

[2014] 13 S.C.R. 17

VIRENDRA KRISHNA MISHRA

v.

UNION OF INDIA AND OTHERS
(Civil Appeal No. 9979 of 2014)

OCTOBER 31, 2014

[ANIL R. DAVE, KURIAN JOSEPH AND
R. K. AGRAWAL, JJ.]

Service Law – Encadrement of posts – Guarantee against discrimination u/Art.14 of the Constitution – National Capital Territory of Delhi; Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Services – Posts of Deputy Resident Commissioner (DRC), Tourist Information Officer (TIO) and Information Officer (IO) – In status, grade, scale of pay and professional content, the posts of IO, TIO and DRC were same – Feeder cadre for all the posts was PRO – Cadre Review Committee encadred only the DRCs, ignoring TIOs and the IOs – Justification – Held: Not justified – Whole conduct of the Cadre Review Committee was arbitrary and a blatant violation of the guaranteed protection of equality u/Art.14 of the Constitution – No justification for distinguishing persons who are grouped together – If posts of DRC only are encadred, the juniors in the feeder as well as promoted category will steal a march over their seniors, merely on fortuitous situation of posting as DRC – Direction issued to the Union of India to encadre all the posts which were treated by the Andaman and Nicobar Islands under a common seniority – Andaman and Nicobar Administration (Information Officer in the Directorate of Information, Publicity and Tourism) Recruitment Rules, 1988 – Andaman and Nicobar Administration (Group 'B' Gazetted post of Tourist Information Officer and Deputy Resident Commissioner in the Directorate of Information, Publicity and Tourism)

A *Recruitment Rules, 1997 – Constitution of India, 1950 – Art. 14.*

Fundamental Rights – Right to equality – Held: Cannot be arbitrarily denied to equals in the absence of a valid classification.

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Allowing the appeal, the Court

HELD:1.1. Equality before law and equal protection of laws is the quintessence of Right to Equality, a Fundamental Right guaranteed under the Constitution of India. Equals cannot be treated unequally, nay, they are to be treated equally. Right to such equality cannot be arbitrarily denied to the equals in the absence of a valid classification. [Para 2][19-F-G]

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1.2. In the case at hand, one fails to understand, on elementary principles, as to how the Cadre Review Committee would encadre only the Deputy Resident Commissioners (DRCs), ignoring Tourist Information Officers (TIOs), leave alone the Information Officers (IOs). The whole conduct is arbitrary and a blatant violation of the guaranteed protection of equality under Article 14 of the Constitution of India. [Para 15][31-C-E]

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1.3. There is no justification for distinguishing persons who are grouped together. The feeder cadre is PRO for all the three posts of IO, TIO and DRC. Promotion is based on seniority. If 3 posts of DRC only are encadred, the juniors in the feeder as well as promoted category will steal a march over their seniors, merely on fortuitous situation of posting as DRC. People who have burnt their boats should sail together. Therefore, the interest of justice would be protected and cause of justice would be advanced only if a positive direction is issued

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to the Union of India to encadre all the seven posts which are treated by the Andaman and Nicobar Islands under a common seniority. [Para 17][32-D-G] A

Budhan Choudhary and Ors. v. State of Bihar AIR 1955 SC 191 : 1955 SCR 1045 – referred to. B

Case Law Reference:

1955 SCR 1045 referred to Para 16

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9979 of 2014. C

From the Judgment and Order dated 14.03.2012 of the High Court at Calcutta, circuit at Port Blair, in COCT No. 01 of 2012. D

J.S. Attri, Gurukrishana Kumar, Sr. Advs., Surajit Samanta, Sujoy Mondal, S. K. Poddar, Bijan Kumar Ghosh, Rupesh Kumar, Ms. Meenakshi Grover (For Ms. Sushma Suri), Mohan Prasad Gupta, R. Balasubramaniam, D.S. Mahra, B.K. Prasad, Hiren Dasan, Ms. Shanta Pandye, Avinash Singh, S.K. Bhattacharya, D.K. Mishra for the appearing parties. E

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted. F

2. Equality before law and equal protection of laws is the quintessence of Right to Equality, a Fundamental Right guaranteed under the Constitution of India. Equals cannot be treated unequally, nay, they are to be treated equally. Right to such equality cannot be arbitrarily denied to the equals in the absence of a valid classification. Had the first respondent borne in mind these elementary principles of one of the most sacred fundamental rights as indicated above, a long drawn three tier litigation of the appellant employee could have been averted. G

