New Delhi to the Department of Personnel and Training, New Delhi and the said intimation was received on 23rd April, 1993 and then it was decided that review application should be filed in the aforesaid matter. Thereafter, in month of May 1993, the Rajkot Office requested the counsel to file review application, that the concerned counsel was not available for some time and ultimately the review application was filed on 9th July, 1993. It is mentioned in the M.A that these applicants have acted with due care and vigil and the time spent for filing review is due to the reasons which are beyond the control of the applicant and therefore, the delay be condoned. In our view, the delay of about 9 months can not be condoned at all for the alleged grounds being not sufficient reasons. mentioned in M.A. Even if the liberal view is taken, the respondents, after receiving the legal opinion on 13th November, 1992 ought to have filed the review application within 30 days thereafter, but they have hence not done so and there is a clear delay of about even 7 months. On 18th March, 1993, when

.....5/-

they filed an application for extension of time for complying judgment, it would suggest that, they ~~filed~~ / that date not decided to file review application.

There is gross delay which can not be said to have been properly explained. Under these circumstances, in our opinion there is no sufficient cause established for condonation of delay and the M.A. deserves to be dismissed. In view of the dismissal of M.A. we can dismiss the review application because it would not survive. However, even examining the grounds of review application, in our opinion, there is no error apparent on the face of the record. The respondents have contended that the scheme of voluntary retirement under Rule 48(a) came into force with effect from 26th August, 1977 and on 1st June, 1972 Rule 48(a) was not in existence. The respondents have mentioned in the review application that Rule 48(a) of CCS(Pension) Rules, 1972 was inserted vide Notification dated 28th November, 1978 and the date of effect of the said Rule was 26th August, 1977 and therefore, there is a basic infirmity in the judgment. It is also mentioned in the review application that the original applicant had not completed 30 years qualifying service as on 1st June, 1972 and hence was not eligible for any pension as per the Rules applicable.

3. We have held in our judgment that the respondents

should fix the pension of the applicant under Rule 48(a) of the CCS (Pension) Rules, 1972 as if the applicant had retired on 1st June, 1972 on the basis of his qualifying service that may be calculated upto that date. We have accepted the argument of the learned advocate for the original applicant that as the applicant had completed 20 years qualifying service on 20th March, 1972, as per Rule 48(a) of the new Pension Rules, he should be given the benefit. The respondents' learned advocate had argued in the O.A that the CCS (Pension) Rules, 1972 came into effect from 1st June, 1972 and as per the Liberalised Pension Rule 1950 which were applicable to the applicant period for retirement required was after completion of 30 years of qualifying service. The main argument of the learned advocate for the respondents in O.A was that the applicant is not entitled to the benefit of Rule 48(a) of the CCS (Pension) Rules, 1972 which came into effect from 1st June, 1972. It is observed by us that though the CCS (Pension) Rules, 1972 came into force from 1st June, 1972, but the said Rules were published vide GIMF Notification dated 1st March, 1972. We have also held that the respondents could not decide the letter for retirement of the applicant on medical grounds at all and if the respondents had rejected it immediately after the order

ne
and not, as now
argued, that Rule 48(a)
came into force
only from 26.8.87

ne

of conclusion of enquiry dated 20th March, 1972, the applicant could have taken the advantage of new rules because the notification was dated 1st March, 1972 and as per Rule 48(a) of the new rules, he could have given notice of not less than three months in writing to the respondents to retire him from service as he had completed 20 years qualifying service. Therefore, we have considered all the arguments and documents on record and there is no error apparent on the face of the and record /there is no substantial question of law involved. In our opinion, none of the ingredients of Order XLVII Rule 1 of C.P.Code apply. We have hold that as the applicant had a qualifying service of more than 20 years, he was entitled to the pension as per Rule, and ^{we} /rejected the contention of the respondents that he was not entitled to pension as he had not completed 30 years qualifying service. If the respondents feel that our order is not legal, they can assail it by filing an appeal before the Higher Forum but there is no ground to review the judgment, as none of the ingredients of Order XLVII Rule 1 of C.P.Code are attracted.

