

## **The New India Assurance Co. and Others Vs Sukanta Mitra**

**Court:** Calcutta High Court

**Date of Decision:** Nov. 22, 2006

**Citation:** 111 CWN 78

**Hon'ble Judges:** Tapan Mukherjee, J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** Partha Sarathi Sengupta and Probal Kumar Mukherjee, for the Appellant; Kashi Kanta Moitra, Ashim Kumar Dutta, Paramesh Bhattacharjee and Novojit Mukherjee, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Ashim Kumar Banerjee, J.

The respondent was working as an Assistant in the appellant company. Since his appointment in 1978 he was

not given any promotion and since then he was working as Punch Card Operator in the regional office of the appellant at Kolkata. The appellant

company wanted to introduce micro processor unit which was being opposed by the employees. Bipartite agreement was entered into by General

Insurance Corporation, the holding company of the appellant on the one hand and the employees union on the other hand on November 8, 1986

by virtue of which the appellant could install and introduce micro processors in their offices. Under the agreement the assistants working in the

different offices could be considered for the post of Data Entry Operator whereas senior assistants having a higher pay scale were to be

considered for the post of Programmer. Pertinent to note that the post of Data Entry Operator did not enjoy any better scale than that of the

assistant. Hence, according to the respondent such consideration was, in fact for a change in cadre and in any event not a promotion. Applications

were invited for the post of Data Entry C(sic)rator as well as Programmer from the eligible employees. The respondents/writ petitioners applied on

April 30, 1987. In the said application appearing at page 74-75 of the paper book the respondent contended that since he acquired suitable

knowledge and skill to perform as a Programmer he should be considered for the said post. It was further made clear that by virtue of his

designation as Punch Card Operator he should automatically be considered for the post of Data Entry Operator in case he was not selected as a

Programmer. He also refused to undergo any aptitude test in the selection process. On the basis of the said application he was offered the post of

Data Entry Operator vide letter dated March 24, 1988 as he was not entitled to be considered in the post of Programmer by virtue of the bipartite

agreement. When the selection process was in progress the appellant issued a circular dated March 7, 1988 page 107 of the paper book marked

as ""Offices in Bombay"" by which machine operators who were at par with Punch Card Operators were given one time opportunity to apply for the

post of Programmer as and by way of promotional process. Since the respondent/writ petitioner was a Punch Card Operator and not a Machine

Operator he was not given benefit of the said circular. The petitioner became dissatisfied. He made representation. He approached this court

earlier. This court directed consideration of his case after giving him an opportunity of hearing. The order of this court in the first writ petition dated

November 9, 1999 is appearing at page 45 of the paper book.

2. In terms of the order of this Hon"ble Court the authority framed a committee which heard the respondent on his representation and passed a

reasoned order appearing at page 77-85 of the paper book. By the said reasoned order representation made by the respondent was rejected,

inter alia, on the ground that he was not entitled to be considered for the post of Programmer as he was not a Machine Operator. Moreover, he

did not have the requisite qualification for the post of Programmer. The certificate issued by the British Institute so produced by the respondent/writ

petitioner was not adequate to apply for the post of Programmer.

3. Being aggrieved by and dissatisfied with the reasoned order so passed by the authority the second writ application was filed by the

respondent/writ petitioner which was finally heard and disposed of by the learned Single Judge by the judgment and order under appeal appearing

at page 214-233 of the paper book. By the said judgment and order the reasoned order was quashed and the writ petition was allowed. Hence.

the appellant company filled the instant appeal which was heard by us on the abovementioned dates.

4. Mr. Partha Sarathi Sengupta, learned Counsel appearing for the appellant contended as follows:

(i) The respondent/writ petitioner applied for the post of Programmer and not the post of Data Entry Operator. His application was based on

misconception. Even then the authority considered him for the post of Data Entry Operator and offered him as such. Hence, no illegality was

committed by the appellant.

(ii) The reasoned order so passed by the authority was based upon his claim made in his application as well as representation. He did not press his

claim on the basis of the subsequent circular. The authority considered his claim and rejected it by the reasoned order, as such no interference was

called for.

(iii) The very circular by which the other assistants working as Punch Card Operators were considered for the post of Programmer was not under

challenge. No case was made out by the respondent that he was discriminated in the matter of consideration for the post of Programmer. Hence,

the learned judge should not have gone to that extent by holding that there had been discrimination.

(iv) The Punch Card Operators as a class did not have the expertise to work as Programmer although they were enjoying the identical pay scale

with machine operators. Hence, the General Insurance Company did not think it fit to allow them to be considered for the post of Programmer by

the said circular. In any event, since the said circular was not under challenge the issue of discrimination could not be raised

(v) For finding that employees working in two posts were equal, identical pay scale would not be the sole criteria Their nature of work experience

and other factors incidental to their job should also be considered. Such guideline should have been considered by the learned Single Judge.

(vi) The promotion now being enjoyed by the respondent/writ petitioner was not after consideration by the promotional committee but by virtue of

the order of court and no benefit could be achieved by the respondents/writ petitioner from such promotion.

5. Mr. Kashi Kanta Mitra, learned counsel appearing for the respondent/writ petitioner contended as follows:

(i) The respondent/writ petitioner was stagnating in the same post since 1978. Hence, he was entitled to be considered for the next post without

any further delay to undo grave injustice caused to him

(ii) The reasoned order so passed by the authority impugned in the writ petition was a result of the direction of this court in the first writ petition. By

the order passed in the first writ petition the authorities were directed to consider his representation meaning thereby the authority should consider

relevant factors including clause 9 and 16 of the agreement. Having not done so, the authorities complied with the order of this court passed in the

first writ petition in breach..