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A 3. Andaman and Nicobar Administration (represented
by its various officers, respondent nos. 2 to 5) has been
requesting the first respondent—Union of India in the Ministry
of Home Affairs for encadrement of the post of Information
Officer, Tourist Information Officer and Deputy Resident
B Commissioner (hereinafter referred to as IO, TIO and DRC,
respectively) in the National Capital Territory of Delhi; Andaman
and Nicobar Islands, Lakshadweep, Daman and Diu and
Dadra and Nagar Haveli Civil Services (hereinafter referred
to as DANICS). In Andaman and Nicobar Islands, there are
C three posts of DRC, two posts of TIO and two posts of IO. The
appellant belongs to the IO cadre. The Cadre Review
Committee recommended encadrement only of three posts
of DRCs and, accordingly, the Government vide notification
dated 01.10.2009, encadred three posts of DRCs. The
D appellant approached the Central Appellant Tribunal, which,
by order dated 31.01.2012, held as follows:

E “13. ... The decision of respondents not to include the
post of Information Officer cannot therefore be sustained.
The UOI is directed to reconsider the matter relating to
their encadrement from the date of notification. ...

F 14. ... The respondents UOI are directed to reconsider
the matter relating to non-inclusion of the post of
Information Officer in the Schedule I. In case they are
included they will be included wef the date of notification
of revised Schedule I. ...”

(Emphasis supplied)

G 4. The appellant, finding that the directions are not
sufficient enough to protect his interest, moved the High Court
of Calcutta on the Appellate Side leading to the impugned order
dated 14.03.2012. It was held by the High Court as follows:

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“ ... We are of the considered view that the Tribunal has sufficiently protected the interest of the petitioner. The contention of Mr. Samanta that the petitioner is an officer senior to the proforma respondents and if the selection process for induction of the Deputy Resident Commissioners in DANICS is not stayed, he may have to work as junior to them, does not impress us, in view of the fact the Tribunal has directed that in the event the post of Information Officer is included in Schedule-I of DANICS, the same shall have effect from the date of notification of the revised Schedule –I dated 1st October, 2009. Importantly, while entertaining the original application the Tribunal had not stayed the selection process and directed that it would be subject to result of the original application.

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Therefore, we find no justification to restrain the official respondents from proceeding further with induction of the Deputy Resident Commissioners in DANICS in accordance with law, but make it clear that any action taken hereafter in this behalf shall abide by the decision to be taken in terms of the Tribunal's order.

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We may, however, record that Mr. Das appearing for the respondent No. 1 has submitted before this Court that the process of reconsideration as directed by the Tribunal would be completed within a period of three months. We hope and trust that the submission made before this Court shall be honoured in letter and spirit. ...

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(Emphasis supplied)

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5. Still not satisfied, the appellant approached this Court.

6. On 11.09.2013, this Court passed the following Order:

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A "At the time of hearing of this petition, the learned ASG
appearing for Respondent No. 1 - Union of India has
submitted that the matter is being considered with
regard to the encadrement of the post in question
including Information Officers and Tourist Information
B Officers. It has been further submitted by him that the
process of review shall be expedited.

We wish that the process be concluded by 28th
February, 2014.

C List on 4th March, 2014.

It is clarified that by an order dated 20.04.2012, it
has been recorded that induction of any Deputy Resident
Commissioner to DANICS shall be subject to the final
D result of the petition. This indicates that there is no stay
with regard to the induction of Deputy Resident
Commissioner to DANICS."

(Emphasis supplied)

E 7. In the counter affidavit filed on 27.07.2012, the Union
of India has submitted before this Court that:

F "...the Ministry intends to stop the process of
encadrement of DRCs till the final outcome of the present
SLP, since the very process of en-cadrement is proposed
to be reviewed. ..."

G 8. The Cadre Review Committee, in its meeting held on
09.01.2014 (Annexure-'C' produced with I.A. No. 11 of 2014),
took the following decision:

H "5. The entire issue of encadrement, relevant rules and
issues pertaining to cadre structure of DANICS was
discussed in detail. The representations given by Officers
for encadrement were also discussed. It was also noted

that no court order makes it mandatory to encadre any particular post. After considering the recommendation of the A & N Administration, all the grievances in various OAs/WPs/SLP, directions of the Hon'ble Supreme Court dated 11.09.2013, proceedings of the Cadre Review Committee and all the material on record, it is decided to recommend 3 posts of DRCs for encadrement as decided by the earlier CRC and duly notified. It is also decided that the request of encadrement of the posts of IOs/TIOs of A & N Islands and other similar requests from other outlying UT segments regarding encadrement of posts of DANICS will be considered as per administrative requirement, cadre structure and pyramid and the Rules during the next cadre review.