4. As observed above, in view of our dismissal of M.A. 577/93 on the ground of delay, this review ^{but} application would not survive at all /in order to give

25

- 8 -

finality we have also considered the review application and we find that there is no merit in it at all, hence the same is also rejected.

5. M.A.No. 577/93 is dismissed. R.A.No. 43/93 in O.A. 313/89 is also dismissed.



(R.C. Bhatt)
Member (J)



(N.V. Krishnan)
Vice Chairman

vtc.

Central Administrative Tribunal

Administrative Tribunal

Inward No. 18193

Date 28/02/95 No. 1150/94/Sec. IX

SUPREME COURT
INDIA

Dated New Delhi, the 13th February, 1995 19

All communications should be
addressed to the Registrar.
Supreme Court, by designation.
NOT by name
Telegraphic address :—
"SUPREMECO"

FROM Assistant Registrar,
Supreme Court of India.

TO The Registrar,
Central Administrative Tribunal,
B.D. Patel House,
Near Sardar Patel Colony,
Ahmedabad.

INTERLOCUTORY APPLICATION NO.2

(Application for restoration of Special Leave Petition)

IN THE MATTER OF:

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.13732 OF 1994
(C.A.T. R.A. No.43/93 in O.A. No.313/89)

The General Manager, Telephones & Dns. .. Petitioners

-Vs-

V.G. Desai & Anr. .. Respondents

Sir,

In continuation of this Registry's letter of even number dated 12th September, 1994, I am to inform you that the application for restoration of the S.L.P. above-mentioned was listed before the Court on 30th January, 1995 and the same was allowed and Special Leave Petition has been restored by this Court on 30th January, 1995.

This is for your information.

Yours faithfully,


Assistant Registrar

PA/193/93
in
OA/313/89

communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name
Telegraphic address :—
"SUPREMECO"

Recd
31/12/95
18-12-95
DRA

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 1558
Date 14/12

SUPREME COURT
INDIA

Dated New Delhi, the 9th December, 1995 19

FROM

Assistant Registrar,
Supreme Court of India.

TO

The Registrar,
Central Administrative Tribunal,
Bench at Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 17578 OF 1995
(Petition under Article 136 of the Constitution of India for Special Leave to Appeal from the Order dated 27th August, 1992 of the Central Administrative Tribunal, bench at Ahmedabad in O.A.No.313 of 1989)

The General Manager, Telephones & Drs. ..Petitioners

-Vs-

V.G.Desai & Anr.

..Respondents

Sir,

I am directed to forward herewith a certified copy of the Order of this Court dated 31st July, 1995 passed in the matter above-mentioned, for your information and necessary action.

I am to inform you further that the delay in filing process fee and spare copies of Special Leave Petition has been condoned by order of this Court dated 31st October, 1995 passed in Interlocutory Application No.3.

Please acknowledge receipt.

For personal please to

Yours faithfully,

① Honble vice chairman.

② Honble Mr. V. Radhakrishnan, member (A)

③ Honble Mr. K. Ramaswamy, member (A)

Assistant Registrar

Copy to be noted
17/12/95

IN THE SUPREME COURT OF INDIA

~~ORIGINAL JUDGMENT~~
CIVIL APPELLATE JURISDICTIONINTERLOCUTORY APPLICATION NO.1

(Application for condonation of delay in filing Special Leave Petition)

42103

~~XXXXXX~~IN~~XX~~~~XXXX~~

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 17578 OF 1995
 (Petition under Article 136 of the Constitution of India
 from the Order dated 27th August, 1992 of the Central
 Administrative Tribunal, Bench at Ahmedabad in O.A.
 No. 313 of 1989)

WITHINTERLOCUTORY APPLICATION NO.2

(Application for stay by Notice of Motion with a prayer for an ex-parte order)

1. The General Manager,
Telephones, Ahmedabad, Gujarat.
2. The Divisional Engineer,
Telegraphs, Rajkot, Gujarat.
3. The Divisional Engineer,
Telegraphs, Jamnagar, Gujarat.

