

ITEM NO.1501

COURT NO.2

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.3968/2009

B.S. MURTHY & ORS.

Appellant

VERSUS

A. RAVINDER SINGH & ORS.

Respondent(s)

(IA No.61370/2020 - FOR CLARIFICATION/DIRECTION; and, IA
No.61371/2020 - FOR EX-PARTE STAY)

WITH

C.A. No.3967/2009 (XII-A)

C.A. Nos.3969-3982/2009 (XII-A)

W.P.(C) No.1380/2020 (X)

Date : 15-03-2022 These matters were called on for pronouncement of
Order today.

Counsel for the Parties:

Mr. Anil Kumar, AOR

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Ms. Ritika Sethi, AOR

Mr. Nithin Pavuluri, Adv.

Ms. Ameya Thanvi, Adv.

Ms. Manisha Chava, Adv.

Ms. Chitrangda Rastravara, Adv.

Mr. Manvendra Singh, Adv.

Mr. Dashrath Singh, Adv.

Gp. Capt. Mr. Karan Singh Bhati, AOR

Mr. Vadlamani Seshagiri, Adv.

Mr. Shreyuss Shankar Joshi, Adv.

Ms. Bela Maheshwari, AOR

Mr. Arvind Kumar Sharma, AOR

Hon'ble Mr. Justice S. Ravindra Bhat pronounced the Reportable Order of the Bench comprising Hon'ble Mr. Justice Uday Umesh Lalit, Hon'ble Mr. Justice Hemant Gupta, and Hon'ble Mr. Justice S. Ravindra Bhat.

The operative part of the judgment reads as under:

“1. The appellants are aggrieved by a common judgment and order of the erstwhile unified High Court of Andhra Pradesh in several writ petitions.¹ The High Court allowed those writ petitions and set aside the order² of the Central Administrative Tribunal (CAT) in a batch of ten original applications. The CAT's order had allowed those applications and directed proper fixation of *inter se* seniority of Inspectors of Central Excise, as between direct recruits and promotees. The promotee inspectors are aggrieved, and are appellants before this court.

62. For the above reasons it is held, that the High Court fell into error in setting aside the order of the CAT, which is hereby restored. Therefore, it is held that:

(i) No excess promotions took place during the period 1983 and 1991. 25% of the actual vacancies arising every year during that period were for the promotees. No direct recruit vacancy for any year was filled by promotees.

(ii) Indents/requisitions placed with, the SSC for the recruitment of DRIs were for a part of the vacancies and not for the exact 75% of the actual vacancies available in each year.

(iii) The record does not bear out instances of suppression or under-reporting of vacancies available for direct recruits out of the permanent cadre strength in any year, to help the promotees. As a result, there is no justification for invoking para 5 of the O.M. of 1986. The department erroneously proceeded as if there were excess promotions by wrongly estimating the promotee quota on the basis of the indents placed for direct recruitment;

(iv)(a) The date of appointment of direct recruits the date for counting seniority- it is not from the date of receipt of the dossiers

¹ W.P.Nos.11620/2004, 10601/2004; 13525/ 2004, 12970/ 2004, 21863/2004, 1834/ 2005, 1836/2005, 1838 of 2005, 1858/ 2005, 1861/ 2005, 2011/2005, 1348/ 2005, 18149/ 2004, W.P. No.6098/2005, 6099/2005; 6100/ 2005, & 6097/ 2005; all were decided on 16.03.2005.

² Dated 29.12.2003

from the recruiting authorities or the date of recommendation. Resultantly seniority of direct recruits appointed after 01.03.86 has to be revised only from the date of their respective appointments but not earlier to 01.03.1986 as was done in the impugned seniority list,

(b) Direct recruits of 1992 could be given seniority only in that year but not earlier, or in 1991 as was erroneously done in the impugned seniority list;

(v) The seniority of five applicants in O.A.NO. 156/86 originally fixed in terms of the order, had to be restored and could not be altered.

(vi) Those promoted *ad hoc* basis in any year in the vacancies available to them were eligible for seniority from the date of their continuous officiation, if -they were promoted within their eligible quota of that year under the Recruitment Rules;

(vii) Those promoted in 1983 against 17 posts diverted from Shillong, were entitled to seniority in terms of 1959 O.M;

(viii) Of 137 promotees regularised on 27.10.1988, seniority of those applicants regularised under the earlier order in 1985 has to be fixed prior to 1.3.1986, on the said earlier date of their regularisation in 1985;

(ix) Seniority of promotees functioning in temporary posts not forming part of the cadre, is to be fixed from the date of promotion/ appointment.

63. The impugned judgment and order is accordingly set aside; the appeals by the PRIs are allowed in the terms of the above findings. The consequential action, by way of drawing and publishing a final seniority list, in accordance with the present findings, shall be completed within three months. The writ petition is also disposed of in the above terms. There shall be no order on costs.”

Pending applications, if any, also stand disposed of.

**(MUKESH NASA)
COURT MASTER**

**(VIRENDER SINGH)
BRANCH OFFICER**

(Signed Reportable Order is placed on the File)