Sd/- (Anuj Sharma)
Director (Services)

Sd/- (Kailash Chandra)
Secretary
(Services)

Sd/- (I S Chahal)
Joint Secretary (UTs)

(Emphasis supplied)

9. It is disturbing if not shocking to note that the Cadre Review Committee has not applied its mind at all to any of the relevant aspects. It has virtually ignored the submissions made on behalf of the Government of India before the High Court and this Court and the direction issued by this Court vide Order dated 11.09.2013.

10. The undisputed factual and legal position is as follows:

- a. The finding by the Central Administrative Tribunal that "The decision of respondents not to include the post of Information Officer cannot therefore be sustained. The Union of India is directed to reconsider the matter relating to their re-cadrement from the date of

- A notification”, has not been challenged so far by the Union of India.
- b. Before the High Court, it was submitted that the process of reconsideration, as directed by the High Court, was being done.
- c. In the affidavit filed on 27.07.2012 before this Court, the Union of India has submitted that “...the Ministry intends to stop the process of en-cadrement of DRCs till the final outcome of the present SLP, since the very process of en-cadrement is proposed to be reviewed. ...”.
- d. It was again submitted on behalf of the Union of India before this Court on 11.09.2013 that ... “the matter is being considered with regard to encadrement of posts in question including the Information Officers and Tourist Information Officers”.
- e. That the Andaman and Nicobar Islands maintains a common seniority list of the Information Officers, Tourist Information Officers and Deputy Resident Commissioners. The final seniority list is of 07.02.2001 and a provisional seniority list thereafter was published in January 2014 (Annexure-'B' in I.A. No. 11 of 2014).
- f. Under both Rules, viz., the Andaman and Nicobar Administration (Information Officer in the Directorate of Information, Publicity and Tourism) Recruitment Rules, 1988 and the Andaman and Nicobar Administration (Group B Gazetted Post of Tourist Information Officer and Deputy Resident Commissioner in the Directorate of Information, Publicity and Tourism) Recruitment Rules, 1997, the

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posts are classified as Group B Gazetted non-ministerial with the same scale of pay. A

g. In case, the method of appointment is promotion, it is from the feeder category of Public Relations Officer, a common feeder cadre. B

h. The posts are interchangeable. It is the specific stand of the administration that the personnel posted at Kolkatta, Chennai and New Delhi, had to be designated as Deputy Resident Commissioner only since the posts in those places are of the said category. C

i. Rule 4(2) of DANICS, 2003 specifically provides that the Government may include in the service, such posts which are equivalent to the posts included in the service in status, grade, scale of pay and professional content. To quote: D

"4. Grades, strength and their review.-

(1) The duty posts included in the various grades, their number and the scales of pay attached to them on the date of commencement of these rules shall be as specified in Schedule I: E

Provided that ten per cent and twenty per cent of the sanctioned strength of the posts in the Service shall be non functional grades of Junior Administrative Grade-I and Selection Grade respectively, and these shall be operated within the respective number of posts specified in Parts B and C of Schedule I: F G

Provided further that the number of posts in Junior Administrative Grade I shall not exceed the total number of sanctioned posts in the Junior Administrative H

- A Grade in the scale of pay of Rs. 12,000-16,500.
- (2) Notwithstanding anything contained in sub-rule(1), the Government may -
- B (a) from time to time, make temporary additions or alterations to the duty posts in various grades;
- (b) in consultation with the Commission include in the Service such posts as are be deemed to be equivalent to the posts included in the Service in status, grade, scale of pay and professional content
- C or exclude from the Service a duty post already included in the Service; and
- (c) in consultation with the Commission appoint the regular incumbent of the post which has been included in the Service as a duty post to the appropriate grade of the Service and fix his seniority taking into account the regular service rendered by him in the said post or analogous
- D grade.
- E (3) Notwithstanding anything contained in clauses (b) and (c) of subrule (2), in case any regular incumbent of the post which has been encadred in the Service is not found suitable for appointment to the Service under clause (c) of sub-rule (2), he shall continue to hold the post and for the purpose the post shall be treated to have been excluded from the Service till such time it is held by such incumbent. The suitability of such persons for induction into the Service will be reviewed every year."
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- j. It is the specific stand of the administration that in status, grade, scale of pay and professional content, the posts of Information Officer born in 1988 Rules and the posts
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of Tourist Information Officer and Deputy Resident Commissioner born in the 1997 Rules, are the same. A

k. The Cadre Review Committee, in its Report dated 24.10.2005, had resolved as follows:

"4(iv)b. Posts which are having duties and responsibilities akin to the posts included in Schedule-I to the DANICS Rules, 2003, although different in designations, may be included in the Schedule in the corresponding grade; followed by, B
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c. Posts which are executive and administrative in nature, but having no promotion grades may be included in the appropriate grade in Schedule-I to the DANICS Rules, 2003." D

(Emphasis supplied)

l. At the time of promotion to the post of IO or TIO and DRC, there is no option available to the promotee. It is simply fortuitous that one gets a posting as DRC depending upon the vacancy. E

m. In Annexure-P7, letter dated 03.06.2009, the Ministry of Home Affairs in its letter addressed to the Union Public Service Commission has taken the specific stand that: F

"4. ... In terms of the Rule 4(2) of the aforesaid Rules, the Government may from time to time, make temporary additions or alterations to the duty posts in various grades, and in consultation with the Union Public Service Commission include in the Service such posts as are deemed to be equivalent to the posts included in the Service in status, grade, scale of pay G
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A and professional content or exclude from the Service a duty post already included in the Service.”

B 11. Despite such glaring factual and legal position, the Cadre Review Committee has casually, if not callously resolved that the encadrement of the post of Information Officers and Tourist Information Officers of Andaman and Nicobar Islands will be considered during the next cadre review. By the submissions on behalf of the Union of India, which we have extracted hereinabove, before the High Court and this Court, C the first respondent has been clearly, if not cleverly, averting positive directions. The Cadre Review Committee had the temerity, if not audacity, to record in its minutes that there is no positive direction to encadre any post. Even at the risk of D redundancy, it may be noted that despite the clarification by this Court on 11.09.2003 that there was no stay operating in this case, they did not proceed with the encadrement of the three notified DRCs on the stand that the whole matter was being reconsidered.

E 12. Though an attempt is made by the party respondents to establish that there are two separate divisions, the Administration is of the unambiguous stand that for all practical purposes, the establishment continues to be one and the same. Paragraph-12 of the order of the Central Administrative F Tribunal which entered a finding that there is practically no bifurcation of the department, is also relevant in this context:

G “12. The recruitment rules for the post of Information Officer and Deputy Resident Commissioner/Tourism Information Officer are framed in 1988 and 1997 respectively. The 2001 & 2003 recommendations were submitted before the framing of the 2003 rules. The 2003 recommendation recommended for their inclusion in Schedule II ie. Feeder grade for promotion rather than

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Schedule I ie the posts encadred. These posts were not included in either of the Schedule. The 2005 proposal recommends inclusion of the posts of Deputy Resident Commissioner and Information Officers. The report of CRC does not refer to the post of Information Officers. The UOI does not disclose in their reply as to whether the proposal of Information officers was put up to CRC and whether on receipt of CRC report and during its examination this aspect was looked into. There is a bifurcation of Directorate of Information, Publicity & Tourism into two divisions but the reply of A& N Administration does not disclose, if as a result of it, the Cadre was bifurcated. The only ground given by UOI in the reply is that it was decided to increase the cadre strength by 25% and hence similarly situated posts were left out. 7 posts have been included in the new schedule.”

13. Respondents 2 to 5, in counter affidavit filed on 13.12.2012, submitted in paragraphs-3 and 4 as follows:

“3. That the duties and responsibilities of the posts of Information Officer (IO), Tourist Information Officer (TIO) & Deputy Resident Commissioner (DRC) of the Directorate of Information, Publicity and Tourism of the Union Territory Administration of Andaman and Nicobar, are Executive/Administrative in nature with same pay scale/grade pay. The duties include co-ordination in respect of wide varieties of subjects. There is no separate cadre for the A & N Islands and the incumbents of the said posts of TIOs, IOs and DRCs have no promotional avenues during their whole service career which resulted in their stagnating in the same post till retirement.