Certified to be true copy

Assistant Registrar (Judl.)

..... 9/11/95 1995
Supreme Court of India

..Petitioners

-Vs-

1. V.G. Desai,
residing at 12, Budhia Building,
Mankodia, Navsari-396 445,
District: Valsad, Gujarat.
2. The Union of India,
through the Secretary,
Ministry of Communications, Post &
Telegraphs, Sancha Bhawan,
New Delhi.

..Respondents

31st July, 1995

COR AM:

HON'BLE MR. JUSTICE K. RAMASWAMY
 HON'BLE MR. JUSTICE K.S. PARIPORNAN

For the Petitioners: Mr. Rajiv Kumar Singh, Advocate.

THE APPLICATION FOR CONDONATION OF DELAY IN
 FILING SPECIAL LEAVE PETITION alongwith Petition for

29

Special Leave to Appeal AND application for stay above-mentioned being called on for hearing before this Court on the 31st day of July, 1995 UPON hearing counsel for the Petitioners herein THIS COURT while directing issue of notice to the Respondents herein to show cause why delay in filing the Petition for Special Leave, Special Leave to appeal ^{be not condoned and why} and stay be not granted to the Petitioners herein from the Judgment and Order above-mentioned DOTH ORDER that pending the hearing and final disposal by this Court of the application for stay after notice, the operation of the Order dated 27th August, 1992 of the Central Administrative Tribunal, Bench at Ahmedabad in O.A.No.313 of 1989 be and is hereby stayed;

AND THIS COURT DOTH FURTHER ORDER THAT this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 31st day of July, 1995.

(A.P. JAIN)
JOINT REGISTRAR

②

SUPREME COURT
~~ORIGINAL JURISDICTION~~
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO.1
(Application for condonation of delay in filing
Special Leave Petition)

IN

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.17578 OF 1995

WITH

INTERLOCUTORY APPLICATION NO.2
(Application for stay by Notice of Motion with ~~Petitioner~~
a prayer for an ex-parte order)

The General Manager, Telephones & Cords. ..Petitioners
-Vs- X/61688

V.G.Desai & Anr. ...Respondents

ORDER DIRECTING ISSUE OF SHOW CAUSE
NOTICE AND GRANTING EX-PARTE STAY. Respondent

DATED THIS THE 31st DAY OF JULY, 1995

Dated for

Engrossed by ^{cs}

SHRI Rajiv Kr.Singh,

Examined by

Advocate on Record for the Petitioners.

Compared with

SHRI

No. of folios

Advocate on Record for

SEALED IN MY PRESENCE

11/11/95

All communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name. Telegraphic address:— "SUPREMECO"

Recd
Order
27-2-86
Dated
20-2-96

52/96

30

No. D.Nos. 1150/94/IX and 1925/95/IX

SUPREME COURT
INDIA

Dated New Delhi, the 15th February, 1996 19

FROM Assistant Registrar,
Supreme Court of India,
New Delhi.

Central Administrative Tribunal
Ahmedabad Bench
Inward No. 2096
Date 28.02.96

TO The Registrar,
Central Administrative Tribunal,
B.D. Patel House,
Near Sardar Patel Colony,
Ahmedabad.

CIVIL APPEAL NOS. 2570 AND 2571 OF 1996
(From Central Administrative Tribunal Judgment and Order dated 3rd December, 1993 in R.A.No.43 of 1993 in O.A.No.313 of 1989 and Order dated 27th August, 1992 in O.A.No.313 of 1989)

The General Manager, Telephones
& Ors.

..Appellants

-Vs-

V.G.Desai & Anr.

..Respondents

Sir,

In pursuance of Order XIII, Rule 6, S.C.R.1966, I am directed to transmit herewith a certified copy of the Judgment dated the 1st February, 1996 in the appeals above-mentioned.

