IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 576/94 alongwith 199
O.A.No. 577/94 & OA 653/94

19

DATE OF DECISION 26-10-99

OA 576/94-M.R.Nouni ....Petitioner
OA 577/94-S.K.Jagwani
OA 653/94-S.K.Singh & Ors.

Sh.D.R.Gupta along with Shri H.L. Taneja ....Advocate for the Petitioner(s)

VERSUS

UOI & Ors. ....Respondent(s)

Sh.S.M.Arif for official respondents..Advocate for the
Sh.P.P.Khurana for pvt.respondnts Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri R.K.Ahooja, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

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O.A. 576/94
with
O.A.577/94
and
O.A.653/94

New Delhi this the **26** th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

O.A. 576/94

M.R. Nouni,
S/o Shri U D Nouni,
R/o B-30, Sector 20,
Noida (UP) ... Applicant.

By Advocate Shri D.R. Gupta along with Shri H.L. Taneja

Versus

1 Union of India through
Secretary,
Ministry of Non-Conventional Energy Sources
(MNES), Block No. 14,
CGO Complex, N Delhi-110 003.

2 A.K Tripathi,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

3. R.D. Sharma,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

4. Inder Kumar,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

5. P.C Maithani,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

6. M.L Bamboria,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3 ... Respondents

By Advocate Shri S. Mohd. Arif - for official respondents
By Advocate Shri P.P. Khurana - for private respondents.

O.A. 577/94

S.K. Jagwani,
S/o Shri D.B. Jagwani,
R/o M-107, Saket,
New Delhi-110 017 ... Applicant

By Advocate Shri D.R. Gupta along with Shri H.L. Taneja.

Versus

1. Union of India through
Secretary,
Ministry of Non-Conventional Energy Sources
(MNES), Block No. 14,
CGO Complex, N.Delhi-110 003.

2. R.D. Sharma,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

3 Inder Kumar,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

4. P.C. Maithani,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

5. M.L. Bamboria,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3. ... Respondents.

By Advocate Shri S. Mohd. Arif - for official respondents
By Advocate Shri P.P. Khurana - for private respondents.

O.A. 653/94

1 S.K. Singh,
S/o Shri D.M. Singh,
R/o 99/V, Pushap Vihar,
New Delhi.

2 P.R. Srivastava,
S/o Shri L.P. Srivastava,
R/o 114/IV, Pushap Vihar,
New Delhi.

3. Shri Sohail Akhtar,
S/o Shri Abdus Samad,
R/o 2060, Delhi Administration Flats,
Gulabi Bagh,
New Delhi. ... Applicants.

By Advocate Shri D.R. Gupta along with Shri H.L. Taneja

Versus

1. Union of India through
Secretary,
Ministry of Non0Conventional Energy Sources
(MNES), Block No. 14,
CGO Complex, N.Delhi-110 003.

2. R.D. Sharma,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

3 H.R. Khan,
Senior Scientific Officer-I,
MNES, Block No 14, CGO Complex,
New Delhi-3.

4 Inder Kumar,
Senior Scientific Officer-I,
MNES, Block No 14, CGO Complex,
New Delhi-3

5 P.C. Maithani,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3

6 N. Mehta,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3

7 M.L. Bamboriya,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

8 B R. Mishra,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3

9 D.R. Das,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3.

10 Dilip Nigam,
Senior Scientific Officer-I,
MNES, Block No. 14, CGO Complex,
New Delhi-3. ... Respondents.

By Advocate Shri S. Mohd. Arif - for official respondents
By Advocate Shri P.P. Khurana - for private respondents.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

These three applications, namely, M.R. Nouni Vs Union of India & Ors. (OA 576/94), S.K. Jagwani Vs. Union of India & Ors (OA 577/94) and S.K. Singh & Ors. Vs. Union of India & Ors. (OA 653/94), have been heard together as they raise similar issues of facts and law and are disposed of by this common order. For the sake of convenience, references to facts and orders have been given in M.R. Nouni's case (supra).

2 The applicant, who was working as Senior Scientific Officer, Grade-I (for short 'SSO-I') with Respondent 1, was promoted in that grade w.e.f. 23.3.1993 by order dated 7 5 1993 Prior to that date, he was working as Senior Scientific Officer, Grade-II (for short 'SSO-II') in which post he was initially appointed by order dated 11 12 1987 as a direct recruit with effect from 1 12 1987 He has submitted that some of the SSOs-II joined the Department/Ministry on deputation though they were not holding the rank or grade of SSO-II on the substantive posts in their parent departments. A seniority list of SSO-II was circulated by order dated 12 7.1991 The applicant, Shri M.R. Nouni, was placed at Serial No 1 in this seniority list as on 1.12.1990. A final seniority list was also issued which, according to the applicants, did not change their seniority positions as on 1 7 1991 This list was notified on 26.3.1993. The promotion of SSO-II to the post of SSO-I is based on Flexible Complementing Scheme (FCS). The applicant has stated that the SSOs-II with five years of regular service were eligible for consideration for promotion to the post of SSO-I His grievance is that certain junior persons have been considered for promotion to the post of SSO-I. who have not put in five years of regular service as per the then existing Recruitment Rules of 1985. Subsequently Respondent 1 had amended the service conditions which was published by Notification dated 12.3.1992. The applicant has contended that the amended Rules were not in existence at the time when the DPC met for considering the promotion of S/Shri A.K. Tripathi, R.D. Sharma, Inder Kumar, P C Maithani and Bambooria along with two others. He has submitted that the amended Rules could not have been made

