

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

HEARD ON: 04.02.2026

DELIVERED ON: 04.02.2026

CORAM:

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

WP.CT 22 of 2015

Kalipada Majumdar & Ors.

Vs.

Union of India & Ors.

With

WP.CT 24 of 2015

Sri Tapas Chakraborty & Ors.

Vs.

Union of India & Ors.

Appearance:-

Mr. Subir Sanyal, Sr. Adv.

Mr. Tulsidas Ray

Mr. Tapan Roy

Mr. Sourojit Mukherjee

.....For the Petitioners

Mr. Pramod Kr. Drolia

Mr. Rajesh Kr. Shah

.....For the Respondents/Department

JUDGMENT (ORAL):

Per, Sujoy Paul, CJ:-

1. The interesting conundrum before the Tribunal was whether the Post of Motor Pump Attendant (for short, 'MPA') re-designated as Fitter General Mechanic (for short, 'FGM') was a 'promotional' post or a 'direct recruitment/reclassified' post. Admittedly, if the post of MPA/FGM is a promotional post, the petitioners were not entitled to get the benefit of Second Assured Career Progression (ACP) Scheme. The Tribunal faced

this question in O.A. No.1543 of 2009, which was disposed of by directing the petitioners to prefer representation in this regard, before the Department and in turn, Department was directed to consider the same and pass a speaking order. In turn, speaking order dated 21st May, 2010 (Annexure – A6) was passed by the Department.

2. The petitioners filed O.A. No.670 of 2010 and O.A. No.1722 of 2010, which were heard analogously by the Tribunal and decided by impugned common order dated 15.05.2013. The Tribunal declined the relief claimed and opined that their movement from the Post of General Mazdoor/Chowkidar to the Post of MPA/Fitter General Mechanic is indeed a “promotion”. This common order dated 15.05.2013 is subject-matter of challenge in this petition filed under Article 226/ 227 of the Constitution of India.

CONTENTION OF THE PETITIONERS

3. Shri Sanyal, learned senior counsel appearing for the petitioners submits that the petitioners were initially appointed as Chowkidar/General Mazdoor. Subsequently, through internal direct recruitment/reclassification, they became MPA/FGM. The said direct recruitment was pursuant to clearing the trade test conducted by the Department.
4. Learned counsel for the petitioners submits that the said reclassification has taken place nationwide and to bolster this submission, he places reliance on certain orders (from page 34 to 38). It is submitted that these orders were issued whereby the earlier promotion as ‘MPA’ was directed to be read as “reclassified” as MPA. Although, these promotion orders are of different persons and not in relation to petitioners, petitioners deserve similar treatment.

5. The next reliance is on the document dated 3rd June, 2011 issued by the SE CWE (S) Barrackpore, wherein it is held that where the Mazdoors have been reclassified/appointed as skilled tradesman in various industrial categories, they should be treated as 'recruited' and not 'promoted'. Thus, by placing reliance on Prayer No.8 (ii) of O.A., Shri Sanyal, learned senior counsel submits that the Tribunal ought to have treated the present petitioners as "reclassified" and accordingly, further treated them as direct recruitees. Resultantly, the petitioners were entitled to get the benefit of ACP Scheme by getting the 2nd financial upgradation.
6. Learned senior counsel has taken pains to submit that the said ACP benefit was granted to similarly situated persons at Bhatinda, Delhi Cantonment and Barrackpore, where their movement to MPA and FMA was treated as "reclassification" and consequently, as direct recruitment. Thus, they got the benefit of the ACP Scheme. There is no justification in depriving the petitioners from the fruits of similar treatment. Furthermore, learned senior counsel places reliance on Standing Order, 1971 issued by Army Headquarters.
7. To bolster the submission Clause 3 was referred, which reads thus:-

"3. Industrial posts with a starting pay scale of Rs.150 are treated as "highly skilled," those with a starting pay scale between Rs.85 and Rs.149 as "skilled"; with a starting pay scale between Rs.75 and Rs.84 as "semi-skilled" and the remaining as "un-skilled".
8. It is argued that it is clear that the pay scale of 75-95 attached to the Post of MPA falls within the ambit of semi skilled category. In that event, the petitioners occupying the said Post must be treated to be occupying the same under direct recruitment.
9. It is further submitted by the petitioners that except petitioners, in the entire nation in the department, the similarly situated persons were reclassified and not treated as

promoted. There is no justification in giving a step motherly treatment to the petitioners. So far the statutory recruitment rules commonly known as **S.R.O. 215** are concerned, learned senior counsel urged that the said **S.R.O. 215** stood modified by issuance of the order dated 3rd June, 2011 and also the **Standing Order, 1971**. If “reclassification” is permissible in the teeth of the order dated 3rd June, 2011 (Annexure – P/2) read with Standing Order, 1971, such reclassification made nationwide cannot fall within the ambit of ‘illegality’ thereby attracting negative equality principle.