The certified copy of the decree made in the aforesaid appeals will be sent later on.

Please acknowledge receipt.

For perusal please

Yours faithfully,

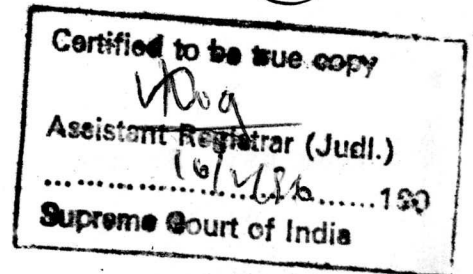
① Honble vice chairman 13/3

Assistant Registrar

② Honble Mr. V. Radhakrishnan, member

Honble Mr. K. Ramaswamy, member

113
R
4/3



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

61012

CIVIL APPEALS NOS. 2570-71 OF 1996
(arising out of S.L.P.(Civil) Nos. 13732/94 and 17578/95)

The General Manager,
Telephones, Ahmedabad & Ors.

...Appellants

versus

V.G. Desai & Anr.

...Respondents

J U D G M E N T

S.C. AGRAWAL, J. :

Special leave granted.

V.G. Desai, respondent No. 1, was appointed as Telephone Operator in the Telephone Department of the Government of India on August 30, 1948. He was promoted as Inspector with effect from November 12, 1959 in the said department. By order dated February 28, 1970, he was transferred from the office of Divisional Engineer Telegraphs Baroda to the office of Divisional Engineer Telegraphs Rajkot at Kandla. He did not join at the place of posting and remained on leave. Ultimately he submitted an application dated September 25, 1971 whereby he sought further extension of leave for 60 days and also sought retirement on medical

grounds. By application dated October 19, 1971, he requested the Divisional Engineer, Telegraphs, to accept his resignation with immediate effect. Since a vigilance case was pending against him since September 25, 1971, the said request of resignation was not accepted. In the departmental proceedings which were taken against him the punishment of censure was imposed on him on March 20, 1972. On August 1, 1980, he sent another letter requesting that his retirement case be settled and his GPF be released. Since no action was taken on the said letter, he filed a Writ Petition in the Gujarat High Court. After the constitution of Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), the said writ petition was transferred to the Tribunal and it was registered as TA No. 109 of 1986. The said application was disposed of by the Tribunal by judgment dated November 30, 1987. The Tribunal was of the view that after the award of the punishment of censure on March 20, 1972, there was no reason why the authorities could not have decided on the letter for retirement on medical grounds submitted by the respondent. According to the Tribunal, if the question of withholding any part of pension or retirement benefits or GPF on account of the punishment imposed upon him arise, this should also have been decided immediately after 1972. In view of the delay on the part of the authorities in dealing with that request of the respondent to release his pensionary benefits, arrears

(32)

of pay, GPF etc. the Tribunal gave the following direction :-

"We, therefore, direct that the respondents decide the question of releasing GPF leave salary and other dues of the petitioner within a period of two months and further direct that an interest of 9% should be payable on such dues to the petitioner from 20.4.1972 one month after the date of the order of punishment of censure i.e., 30.3.1972. Payment of the dues of the petitioner with interest should be effected within three months of the date of this order."

The respondent filed an application (MA/392/88) which was disposed of by order dated February 20, 1989 with the following observations :

"The Judgment in TA/109/86 clearly states that the dues as indicated in it are required to be paid and further clarification is not possible in this review application."

The respondent was paid the dues in accordance with the directions contained in the judgment dated November 30, 1987 including the amount lying in his GPF account alongwith interest @ 9% from April 20, 1972. The claim of the respondent for pension was, however, not accepted by the Divisional Engineer Telegraphs by his order dated February 26, 1988 on the ground that he was not entitled to pensionary benefits as per the rules.