4. That therefore number of representations were

A received from the incumbents holding these posts for
inclusion of UTCS, and in the year 2001, the A & N
Administration, sent a proposal to the Ministry of Home
Affairs, Government of India for simultaneous
encadrement of 3 posts of Deputy Resident
Commissioner, 2 posts of Tourist Information Officer
and 2 posts of Information Officer in the National
Capital Territory of Delhi, Andaman and Nicobar
Islands, Lakshadweep, Daman and Diu and Dadra
and Nagar Haveli Civil Service (DANICS) cadre
C stating therein that the said posts are inter-changeable
having same/similar recruitment rules, same scales
of pay and same nature of duties and responsibilities.
No bifurcation has taken place and all these posts are
interchangeable.

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(Emphasis supplied)

14. Be that as it may, the specific stand of the Union of
India before this Court is that:

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“All these applications were disposed of vide a common
order dated 31.1.2012 by the Hon’ble CAT. The said
order was challenged by Shri V.K. Misra in the High Court
of Calcutta, Port Blair Bench in COCT No.001/2012
which was disposed of by the Hon’ble High Court vide
F order dated 14.3.2012. The Hon’ble High Court had
upheld the order passed by the Hon’ble CAT. The said
order passed by the Hon’ble High Court is under
challenge in the instant SLP filed by Shri Virendra
Krishna Misra. Due to these developments, the Ministry
intends to stop the process of encadrement of DRCs till
G the final outcome of the present SLP since the very
process of encadrement is proposed to be reviewed.
Further no action in compliance of the CAT’s order has

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been taken so far because the said order is under challenge by one of the applicants." A

(Emphasis supplied)

15. All that apart, the Andaman and Nicobar Administration (Group 'B' Gazetted post of Tourist Information Officer and Deputy Resident Commissioner in the Directorate of Information, Publicity and Tourism) Recruitment Rules, 1997, provides for the name of the post in the Schedule as Tourist Information Officer and Deputy Resident Commissioner. There are no separate Recruitment Rules for Deputy Resident Commissioner. The post under the Rules is Tourist Information Officer and Deputy Resident Commissioner. If that be so, one fails to understand, on elementary principles, as to how the Cadre Review Committee would encadre only the Deputy Resident Commissioners, ignoring Tourist Information Officers, leave alone the Information Officers. The whole conduct is arbitrary and a blatant violation of the guaranteed protection of equality under Article 14 of the Constitution of India. B
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16. Though it needs no elaborate discussion or reference to the guarantees under Article 14 of the Constitution of India, against discrimination, we shall refer to one of the earliest constitution bench judgments delivered by a 7-Judges Bench in **Budhan Choudhry and others v. State of Bihar**¹ wherein it has been held at paragraph-5 as follows: E
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"(5) ... It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are G

¹ AIR 1955 SC 191

A grouped together from others left out of the group and
(ii) that that differentia must have a rational relation to
the object sought to be achieved by the statute in
question. The classification may be founded on different
bases; namely, geographical, or according to objects or
B occupations or the like. What is necessary is that there
must be a nexus between the basis of classification and
the object of the Act under consideration. It is also well-
established by the decisions of this Court that article 14
condemns discrimination not only by a substantive law
C but also by a law of procedure. ...”

17. No plausible explanation is forthcoming from the Union
of India for the arbitrary and discriminatory conduct. There is
no justification for distinguishing persons who are grouped
D together. The feeder cadre is PRO for all the three posts of IO,
TIO and DRC. Promotion is based on seniority. If 3 posts of
DRC only are encadred, the juniors in the feeder as well as
promoted category will steal a march over their seniors, merely
on fortuitous situation of posting as DRC. All the posts carry
E the same scale of pay. They come under the same category
of Group B posts. Professional content, status and grade are
the same. Thus, we have no hesitation in holding that they
cannot be discriminated within the class. People who have
burnt their boats should sail together. Therefore, we are of the
F view that the interest of justice would be protected and cause
of justice would be advanced only if a positive direction is
issued to the Union of India to encadre all the seven posts
which are treated by the Andaman and Nicobar Islands under
a common seniority. The first respondent-Union of India is hence
G directed to take the required action forthwith for the
encadrement of all the seven posts of Information Officer, Tourist
Information Officer and Deputy Resident Commissioner under
the Andaman and Nicobar Islands Administration. The process
H shall be completed within a month from the date of

communication of this Judgment. Needless to say, the A
encadrement, as above, will be with effect from the same date.

18. The appeal is allowed. The appellant shall be entitled
to costs of Rs.50,000/-. The costs shall be borne by the first
respondent.

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Bibhuti Bhushan Bose

Appeal allowed.