

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.NO.309/92

HON'BLE JUSTICE CHETTUR SANKARAN NAIR(J), CHAIRMAN
HON'BLE SHRI R.K.AHOJA, MEMBER(A)

New Delhi, this 10th day of October, 1996

1. Dr. V.K.Khanna
s/o Dr. P.N.Khanna
I-7, Jangpura Extension
New Delhi.
2. Dr. B.S.Mathur
s/o Shri B.C.Mathur
N.H.Medical College Campus
Defence Colony
NEW DELHI.
3. Dr. B.M.Sharma
s/o Shri J.L.Sharma
36, DDA Flats
Greater Kailash
NEW DELHI - 110 048.

... Applicants

(By Shri D.R.Gupta, Advocate)

Vs.

1. Lt. Governor
Delhi.
2. Secretary(Services)
Delhi Administration, Delhi
Old Secretariat
DELHI.
3. Secretary(Medical)
Delhi Administration, Delhi
(M & PH Department),
5, Sham Nath Marg
DELHI-54.
4. The Principal
Nehru Homeopathic Medical College
& Hospital, NEW DELHI.

... Respondents

The application having been heard on
10.10.1996, the Tribunal on the same
day delivered the following:

ORDER

Chettur Sankaran Nair(J), Chairman

Applicants, who were holding posts of
Lecturer, were promoted as Assistant Professors

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on adhoc basis on 03.11.1983. At that time, no Rules were framed under Article 309 of the Constitution of India governing appointments and such Rules were notified only in the year 1985. Even thereafter, the cases of applicants were not referred to the Union Public Service Commission as requested by the Deputy Director under whom they are working. Applicants submit that for inaction and delay on the part of respondents, the benefit of seniority and regularisation should not be denied to them. Learned counsel relied on the decision in Ashok V. David & Another Vs. Union of India & Others 1996(6) JT 157 and Y. H. Pawar Vs. State of Karnataka 1996(5) JT 521 to draw support for his contention. However, learned counsel for respondents would submit that for purposes of seniority and regularisation, adhoc service will not count. Generally stated, this is a sound proposition, but in cases where there is undue delay on the part of the Government in regularising the services, different consideration must prevail. As observed by the Supreme Court in Ashok V. David's case(Supra), the benefit of confirmation and regularisation cannot be delayed or denied on account of the delay on the part of the employee. It is not as if regular appointments cannot be made without Statutory Rules. Where Rules are not framed under Article 309, the executive powers of the Union or the

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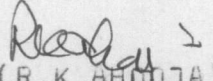
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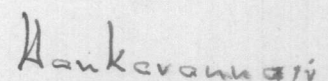
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State can be invoked and in such cases the procedure to be followed is indicated by the Government of India in Office Memorandum No.39021/5-83-Est.(B), dated 09.07.1985. It is stated that further action to fill up such posts should be taken according to the advice of the Union Public Service Commission and that, "all such appointments will be treated as regular appointments". The principle laid down by the Supreme Court finds place in this Office Memorandum also. As noticed in Union of India & Another Vs. Harish Chander Bhatia, 1995 SCC(LS) 404, even long adhoc service is not "fleeting service" and the employee must be given the benefit of such service following the decision of Supreme Court aforesaid.

2. In the special circumstances of the case, we direct respondents to treat the service rendered by applicants as Assistant Professors with effect from 03.11.1983 as regular service for purposes of regularisation and future promotion. Respondents will proceed further in the matter in accordance with these directions within six months from today and they will do well to adhere to the time limit faithfully. With these directions, we allow the application. Parties will bear their costs.

Dated, the 10th October, 1996.


(R.K. AHUJA)
MEMBER(A)


(CHETTUR SANKARAN NAIR(J))
CHAIRMAN

/rao/