Thereafter the respondent filed another application (OA No. 313 OF 1989) which has given rise to

these appeals. In that application the respondent sought the relief that a declaration may be given that he is entitled to pensionary benefits on and from March 20, 1972 or from the date of application made by him requesting for retirement on medical grounds, i.e., September 25, 1971. In the alternative he sought a declaration that he is entitled to pensionary benefits on voluntary retirement as per the new pension rules, namely, Central Civil Services (Pension) Rules, 1972 (for short '1972 Rules') or, in the alternative, for a declaration that he has retired on superannuation on August 27, 1987 and that he is entitled to pensionary benefits of retirement by superannuation.

The said application of the respondent was opposed by the appellants on the ground that as per the decision of the Tribunal dated November 30, 1987 in TA No. 109 of 1986 the respondent had already been paid arrears of pay alongwith interest as per the directions of the Tribunal and no cause survives. It was submitted that as per the judgment of the Tribunal, the respondent is deemed to have retired with effect from April 20, 1972 and, at that time, entire period of his qualifying service was 23 years 6 months and 20 days and since he had not completed 30 years of qualifying service, he could not get pension under the old rules. It was submitted that the 1972 Rules had come into force from June 1, 1972 and the respondent could not get pension under the said rules. It was also submitted that the respondent also could not be granted invalid pension because the medical

certificate submitted by him did not declare him unfit for ever but for a specific period only.

By judgment dated August 27, 1992, the Tribunal has held that in the earlier judgment dated November 30, 1987 in TA No. 109 of 1986 the Tribunal had not accepted the claim of the respondent that he is deemed to have retired on medical grounds and that the said claim has also not been established by him in this petition. The Tribunal has, therefore, rejected his claim that he was entitled to pensionary benefits on and from March 20, 1972 or from the date of his application, i.e., September 25, 1971, requesting to retire him on medical grounds. The Tribunal has also held that the respondent could not be granted invalid pension under CSR 441 because no documentary evidence was produced by him to show that he was incapacitated from rendering public service due to bodily or mental infirmity and the medical certificate produced by him did not declare him unfit for ever but it declared him unfit for a specific period only. The Tribunal has, however, referred to the 1972 Rules, more particularly Rule 48-A, and has observed that on March 20, 1972, the respondent had completed 20 years qualifying service and he could claim pension on the basis of the said Rule. It was submitted on behalf of the appellants before the Tribunal that 1972 Rules had come into effect from June 1, 1972 and the respondent could not avail the benefit of the said Rules. The Tribunal has observed that the 1972 Rules were published vide notification dated March 1, 1972

and at the time of hearing of TA No. 109 of 1986 neither party had brought to the notice of the Tribunal that the 1972 Rules had been notified in the Gazette on March 1, 1972 and if the same had been brought to the notice of the Tribunal it might have perhaps considered the respondent for voluntary retirement finally at that stage considering the said notification. The Tribunal further observed that if the appellants had rejected the request of the respondent for retirement on medical grounds immediately after the order dated March 20, 1972 imposing punishment of censure the respondent could have taken the advantage of the 1972 Rules as per Rule 48-A and he could have given notice of not less than three months in writing to the appellants to retire him from service as he had completed 20 years qualifying service. The Tribunal directed the appellants to fix the pension of the respondent under Rule 48-A of the 1972 Rules as if he had retired on June 1, 1972 on the basis of his qualifying service that may be calculated upto that date.

The appellants submitted a Review application (R.A. No. 43 of 1993) for the review of the said judgment of the Tribunal on the ground that Rule 48-A was not in operation on June 1, 1972 but had been inserted by notification dated November 28, 1978 with effect from August 26, 1977. The said review application was, however, dismissed by the Tribunal by its order dated December 3, 1993 as barred by limitation. The Tribunal has ^{also} dealt with the

said review application on merits and has held that the judgment dated August 27, 1992 did not suffer from any error apparent on the face of the record.

The appellants have filed these appeals against judgment dated August 27, 1992 in OA No. 313 of 1989 as well as judgment dated December 3, 1993 in R.A. No. 43 of 1993.

