

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.372/2011

Date of order : 24.10.2016

8.11.2016

Present : Hon'ble Justice Mr. V.C. Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative MemberTRIBHUWAN NATH SHUKLA
DEO KUMARI DEVI

-VS.-

UNION OF INDIA & OTHERS
(E. Railway)

For the applicants : Mr.A.Chakraborty, counsel

For the respondents : Mr.S.Banerjee, counsel

O R D E R

The applicant has approached C.A.T. under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

- a) A declaration that the father of the applicant No.1 having served the Railway administration quite a long time should be deemed to be regularized in his service from the date of judgment which was passed by the Supreme Court of India on 22.08.2003;
- b) An order be passed directing the respondent authorities to consider the representation dated 03.02.2011 made by the applicant No.1 herein;
- c) A direction be given to the respondent authorities to grant appointment of the applicant No.1 under compassionate ground into their main establishment;
- d) Consequential order do issue directing the applicant No.1 on compassionate ground;
- e) Costs incidental to and arising out of this application;
- f) Any other or further order or orders or direction as to your Lordships may deem fit by way of molding reliefs.
- g) Leave may be granted to file this joint petition under Rule 4(5)(a) of C.A.T.(Procedure) Rule, 1987."

2. It is the case of the applicant that as per directives of Hon'ble Supreme Court and on the basis of a report of Assistant Labour Commissioner, made under the direction of Hon'ble Supreme Court, the father of the applicant No.1

was eligible for absorption in the Eastern Railway, which was not done by the respondent authorities in proper time. In the meantime the father of the applicant No.1 has expired. Now the applicant No.1 prays for compassionate appointment. The applicant No.1 has made a representation for the same to the respondent authorities but the same has not yet been disposed of. Hence the present application has been filed.

3. The respondents however, have placed facts, which will be discussed below, showing that the applicant No.1 is not fit to be inducted in the Railways as his father was not regularized in service after screening as directed by the Hon'ble Apex Court.

4. Heard both. Consulted the records.

5. In this case previously an order was passed by this Bench which reads as follows:-

**"CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 372 of 2011

Date of order: 10.5.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

TRIBHUWAN NATH SHUKLA & ANR.

VS.

UNION OF INDIA & ORS.
(Eastern Railway)

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

O R D E R (Oral)

Justice Shri Vishnu Chandra Gupta, Judicial Member:

Heard the Ld. Counsel for the applicant and Ld. Counsel for the respondents.

2. A report has been filed by Ld. Counsel for the applicant along with his petition which has been prepared in pursuance of the order of the Hon'ble Apex Court by the Office of the Asstt. Labour Commissioner (Central), Allahabad as annexed as Annexure A-3 at Page 65 of the petition which is the last page of the report submitted by Shri Ambrish Sharma, Assistant Labour Commissioner (Central), Allahabad contains a paragraph, as under:-

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"Railway has agreed with 290 petitioner parcel porters and admitted their working but they gave engagement of 310 labourers. The Secretary of the presently working contractor society has put his signatures and seals only on the pages which contained 321 names and not signed or put his seal on the pages which contained the names from serial number 322 to 345 in the statement filed by him. Thus I verified engagement of only 310 parcel porters as per list enclosed in the Annexure - Howrah - I.

Railway Administration has filed the statement about the years for which the petitioners have worked. In that statement the Railway has verified the working of 289 petitioners leaving one parcel porter already expired and stated that they have worked for 13 to 01 years, but did not mention further engagement of 20 more parcel porters. "

3. It reveals that 310 Parcel Porters were verified and the engagement was found genuine. It was mentioned that one Parcel Porter already expired.
4. The list of 310 Parcel Porters has not been annexed with the report by the petitioner. Ld. Counsel for the applicant contended that Rama Shankar Shukla the father of the applicant never appeared before that committee which was constituted to consider genuineness of engagement of Parcel Porters. It does not reveal from the record. There is a mention in report that one Parcel Porter has died. What is the name of that person is not emerged out from the report filed by the applicants. The question which the respondents raised that the services of applicant's father were not verified, hence he could not be deemed to have been regularised in terms of the order passed by the Hon'ble Apex Court. To substantiate the objections it would be necessary to look into the records of the selection committee constituted by the Hon'ble Supreme Court and the list of Parcel Porters whose engagement was verified and subsequently regularised/absorbed. The respondents are directed to place the complete report along with subsequent orders passed thereon by the Railway authorities regarding absorption/regularisation of the Parcel Porters within a period of 4 weeks from today.
5. List this matter for hearing on 23.6.2016.
6. Urgent copy may be furnished to the Ld. Counsel for the parties on payment of usual costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)"

6. As per directions of this Bench, the respondent authorities have submitted office records regarding Tribhuwan Nath Shukla vs. Union of India & Ors.

7. From the record it appears that as per the Hon'ble Supreme Court's order, in Writ Petition (Civil) No. 121 of 2000 delivered on 22.8.2003 and

10.9.2004, an order was passed by Assistant Labour Commissioner(Central), Allahabad formerly Assistant Labour Commissioner (Central), Lucknow which is as follows:-

"GOVERNMENT OF INDIA
MINISTRY OF LABOUR
OFFICE OF THE ASSTT. LABOUR COMMISSIONER (CENTRAL)
189-A/4, ALOPIBAGH, ALLAHABAD.