CONTENTION OF THE DEPARTMENT

10. Learned counsel for the Department supported impugned order of the Tribunal and drawn our attention to the reply/counter filed before the Tribunal, which was considered by Tribunal in extenso. In paragraph 3 of the impugned order it was pointed out that the petitioners are claiming parity with so-called similarly situated employees, who were treated to be “reclassified” and not “promoted” but, the said order stood cancelled vide PTO 52/75 dated 29.12.1975. Even assuming that the petitioners filed a rejoinder and stated that those employees are continuing to get the benefit of 2nd ACP, it was not disputed in specific about cancellation of PTO No.52/75 dated 29.12.1975.
11. Learned Counsel for the Department places heavy reliance on **S.R.O. 215** and urged that the governing statutory rule is this **S.R.O. 215**, which makes it clear that there are three methods of induction to the Post of MPA namely, - (i) Promotion from the Feeder Post of Mazdoor/Chowkidar/Sweepers etc. (ii) Transfer and failing both (iii) by direct recruitment. In the instant case, the petitioners were “promoted” and by no stretch of

imagination, they can be said to be direct recruitees. Thus, Tribunal has not committed any error of fact or law which warrants interference.

12. We have bestowed our anxious considerations on rival contentions and perused the records.

FINDINGS

13. As noticed above, the interesting quagmire in this case, is whether the Post of MPA/FGM is a "promotional post" or petitioners occupied it by way of reclassification/direct recruitment.
14. The **S.R.O. 2015** is issued and published in the Official Gazette in exercise of power under proviso to Article 309 of the Constitution of India. The S.R.O. is called as **Military Engineer Services (Industrial Class III and Class IV Posts) Recruitment Rules, 1971** (hereinafter referred to as the "**S.R.O. 215**"). These rules are statutory in nature. The Post of Motor Pump Operator is classified as Class – IV Non-Gazetted Industrial Post having Pay Scale of 75-1-85-EB-2-95. The Post is a non-selection post.
15. Learned counsel for Department has rightly pointed out that there are three methods of induction on the Post of Motor Pump Attendant. The S.R.O. shows that the said contention is factually correct.
16. The whole case of petitioners is based on the documents filed from page 34 to 38 whereby certain persons, who were "promoted" as MPA were "reclassified" as MPA. Coupled with this, document/letter dated 3rd June, 2011 is relied upon wherein it was said that certain category of Mazdoors shall be treated to be 'recruited' and not 'promoted'.

17. The whole attempt of petitioners to show that they were “reclassified” and not “promoted” is to reap the benefit of 2nd financial upgradation under the ACP Scheme. It is a matter of common knowledge that ACP Scheme was introduced by the Government to provide financial upgradations to stagnating employees after completing stipulated years of service. If during those stipulated years of service, the stagnating employee has not received any promotion, he gets financial upgradation under the ACP Scheme but if he had received a promotional benefit, he is not entitled for the financial upgradation.
18. In order to wriggle out this aspect, the petitioners intention and projection is of two folds. *Firstly*, it is projected that since other employees (similarly situated MPA employees) were subsequently treated as “reclassified”, they were entitled for similar treatment. *Secondly*, it was prayed that they are entitled to get the benefit of parity with those employees working in Bhatinda, Delhi Cantonment and Barrackpore.
19. So far first contention is concerned, it is seen that Tribunal has dealt with this aspect in paragraph 3 of the impugned order. The same reads thus:-

*“3. In the counter reply filed on behalf of the respondents it has been stated that the applicants were appointed as Mazdoors on 12.10.1972 and 27.12.1971 as casual personnel and were absorbed on regular basis w.e.f. 17.1.1973. Both the applicants were promoted as MPA on 11.7.1979 after passing the Trade Test. The Trade MPA had been re-designated as FGM vide E in C’s Branch letter No.91026/FGM/EIC (3) dated 1.2.1995. The promotion as MPA w.e.f. 11.7.1979 was a direct line of promotion as per SRO 215 dated 24.7.1971 and their pay rose accordingly from Rs.196-232 to Rs.210-290 in accordance with the 3rd CPC and the same pay scale developed into Rs.950-1500 (4th CPC) and Rs.3050-4590 (5th CPC). On completion of 24 years of service the applicants were granted upgradation in the scale of Rs.4000-6000 w.e.f. 9.8.99. It had been clarified in E in C’s Branch, Army HQ, New Delhi vide letter No.85601/47/ACP/CSCC dated 10.10.2003 that **only those employees who had been directly recruited as Skilled Tradesmen be granted their first ACP in the scale of Rs.4000-6000 and the second ACP in the scale of Rs.5000-8000. So far as the employees who are stated to be similarly circumstanced now working under GE/Bhatinda), GE (Delhi Cantonment) and CWE(S) (Barrackpore) having got***