The impugned direction given by the Tribunal regarding payment of pension to the respondent by treating him as having retired with effect from June 1, 1972 involves two questions : (i) whether the direction to treat the respondent as having retired from service from June 1, 1972 is in consonance with the earlier judgment dated November 30, 1987; and (ii) whether under the 1972 Rules pension is payable even if the respondent is treated as having retired on June 1, 1972.

In the earlier judgment dated November 30, 1987, the Tribunal has observed :

"The punishment of censure awarded after the inquiry following the C.B.I. report came about on 20/3/1972. There is no reason why the respondents authorities could not have decided on the letter for retirement on medical grounds thereafter, even if there was any genuine reason for withholding consideration of his letter before that date. The respondent authorities, therefore, have also in a sense acquiesced in the position brought about the applicant treating himself as if he had retired. If the question of withholding any part of pension or retirement benefits or G.P.F. on account of the punishment imposed upon him arises, this should also have been decided immediately after 1972."

This would show that having regard to the conduct of the respondent as well as the appellants, the Tribunal, while deciding TA No. 109 of 1986, had proceeded on the basis that the respondent should be deemed to have retired on April 20, 1972 and gave the direction regarding releasing GPF, leave salary and other dues to the respondent and for payment of interest @ 9% on such dues from April 20, 1972. The direction that interest should be paid on GPF with effect from April 20, 1972, can be justified only on the ground that GPF was payable on April 20, 1972 which means that the deemed date of retirement of the respondent was April 20, 1972. The view expressed by the Tribunal in the later judgment dated August 27, 1992 in OA No. 313 of 1989 that in its earlier judgment dated November 30, 1987 it had not held that the respondent should be deemed to have retired on April 20, 1972 cannot, therefore, be upheld. In the later judgment dated August 27, 1992 in OA No. 313 of 1989, the Tribunal has directed that the respondent should be treated to have retired on June 1, 1972. The said direction cannot be reconciled with the direction given by the Tribunal in its earlier judgment dated November 30, 1987 in T.A.No. 109 of 1986. The Tribunal has not given any cogent reason for arriving at this date, i.e., June 1, 1972. Merely because the 1972 Rules came into force on June 1, 1972 cannot be the basis for altering the date of retirement of the respondent from April 20, 1972 to June 1, 1972.

There is another serious infirmity in the direction given by the Tribunal in its later judgment dated August 27, 1992 regarding payment of pension to the respondent on the basis that he should be treated to have retired on June 1, 1972. The said direction appears to have been given by the Tribunal on the basis that the respondent was entitled to invoke Rule 48-A of the 1972 Rules and since the said rules came into force on June 1, 1972, he was entitled to claim pension on the basis of the reduced period of 20 years of qualifying service. As indicated earlier, Rule 48(A) was inserted in the 1972 Rules by notification dated November 28, 1978 with effect from August 26, 1977. Even if the respondent is treated to have retired on June 1, 1972, as directed by the Tribunal in its judgment dated August 27, 1992, he cannot claim pension on the basis of Rule 48-A because the said provision was not in force on June 1, 1972 and came into force much later on August 26, 1977. This error in the approach of the Tribunal was pointed out in the review application filed by the appellants. The Tribunal, however, did not consider it necessary to correct this apparent error in the judgment on the ground that the review application was barred by limitation as well as on the ground that the judgment dated August 27, 1992 did not suffer from an error apparent on the face of the record.

Shri Narayan B. Shetye, the learned senior counsel appearing for the respondent, has laid stress on the

