BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

1.Shri P.D.Kawade, .. O.A.No.333 of 1986
Stenographer Gde-III,
Department of Paediatrics,
Armed Forces Medical College,
Pune - 411 040.

2.Shri P.S.Ramachandran Nair, . O.A.No.334 of 1986.
Stenographer Grade II,
Department of Surgery,
Armed Forces Medical College,
Pune - 411 040.

3.Mrs.Kunjamma George, .. O.A.No.335 of 1986
Stenographer Grade III,
Department of Dental Surgery,
Armed Forces Medical College,
Pune - 411 040.

4.Miss.Vidya Harchandrai Israni, O.A.No.337 of 1986
Stenographer Grade III,
Department of Pharmacology,
Armed Forces Medical College,
Pune - 411 040.

5.Mrs.Soudamini J.Nair, .. O.A.No.338 of 1986
Stenographer Grade III,
Department of Anaesthesiology,
Armed Forces Medical College,
Pune - 411 040. .. APPLICANTS

V/s

1. The Secretary,
Ministry of Defence,
Govt.of India,
New Delhi-110 011.

2. Office of the Director General,
Armed Forces Medical Services,
Ministry of Defence,
'M' Block,
New Delhi - 110 011.

3. The Commandant,
Armed Forces Medical College,
Pune-411 040. .. RESPONDENTS

Coram: Hon'ble Vice-chairman B.C.Gadgil
Hon'ble Member (A) J.G.Rajadhyaksha

Appearances

1. Mr.P.U.Srinivasan for the applicants

2. Mr.S.R.Atre for the Respondents.

ORAL JUDGEMENT (Per Vice-chairman B.C.Gadgil) Dated 15.12.86.

These five matters O.A.Nos 333/86, 334/86, 335/86, 337/86 and 338/86 were to-day kept for Admission and also

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for considering the question as to whether the interim relief should be continued or not.

2. We find that the matters deserve to be admitted. Accordingly, the applications are admitted. Mr.S.R.Atre, Advocate waives notices for the Respondents. Replies of the Respondents are already on record in all five cases. Hence we suggested to the learned advocates that the matters can be heard to-day itself. There could not have been any objection about this. The advocates, therefore, consented to the suggestion. Accordingly, we have heard Mr.P.U.Srinivasan for the applicants and Mr.S.R.Atre for the Respondents.

3. Initially, we would like to mention the facts in O.A.333 of 1986. The applicant's date of birth as mentioned in the application is 15-9-1940. He was appointed as Stenotypist on 4.3.65 in the Armed Forces Medical College, Pune. At the time when the appointment was made, 1964 Recruitment Rules (which were given effect from 24.2.1964) were in force. According to these rules, the qualifying maximum age limit was 21 years. However, the earlier rules had prescribed such maximum age limit as 25 years. Consequently, the applicant who had crossed 21 years of age was appointed in 1965 and in a way, this appointment was not regular inasmuch as the applicant was more than 21 years of age. We may add that in 1972, the Recruitment Rules were again changed and the qualifying maximum age has been increased to 25 years.

4. It appears that the appointing authority was neither fully aware nor quite certain in 1964 onwards as to whether for the short period in and after 1964 the maximum qualifying age was reduced from 25 to 21 years. It is on account of this hesitation that the applicant was appointed when he had crossed the age of 21 years. The matter has been

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taken up with the Ministry with a request that the age limit may be condoned as far as the applicant and other persons are concerned.

5. On 21.11.84, the Ministry of Defence has passed an order relaxing the maximum upper age limit and holding that the applicant and other persons are fit for appointment to the posts. However, the said letter has directed that the period earlier to 21.11.1984 should be treated as adhoc and it is not to be counted for promotion, confirmation and seniority etc. The applicant has challenged this direction for treating the earlier period of service as adhoc.

6. We would like to deal with the facts of the remaining four applications. They are as follows:-

Sr. No.	O.A.No.	Name	Date of Birth	Date of Appointment	Post
1.	334/86	Mr.P.S.Ramchandran Nair.	8.6.'43	2.3.65	Steno-typist.
2.	335/86	Mrs.Kunjamma George.	21.8.'43	5.10.64	-do-
3.	337/86	Miss.V.H.Israni	1.3.44	19.12.66	L.D.C.
4.	338/86	Mrs.Soudamini Nair.	5.2.'42	6.10.64	Steno-typist.

7. From the Ministry of Defence order of sanction dated 21.11.84 (vide Annexure Page 31 of the compilation), it is quite clear that the Govt.has relaxed the maximum upper age limit in favour of the applicants. On such relaxation, the applicants would obviously be in the regular employment of the Government. The impact of the impuged direction is that long service of 20 years of each of the applicants is to be as ad hoc so far as the promotion, confirmation and seniority are concerned.

It is, however, material to note that the Supreme Court had an occasion to consider these aspects in the case of "Narender Chadha and Others versus Union of India and Others" reported in 1986 A.T.R.(1) S.C.49. The facts before the Supreme Court were that certain employees who were given

ad hoc promotions continued to hold such ad hoc promotions for a very long period. Later on, direct recruits were appointed. There was the quota and rota prescribed by rules. A decision was taken by the Government that the ad hoc service in the promotional post will be of no use to the promotees and that direct recruits subsequently appointed would be senior to such ad hoc promotees. The Supreme Court set aside this decision of the Government and also ruled that long and continuous service though ad hoc in nature will count for seniority.

8. The present case is a little bit stronger inasmuch as the Ministry of Defence has regularised all the previous service from 1964 onwards by condoning or relaxing the maximum upper age limit. In our opinion, it would neither be just nor legal to wipe off the 20 years of service of applicants. This is more so now that the age limit has been relaxed by the Ministry of Defence as conveyed by the Director General of Armed Forces Medical Services. Once such relaxation has been made, the concerned employee would have the right to contend that his services should be counted from the date of initial appointment for the purpose of seniority, promotion and confirmation etc. We may, with advantage, refer to the decision of the New Delhi Bench in the case of "Mr.S.C.Jain V/s Union of India" reported in 1986(2) A.T.R.C.A.T.346. That Bench has held that the entire period of ad hoc service followed by regular appointment should count for the purposes of seniority. The net result is, that the applications succeed. The direction contained in the letter dated 21.11.84 (Page 31 of the compilation) is quashed. It is directed that each of the applicants should be treated in the regular employment in the AFMC from the date on which each of them was initially

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appointed and that the entire period of service should be counted towards promotion, confirmation, seniority and other incidental benefits. The parties to bear their own costs of this application.

(B.C.GADGIL)
VICE-CHAIRMAN

(J.G.RAJADHYAKSHA)
MEMBER(A)