

Form No. J.(2)
Item No.116
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 19.02.2026

DELIVERED ON: 19.02.2026

CORAM:

**THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**WP.CT. 226 of 2015
Union of India & Ors.**

Vs.

Sri Debashis Bhattacharjee & Ors.

Appearance:-

Mr. Dibashis Basu

Mr. Arun Bandyopadhyay

.....For the Petitioners

Mr. Bipul Kumar Mondal

Ms. Tuli Sinha

.....For the Respondents

JUDGMENT (ORAL):

Per, Sujoy Paul, CJ.:-

1. In this petition filed under Article 226/227 of the Constitution of India, the petitioners/Department have called in question the legality, validity and propriety of order dated 26.08.2015 passed by Central Administrative Tribunal (Tribunal), Calcutta Bench in O.A. No.1493 of 2013.
2. Draped in brevity, the singular conundrum before the Tribunal was whether upon promotion to the Post of Goods Guard from the Post of Commercial Clerk, the

respondents/applicants were entitled to get the benefit of Fundamental Rule (FR) 22C [renumbered as 'FR 22(I)(a)(1)'], which is analogous to Rule 1313 of **Indian Railway Establishment Code (Code)**, Volume II. The parties have fairly submitted that before promotion to the Post of Goods Guard, which carries the Pay Scale of Rs. 1200-2040, the petitioners were Commercial Clerks in the same scale of Pay of Rs. 1200-2040. Earlier, they visited the Tribunal by filing O.A. No.1100 of 2012, which was disposed of by directing the respondents to decide their representation by passing a speaking order.

3. In turn, by speaking order dated 25.07.2013, the claim of petitioners to get the benefit of FR 22 (I)(a)(i)/Rule 1313, as aforesaid, was declined by stating that the respondents were not promoted from the Feeder Post, i.e. Commercial Clerk carrying the Pay Scale of Rs. 975 – 1540. Had it been a case of promotion from an inferior Scale to Goods Guard (1200-2040), the respondents could have claimed the benefit of Rule 1313. It is urged that in previous Case No.O.A. 470 of 2008, the FR 22C/Rule 1313 could not be considered by Tribunal. In the teeth of said Rule, the present respondents were not entitled to get the benefit.
4. The Tribunal considered the said distinction tried to be made by Railway Administration but, discarded it for the simple reason that similarly situated persons carrying same scale in the Feeder Post (in the Pay Scale of 1200-2040), upon their promotion as 'Goods Guard' got the benefit of FR 22 (C)/Rule 1313. Thus, on principle of parity, the respondents should be given the benefit of FR 22 (C)/Rule 1313.

CONTENTION OF THE DEPARTMENT

5. Learned counsel for Department submits that the previous order passed by Tribunal in O.A. No.470 of 2008 was implemented because of the threat of contempt filed by the applicants therein, however, the previous order passed in O.A. No.470 of 2008 is passed without considering the statutory provision i.e. Rule 1313 of the Code.
6. In view of this Rule, it is clear that when a person is promoted from one Post to another, carrying the same Pay Scale, there is a presumption that such promotion/appointment does not involve assumption of duties and responsibilities of greater importance. It is urged that previous judgment passed in O.A. No.470 of 2008 cannot be treated as a precedent by the Tribunal because statutory provision i.e. FR 22 (C)/ Rule 1313 has not been taken into account.

CONTENTION OF RESPONDENTS/APPLICANTS

7. Learned counsel for the applicants supported the impugned order and urged that when similar benefit was extended to similarly situated persons in O.A. No.470 of 2008, there is no justification in giving a step motherly treatment to the present respondents. Ld. Counsel did not dispute that in the order passed in O.A. No. 470/2008, Tribunal has not considered FR 22C/Rule 1313.
8. No other point is pressed by learned counsel for the parties.
9. We have heard the parties at length and perused the record.

FINDINGS

10. The pivotal question before us is whether the Commercial Clerks (1200-2040) on promotion to the Post of Goods Guard carrying the same Pay Scale (1200-2040) are entitled to get their fixation as per the FR 22(C)/Rule 1313 of the Code.
11. Before dealing with rival contentions, it is apposite to consider the rule. Relevant portion of Rule 1313 reads thus:-

"Rule 1313 [FR-22(I)(a)(1)] of Indian Railway Establishment Code Volume-II (Sixth Edition-1987) (Second Reprint Edition 2005) provides as following:-

"Where a railway servant holding a post, other than a tenure post in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity s promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more"

Further, Sub-Rule(III) of above Rule provides as follows:-

"For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the railway servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith."

(Emphasis Supplied)

12. On a careful reading of Sub-Rule III reproduced above makes it clear that a legal fiction is being creating by the Statute. It is made clear that if appointment/promotion is on a Post, which carries the same Pay Scale which is attached to the Feeder Post, such appointment/promotion shall not be deemed to be on a Post having duties and responsibilities of greater importance. Since, in the

instant case, admittedly, petitioners' career progression from the Post of 'Commercial Clerk' to the Post of 'Goods Guard' is in the same Pay Scale, on application of Sub-Rule (III), aforesaid, it will be presumed that petitioners' promotional Post of Goods guard does not involve the assumption of duties and responsibilities of greater importance. In that case, the fundamental Rule 22C/ Rule 1313 cannot be pressed into service. The Supreme Court in **(1998) 5 SCC 242 (Union of India and Ors. vs. Ashoke Kumar Banerjee)** opined that:

"8. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post."

(Emphasis Supplied)

Subsequently, such decision was also followed by a Division Bench of the Supreme Court in **State of Haryana v. Partap Singh, (2006) 10 SCC 251** and the **Gauhati High Court in Sankar Chandra Paul v. State of Tripura, 2010 SCC Online Gau 396**.

13. The ancillary question is whether Tribunal was justified in following its previous order passed in O.A. No.470 of 2008? Ordinarily, in cases where a similar benefit has been granted by the court to a similarly situated employee, the Courts and Tribunals endeavour to extend the same benefit on principles of parity. However, while doing so, the Tribunal/Court must not ignore the governing statutory provisions. If a benefit is granted to a set of employees contrary to the statutory provision, the said decision cannot be treated as a precedent. The Apex Court in **(2006) 5 SCC 752 (Mayuram Subramanian Srinivasan vs. CBI)** opined that if a

judgment is passed in ignorance of a binding statutory provision, the said judgment will not be treated as a binding precedent. It was held as under:

“11. “Incuria” literally means “carelessness”. In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The “quotable in law”, as held in Young v. Bristol Aeroplane Co. Ltd., is avoided and ignored if it is rendered, “in ignoratium of a statute or other binding authority”. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short “the Constitution”) which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. v. Synthetics and Chemicals Ltd. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. The position was highlighted in Nirmal Jeet Kaur v. State of M.P.”

(Emphasis Supplied)

14. The Tribunal, in our opinion, erred in ignoring the impact of FR 22(C)/Rule 1313 and mechanically followed its previous order in O.A. No.470 of 2008. Thus, we are unable to countenance the impugned order of Tribunal dated 26.08.2015. Resultantly and reluctantly, we **set aside** the order dated 26.08.2015 and **allow** the petition.
15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, C.J.)

I agree.

(PARTHA SARATHI SEN, J.)