applicable retrospectively and on 25.7.1991, he being senior and a direct recruit, will continue to be senior to the five promoted officers who, he submits, are junior to him. Shri D.R. Gupta, learned counsel, has contended that these junior officers could not have been considered for promotion as SSO-I According to him, as per the relevant rules and regulations for calculating the five years qualifying service, the date of joining the office is significant.

3 Learned counsel for the applicants has contended that the aforesaid three Original Applications are not barred by limitation as the representations submitted by the applicants were rejected only in 1994. The O.As have been filed on 1 3 1994 and hence he contends that there is no question of limitation in these cases. He has contended that under the amended Rules of 1991 notified on 12.3.1992, in the case of officers recruited by transfer on deputation and later absorbed, they can at best be treated as ad hoc employees. He has also submitted that some of these officers were on contract basis. He relies on the judgements of the Supreme Court in **T.K. Ponnuswamy and Ors. Vs. Govt. of T.N. & Ors.** (1994 Supp (3) SCC 376), **S.K. Saha Vs. Prem Prakash Agarwal & Ors.** (1994(1) SCC 131) and **Sushila Devi Vs. Karnataka Provinicial Service Commission** (19983) SCC 242). The applicant has sought a direction to Respondent 1 to advance the date of his promotion from the post of SSO-II to SSO-I from the date his juniors have been promoted with all consequential benefits and to maintain his inter se seniority in the seniority list of 12.7.1991 even after promotion as SSO I

4. Shri Mohd. Arif, learned counsel for the official respondents, has taken a preliminary objection that the O.A. is barred by limitation and there is not even a Miscellaneous Application for condonation of delay. He has submitted that the private respondents have been promoted on 27.12.1991 and the application having been filed in March, 1994 is, therefore, clearly barred by limitation.

5. Respondent 1 in their reply have submitted that the applicant is not entitled to any relief, such as advancing his date of promotion with all consequential benefits, including arrears of pay. They have submitted that seniority has no role to play in the matter of promotion under the FCS as the Scheme is not related to the availability of vacancies in the higher grade. The persons are given in situ promotions in the event of their being found fit by the Assessment Board. They have submitted that under the FCS, promotions are based on residency period prescribed for particular grade and are not based on seniority. They have submitted that under the Recruitment Rules while computing the length of qualifying service in the case of officers recruited on transfer on deputation and later absorbed in the same grade without being reverted, the service rendered by them in the same grade, while on transfer on deputation, immediately preceding absorption in the Ministry, has also to be counted for the purpose of review for promotion to the next higher grade. This amendment was approved by the DOP&T. In the meantime, before the amendment could be notified, some of the SSOs-II became eligible for consideration for promotion to the grade of SSO-I w.e.f. 1.5.1991. They had proposed to include the asessment of those SSOs-II who had become

eligible for consideration for promotion to the next higher grade in accordance with the proposed amendment in the meeting of the Assessment Board which was held in July, 1991, for which they had taken necessary relaxation of the competent authority viz., the Department of Personnel & Training. Consequently, the five SSOs-II, who have been impleaded as Respondents 2 to 6, who were initially appointed by transfer on deputation basis in the grade of SSO-II and were later on permanently absorbed in the same grade without being reverted, were also considered in the meeting of the Assessment Board, as they had completed the requisite residency period in the grade of SSO-II by the cut off date, in accordance with the proposed amendment to the Recruitment Rules. They have submitted that the applicant, Shri S.K. Jagwani in OA 577/94, is a direct recruit to the post of SSO-II and he had completed the residency period of five years in that grade only on 15 10 1992 and, therefore, was not eligible for being considered for promotion to the next higher grade in the meeting of the Assessment Board held in July, 1991. They have admitted that the amendment to the Recruitment Rules was notified on 12 3 1992. However, as the five private respondents, who are SSOs-II, were considered for promotion after obtaining due relaxation of the competent authority in accordance with the proposed amendment Rules, the respondents have submitted that there was nothing illegal about it and their promotions are in order.

6 Shri Mohd Arif, learned counsel, has also reiterated that seniority is unrelated to the promotions under the FCS and the respondents have acted in accordance with the proposed amendment Recruitment Rules and as such, the promotions orders of Respondents 2 to 6 are legally in

order. He has, therefore, submitted that there is no question of advancing the date of promotion of the applicants in these three O.As with consequential benefits from the date their juniors were promoted to the grade of SSO-I. Learned counsel has submitted that the promotion of the private respondents under the FCS has been done in accordance with the Rules notified on 12.3.1992. He has submitted that the amendment Rules itself have not been challenged by the applicants and, therefore, no relief can be given to them. He has contended that under the Rules, the respondents have the power to relax, which power they have exercised in the present cases. Under the Recruitment Rules, the period of deputation is to be counted. He has, therefore, submitted that the applications may be dismissed.