the benefit of ACP in the scale of Rs.5000-8000, it has been stated in the counter reply that GE(Delhi Cantonment) intimated that the promotion granted vide PIIO No. 52/75 dated 29.12.1975 was amended vide PIIO No.14/2006 dated 3.4.2006 as 'Reclassified' instead of 'promoted'. Subsequently 'Reclassification' has been cancelled and 'promotion' granted earlier vide PTO No.52/75 dated 29.12.1975 stands good. It was thus clear that 2nd ACP in the scale of Rs.5000-8000 was not granted to them (Annexure R/1). CWE(S) (Barrackpore) has clarified that second ACP in the scale of Rs.5000-8000 was granted to two persons due to wrong entry in the service book as "re-classified" but the same had been withheld and recovery of excess amount paid to hem had been ordered. Hence the present applicants had no claim to second ACP in the scale of Rs.5000-8000."

(Emphasis Supplied)

20. A plain reading of this paragraph of impugned order makes it clear that this is based on counter-reply filed by the Department wherein they have pointed out that the said benefits granted in Bhatinda, Delhi Cantonment and Barrackpore have been withdrawn. The Order No.52/75 dated 29.12.1975 was cited, which was not specifically rebutted by filing the rejoinder by the petitioner.
21. Thus, we find no reason to disbelieve the stand taken in the counter-reply by the department and believed by the learned Tribunal.
22. *Secondly*, if two views are possible, one is based on statutory recruitment rules and another is on any administrative order or executive instruction like document dated 03.06.2011, it is trite that the interpretation flowing from a statutory provision must be followed. In the instant case, **S.R.O. 215**, in no uncertain terms, makes it clear that the method of induction is through (i) promotion, (ii) transfer failing which (iii) by direct recruitment. Nothing could be pointed out to us that for alleged direct recruitment, any advertisement was issued inviting candidature from open market and in consequent examination, petitioners participated and got selected as direct recruitees. Curiously, the petitioners collected certain documents (from page 34 to 38) in relation

to alleged similarly situated MPAs but for the reasons best known to them did not file their own orders to establish they are direct recruits.

23. The very foundation of claiming parity does not survive when Department made it clear that such decision of reclassifying the MPA/FGM in Bhatinda, Delhi and Barrackpore has been cancelled.
24. The matter may be viewed from another angle. Even assuming that the said benefits in those three places were withdrawn, the said benefits were given by treating the said Post as "reclassified". A microscopic reading of the method prescribed in **S.R.O. 215** shows that only three modes of induction viz. promotion, transfer and direct recruitment were prescribed and permissible. This is settled that if law prescribes a thing to be done in a particular manner, things must be done in the same manner and other employees are forbidden. (*See: (2001) 4 SCC 9, Dhananjaya Reddy vs. State of Karnataka*)
25. For the sake of argument, if it is accepted that MPAs were treated as reclassified, the said decision certainly runs contrary to the statutory provisions viz. **S.R.O. 215**. Thus, any benefit illegally acquired by any similarly situated persons contrary to **S.R.O. 215** will not create any enforceable right in favour of the petitioners. The claim of said benefit/example for all practical purposes must be treated claiming negative equality, which cannot be extended in favour of the petitioners. It is apposite to rely on *State of U.P. & Ors. vs. Rajkumar Sharma & Ors.* reported in **(2006) 3 SCC 330 at Paragraph 15**, wherein it was opined as under:-

"15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution

does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P., Secy; Jaipur Development Authority v. Daulat Mal Jain; State of Haryana v. Ram Kumar Mann; Faridabad C.T. Scan Centre v. D.G. Health Services; Jalandhar Improvement Trust v. Sampuran Singh; State of Punjab v. Dr. Rajeev Sarwal; Yogesh Kumar v. Govt. of NCT, Delhi; Union of India v. International Trading Co. and Kasta Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority)."

26. As analyzed above, the petitioners are not entitled to get the benefit of 2nd ACP being 'promoted' on the basis of MPA/FGM and Tribunal has not committed any error of fact or law.
27. Resultantly, petitions are **dismissed**.
28. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)