observations in the earlier judgment dated November 30, 1987 in TA No. 109 of 1986 that the respondent could not claim that he must be deemed to have retired merely because letter dated May 29, 1971 had not been replied to and until the competent authority decided and communicated the reply to the respondent's request for retirement on medical grounds it cannot be deemed that the respondent is retired merely because his letter had not been replied to. It is submitted that since the offer of the respondent for voluntary retirement was not accepted by the competent authority he should be treated to have continued in service till he attained the age of superannuation in 1987 and he is entitled to pension. We are unable to agree. As indicated earlier, the only possible construction that can be placed on the direction that was given by the Tribunal in its judgment dated November 30, 1987 in TA No. 109 of 1986 can be that the respondent was treated to have retired with effect from April 20, 1972. The appellants as well as the respondents also proceeded on this interpretation of the said judgment and the dues payable to the respondent were paid to him on that basis and GPF amount was also released with interest @ 9% from April 20, 1972. The respondent having obtained the said benefit under the judgment dated November 30, 1987 cannot now be permitted to say that he could not be treated as having retired on April 20, 1972 and that he continued in service till he attained the age of superannuation as per rules in August, 1987.

Shri Shetye has urged that the present case involves an individual employee and since substantial justice has been done by the Tribunal by directing payment of pension it is not a case which calls for interference by this Court under Article 136 of the Constitution. Reliance has been placed on the decision of this Court in Council of Scientific and Industrial Research & Anr. v. K.G.S. Bhatt & Anr., 1989 (4) SCC 635, wherein this Court has emphasised that in exercise of its jurisdiction under Article 136 of the Constitution this Court will not interfere with the orders of the Tribunal unless there is manifest injustice or substantial question of public importance. It is no doubt true that the power of this Court under Article 136 of the Constitution is to be exercised sparingly and the Court does not ordinarily interfere with the orders of the Tribunal on individual disputes. But since the possibility of the impugned judgment being used as a precedent in future, cannot be ignored we feel that the impugned judgment of the Tribunal dated April 27, 1992 cannot be allowed to stand and the matter calls for interference of this Court under Article 136 of the Constitution. We are not inclined to agree with the submission of Shri Shetye that since substantial justice has been rendered this Court should not interfere with the impugned judgment of the Tribunal. In our opinion under the impugned judgment the Tribunal has extended pensionary benefits to the respondent which were not available to him in law.

The appeal filed against judgment dated August 27, 1992 in OA No. 313 of 1989 is, therefore, allowed, the said judgment of the Tribunal is set aside and OA No. 313 of 1989 filed by the respondent is dismissed. Since the judgment dated August 27, 1992 in O.A.No. 313 of 1989 has been set aside the Review Application No. 43 of 1993 filed by the appellants for the review of the judgment dated August 27, 1992 does not survive and the appeal filed against the order dated December 3, 1993 on the review application is dismissed as infructuous. There will be no order as to costs.

.....Sd/-.....J.
[S.C. AGRAWAL]

.....Sd/-.....J.
[G.T. NANAVATI]

NEW DELHI,
FEBRUARY 1, 1996.

SEALED IN MY PRESENCE

16/2/96

All communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name
Telegraphic address — "SUPREMECO"

S.21/94
D.No. 1156/94 & 1925/95/IX (37)

SUPREME COURT
INDIA

10-8-86
Dated New Delhi, the 13/9/96 August, 1996. 19

FROM The Registrar(Judicial),
Supreme Court of India,
New Delhi.

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 2886
Date 11.09.96

TO The Registrar,
Central Administrative Tribunal,
B.D.Patel House, Near Sardar
Patel Colony, Ahmedabad.

CIVIL APPEAL NOS.2570 AND 2571 OF 1996.

The General Manager & Ors.

...Appellants.

Vs.

V.G.Desai & Anr.

...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 15th February, 1996, I am directed to transmit herewith for necessary action a certified copy of the Common Decree dated the 1st February, 1996 of the Supreme Court in the appeals above-mentioned.

Please acknowledge receipt.

Yours faithfully,

K. Malvi
3/9/96
for Registrar(Judicial)

For perusal please

① Heitor anr. v. Radhakrishnan, Actg. J.C.

② Heitor anr. K. Ramamoorthy, anr. anr.

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

Certified to be true copy

K. Mathur
Assistant Registrar (Judl.)

3-9-1996

Supreme Court India

No.

87

CIVIL APPEAL NOS. 2570 AND 2571 OF 1996.

ARISING OUT OF:

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 13732 OF 1994 AND 17578 OF 1995.