(iii) The respondent/writ petitioner was never considered considered on merit. The appellant did not allow him to come within the zone of

consideration by making a discrimination between Machine Operators and Punch Card Operators.

(iv) The agreement empowered the appellant for consideration of the assistants in the post of Data Entry Operator. The subsequent circular made

a departure by which the appellant wanted to bring a distinction by making a different class within the same class which was not permitted in law.

(v) The learned Single Judge considered the issue of discrimination and allowed the writ petition by quashing the reasoned order passed by the

authority and thereby directed the Promotion to be given to the respondent. Such order need not be interfered with.

(vi) Since the learned Judge quashed the reasoned order it was not necessary for His Lordship to send it again back to the authority for

reconsideration as it would amount to not only further delay but also a grave injustice as the authority would have a tendency to pass the same

order again as observed by the Apex Court in the case of K.I. Sephard reported in 1987, Supreme Court Cases (Labour & Services), Page 438.

6. Mr. Sengupta did not cite any authority whereas Mr. Moitra cited the following decisions :

(i) All India Reporter, 1957, Supreme Court, Page 227 (A.M. Allison & Ann vs. B.L. Sen & Ors.)

(ii) All India Reporter, 1974, Supreme Court, Page 1 (The State of Jammu & Kashmir vs. Triloki Nath Khosa & Ors.)

(iii) All India Reporter, 1977, Supreme Court. Page 2051 (S.B. Patwardhan & Anr. vs. State of Maharashtra & Ors.)

(iv) All India Reporter, 1983, Supreme Court, Page 852 (Y.V. Rangaiah & Ors. vs. J. Sreenivasaha Rao & Ors.)

(v) All India Reporter, 1989, Supreme Court, Page 1972 (Council of Scientific and Industrial Research and Anr. vs. K.G.S. Bhatt & Anr.)

(vi) 1994, Volume IV, Supreme Court Cases. Page 269 (Indian Nut Products & Ors. vs. Union of India & Ors.)

7. We have heard the parties. We have perused the judgment and Order under appeal. The learned Single Judge took immense pain in examining

the bipartite agreement, the circular as well as the reasoned order passed by the authority. The learned Judge also considered the submissions

made by the learned counsel before His Lordship. His Lordship, however, ca(sic) to conclusion that the Punch Card Operators and Machine

Operators belonged to the same cadre of assistants and as such there could be no distinction made between them. His Lordship while considering

the submissions of the appellant observed. In consistency and contradiction (sic) the stand of the respondent writ petitioner is more than apparent.

8. His Lordship, further observed that there was no basis for holding that the Machine Operator did have a better skill to become eligible for the

post of Programmer. The change in the job in case of respondent/ writ petitioner from the post of Punch Card Operators to Data Entry Operators

was not at all a promotion as it was a change in designation having an identical pay scale. Hence, the respondent/writ petitioners appointment in the

post of Data Entry Operator had no relevance with the regard to the redressal of his grievance. Even if he was appointed as Data Entry Operator

he should have been considered in the next promotional post being Programmer along with his colleagues working as Machine Operators.

9. His Lordship directed notional promotion from the date when persons similarly circumstanced were given promotion from the post of Machine

Operators to the post of Programmers and actual promotion of the like nature from the date when the impugned order was passed. His Lordship

also directed the appellant to re-fix his seniority accordingly.

10. During the pendency of the appeal the respondent/writ petitioner was given promotion in terms of the order of the learned Single Judge which

was directed to abide by the result of the appeal in terms of the Division Bench order dated January 21, 2004 appearing at page 424 of the paper

book.

11. We are in full agreement with the view expressed by the learned Single Judge while considering the stand of the appellant. It is unfortunate that

the appellant being a public sector undertaking only to support their action took contradictory stand before the learned Single Judge as well as

before us. If the appellant wanted to rely on bipartite agreement they were to strictly follow the same. Under the said agreement of assistants could

be considered for the post of Data Entry Operator. Such consideration was nothing but a change in cadre and could not be termed as promotional

process. It is true that the respondent/writ petitioner's application for the post of programmer on the basis of the circular issued in terms of the

agreement was not proper. However, the authority waived the infirmities and considered his application for the post of Data Entry Operator and

re-designated him as Data Entry Operator. There could be no quarrel on that score. By the further circular which was meant for Bombay office

only, the appellant started considering the Machine Operators for the post of Programmer. Since the post of Programmer attracted a higher scale

such consideration could only be termed as promotion. Once such exercise was a promotional process the authority could not have discriminated

within a class. It is well settled principle that there cannot be a class within a class. Machine Operators and Punch Card Operators were basically

assistants enjoying the equal pay scale. "Their job might be different. The Machine Operators" jobs might place them in advantageous position

because of their nature of job. Such factor might help them to get special weightage in the promotional process. However, the right for

consideration to the next post for such reason could not be denied to the Punch Card Operators. When a person joins his service it is not only for

his livelihood, it is also for advancement of his life style and career. He should be given some scope for advancement of his career and he cannot

be allowed to be stagnated in a post for decades as had been doing in the instant case.

12. The learned Single Judge approached the problem, in our view, accurately. We do not find any scope of interference.

13. The appeal fails and is hereby dismissed.

14. There would be, however, no order as to costs. Urgent xerox certified copy would be given to the parties, if applied for.

Tapan Mukherjee, J.

I agree.