7 We have also heard Shri P.P. Khurana, learned counsel for the private respondents 2 to 6. He has emphasised that in the case of FCS promotions, a SSO-II becomes eligible after five years of residency in the lower grade and if found fit by the Assessment Board, is promoted to the next higher grade, even without having any vacancy in the higher grade. He has also emphasised that seniority has no role to play. He has submitted a statement giving the details of seniority position of the respondents, showing their date of promotion with Respondent 1 from 1986, whereas applicants S/Shri M.R. Nouni, S.K. Jagwani and S.K. Singh & Ors. have been appointed as direct recruit in 1987 and 1988. He has submitted that while the private respondents, in accordance with the Rules had the requisite length of service of five years in the lower grade, the applicants did not fulfil this qualification. He has, therefore, prayed that the O.As may be dismissed

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. Shri Mohd. Arif, learned counsel, has submitted the relevant records for our perusal.

9. The issue in this case is with regard to the promotion orders passed by Respondent 1 promoting private respondents by the orders dated 27.12.1991 and 7.5.1993. Against these orders, the applicant had made representation in 1993 which was rejected by Respondent 1 on 4.11.1993. As the O.As have been filed in March, 1994, the preliminary objection of limitation is, therefore, rejected.

10. On the merits of the case, we find the contentions of the applicants are without any force. The contention of the respondents that seniority is not relevant while considering the promotion under FCS, is as per the relevant Rules i.e. Rule 4(3) of the Department of Non-Conventional Energy Sources Group 'A' Gazetted Posts (Non-Ministerial, Scientific and Technical) Rules, 1988 provides that the system of flexible complementing and in situ promotion shall be followed in the matter of promotion of Departmental officers. Rule 9 of these Rules also provides power to relax which is vested to the Central Government. The feeder grade for promotion to SSO-I is SSO-II with five years regular approved service in the grade. The private respondents, who have been given in situ promotions in the grade of SSO-I were eligible for being considered for promotion to that grade in July, 1991 in accordance with the provisions of the proposed amendment to the Recruitment Rules which were notified later on

12.3.1992. The respondents have obtained the relaxation to the Recruitment Rules on the basis of the provisions of the proposed amendment which provides as follows:

> While computing the length of qualifying service, in the case of officers recruited by transfer on deputation and later absorbed in the same grade without being reverted, the service rendered by them in the same grade, while on transfer on deputation, immediately preceding absorption in the Department shall also count for the purposes of review and promotion to the next higher grade

The private respondents, who were initially appointed in the grade of SSOs-II and were later permanently absorbed without being reverted, were, therefore, entitled to include their periods of deputation and had completed the requisite period by the cut off date. Hence, they were eligible for consideration for promotion to the posts of SSO-I by the Assessment Board.

11 The contention of the applicants in the aforesaid three applications that they have been victimised while the private respondents have been given the promotion, is unacceptable as they did not fulfil the conditions laid down in the Rules. As the promotion posts are not vacancy based, any SSO-II, who fulfils the eligibility conditions of residency, is entitled to be considered by the Assessment Board which is to meet twice annually i e on or after 1st January and 1st July every year The Board is to consider the cases of all Departmental Officers who have completed or will complete the requisite qualifying service in the respective grades during the period of three months before or after the cut off dates to assess their suitability for promotion to the post of higher grade The applicants in these O.As cannot have the grievance that as they are placed senior to some

of the private respondents, they ought to get the consequential benefits of the promotions given to their juniors, when they do not even fulfil the eligibility conditions for placing their cases before the Assessment Board under the FCS. We have also perused the relevant official records submitted by Respondent 1 and do not find that they have acted contrary to the Recruitment Rules or the proposed amendment to the Rules. The DOP&T had agreed for the relaxation that the period of deputation without break may be taken as qualifying service under the FCS of the concerned SSOs-II, which meant that the private respondents fulfil the eligibility conditions for assessment by the Board. This is not so with the applicants in these three cases, as they have joined as SSOs-II later

12 The decision of the Supreme Court in **S.K. Saha's case (supra)** relied upon by the applicant deals with seniority and counting of service rendered by a person on officiation basis In the other case of **T.K. Ponnuswamy and Others (supra)**, their Lordships of the Supreme Court were also dealing with the rule of promotion which required six years experience which was taken to mean six years experience as Deputy Collector under the Tamil Nadu Civil Services Rules These cases, therefore, deal with the rules of promotion and counting of service, which rules are different from the provisions under the FCS and are, therefore, not relevant to the facts in the present cases

13 In the facts and circumstances of the case, therefore, we do not find any irregularity and infirmity in the action taken by Respondent 1 to warrant any interference in the aforesaid three O.As. In the result,

the applications (O.As 576/94, 577/94 and 653/94) fail and are dismissed. No order as to costs.

14. Let a copy of this order be also kept in O.A. 577/94 and O.A 653/94.

(R.K Ahooja)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'