(Petitions under Article 136 of the Constitution of India from the Judgments and Orders dated the 3rd October, 1993 and 27th August, 1992 respectively of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in R.A.No.43/93 in O.A.313 of 1989 and O.A.No.313 of 1989).

1. The General Manager, Telephones,
Ahmedabad, Gujarat.
2. The Divisional Engineer
Telegraphs, Rajkot, Gujarat.
3. The Divisional Engineer
Telegraphs, Jamnagar, Gujarat.

...Appellants in
both the Appeals.

Vs.

1. V.G.Desai, residing at:
12, Budhia Building, Mankodia,
Navsari - 396 445. Distt - Valsad, Gujarat.
2. The Union of India through the
Secretary, Ministry of Communications,
Post & Telegraphs, Sanchar Bhawan,
New Delhi.

...Respondents in
both the Appeals.1st February, 1996.CORAM:HON'BLE MR. JUSTICE S.C.AGRAWAL
HON'BLE MR. JUSTICE G.J.NANAVATI

For the Appellants in

C.A.2570 of 1996: Mr. Ashok Mathur, Advocate.

For the Appellants in

C.A.2571 of 1996: M/s. Raju Ramachandran, Sukumar Pattjoshi,
and Rajeev Kr. Singh, Advocates.

For Respondent No.1

in C.A.2571 of 1996: Mr. Narayan B.Shetye, Senior Advocate.
(M/s. B.N.Patel and S.C.Patel,
Advocates with him).

The Petitions for Special Leave to Appeals above-mentioned being called on for hearing before this Court on the 22nd day of January, 1996, UPON perusing the record and hearing counsel for the appearing parties above-mentioned, the Court took time

...2/-

39

to consider its Judgment and the matters being called on for Judgment on the 1st day of February, 1996, THIS COURT DOTH grant special leave to appeals and in allowing the resultant **CIVIL** Appeal No.2571 of 1996 DOTH ORDER that the Judgment and Order dated the 27th August, 1992 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in O.A.No.313 of 1989 be and is hereby set aside and in place thereof an Order dismissing the said O.A.No.313 of 1989 filed by Respondent No.1 herein before the aforesaid Tribunal be and is hereby substituted;
AND THIS COURT while observing that since the above-mentioned Judgment dated the 27th August, 1992 of the aforesaid High Court has been set aside, the review application filed by the appellants herein for review of the said Judgment does not survive DOTH FURTHER ORDER:

1. THAT the resultant Civil Appeal No.2570 of 1996 be and is hereby dismissed as infructuous;
2. THAT there shall be no order as to costs of these appeals in this Court;

AND THIS COURT DOTH LASTLY ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 1st day of February, 1996.

sh
(MANJU GOEL)
REGISTRAR (VIG.)

SUPREME COURT

~~CRIMINAL~~/CIVIL APPELLATE JURISDICTION

~~No~~
~~XXX~~

~~XXX~~1996

CIVIL APPEAL NOS.2570 AND 2571 OF 1996.

The General Manager & Ors. Appellant s.
Petitioner

Versus

V.G.Desai & Anr. Respondent s.

CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD BENCH AT AHMEDABAD.
R.A.No.43/93 in o.a.No.313 of 1989
and O.A.No.313 of 1989.

DECREE ALLOWING THE CIVIL APPEAL NO.2571 of
1996 AND DISMISSING THE CIVIL APPEAL NO.2570
OF 1996 AS INFRUCTOUS WITH NO ORDER AS TO COSTS.
dated the day of 1996

dated this the 1st day of February, 1996.

Ashok Mathur,

Examined Advocate on Record for the Appellants.in C.A.2570 of 1996.

Compared with SHRI
Rajiv Kr. Singh,

No. of folios Advocate on Record for the Appellants in C.A.2571 of 1996.

Mr. S.C.Patel,
Advocate on record for Respondent No.1 in
C.A.2571 of 1996.

SEALED IN MY PRESENCE

NT