No.18(9)/04/.....(not legible)

Dated 19-11-2004

To
The Chairman,
Railway Board,
Rail Bhawan
New Delhi

The General Manager,
Eastern Railway,
Fairlie Place, Kolkata, W.B.

The Divisional Railway Manager,
Eastern Railway,
Divisional Office,
Howrah, W.B.

Subject :- Report about re-scrtiny of records of petitioners parcel porters of Howrah in Writ Petition(Civil) No.121 of 2000 as per binding direction of Hon'ble Supreme Court of India dated 22.08.2003 and 10.9.2004.

Sir,

Enclosed herewith please find my report about re-scrutiny of the records pertaining to the petitioners of Howrah station in Writ Petition(Civil) No.121 of 2000 as per binding directions of the Hon'ble Supreme Court of India for further action by you.

(Ambrish Sharma)
Asstt. Labour Commissioner(Central)
Allahabad

Formerly Asstt. Labour Commissioner(Central)
Lucknow

Encl: Copy of the report.

1. The Asstt. Labour Commissioner, Lucknow is directed to again scrutiny all the records already placed by the petitioners and also the records to be placed by the respective contractors and the Railway administration and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.
2. Subject to the outcome of the fresh inquiry and the report to be submitted by the Asstt. Labour Commissioner (Central), the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption. The minimum scale

of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.
4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway parcel porters who are not found medically suitable for such employment.
5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilizing their services for any other, manual work of the Railways depending upon its needs.
6. In the matter of absorption of Railway parcel porters on contract labour as permanent and regular Railway parcel porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.
7. The report to be submitted by the Asstt. Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the Railway station. The report shall be finalized and submitted after discussion and deliberation with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.
8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.
9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondents and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers.
10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.
11. This judgment does not relate to the persons who have already been absorbed".

"Several I.As were filed to modify the order dated 08.09.2000 passed by this Court in Writ Petition No.433 of 1998 and 457 of 1998. Few I.As were filed seeking certain prayers pending writ petition. Some I.As were filed for intervention.

In view of the disposal of the main matters, no separate direction is necessary in these I.As.

In the result, the writ petitions and the civil appeals including the I.As filed in different writ petitions shall stand disposed of accordingly."

Copy of the judgment sent by the Registry of the Hon'ble Supreme Court was received in my office on 8.10.2003. Thereafter, copies of the Writ Petitions, Civil Appeals etc. were sent by the Registry to my office.

Accordingly notices were issued by me to all parties asking them to appear in this office and submit whatever relevant papers and records that they might be in possession of. Still further, certified copies of the I.As were supplied to me by the Counsel for the petitioners, Sh. D.K. Garg, Advocate, Hon'ble Supreme Court of India.

I have thoroughly studied the judgment and tried to the best of my capacity to abide by it in letter and spirit.

According to the judgment the time allowed for completion of the exercise was to expire on 8th of April 2004. But due to unavoidable circumstances prayer was made by me to the Hon'ble Supreme Court for extension of time and the Hon'ble Court was pleased to grant extension of five months.

I had almost concluded all the hearings and closed the proceedings prior to drafting the report. All the parties had given final statements that they had filed all the papers/records/documents and made all the submissions and none of them had anything more to submit or state. However, before I could write the report I was transferred.

The Hon'ble Supreme Court was pleased to pass an order on the 10th of September 2004 directing me to submit the report even after my transfer. The copy of the order was sent to me by the above named representative of the petitioners. Only then did I come to know that the applicants had filed I.As number 24 and 23 in the writ petition number 433/98 in the Hon'ble Supreme Court in which prayer had been made that since they had reasons to believe that the report was on the verge of being finalized by me, I should be directed to submit it as any fresh hearings would consume too much time. The said I.A. dated 27.7.2004 came up for hearing on 10.9.2004 when the Hon'ble Court was pleased to pass the following order.

The report in terms of the order of this Court shall be submitted within the time which has already been extended. It can be submitted even after the transfer of the Officer.

The I.As are disposed of."

The extended time limit for completion of exercise of the re-scrutiny of records had already expired on 9.9.2004. I took charge of the office of the Asstt. Labour Commissioner (Central) Allahabad on 14.10.2004. Thereafter the records were sent to me by the Lucknow Office. Again some time was consumed in finalizing the report and then getting it typed.

BACKGROUND

The parcel porters numbering 321 who have claimed to have worked as contract labour at Howrah railway station of Eastern Railway for quite long time are petitioners in writ petition number 121 of 2000 filed on March 8, 2000 in the Hon'ble Supreme Court of India by the Howrah Parcel (Eastern Railway) Labour Contractor Mazdoor Panchayat, now known as Howrah Station Parcel(Railway) Contractor Mazdoor Panchayat and others. The Chairman of the Railway Board, New Delhi, the General Manager of Eastern Railway, Kolkata, the Divisional Railway Manager of Eastern Railway, Howrah Division, the Chief Commercial Manager of Eastern Railway, Kolkata and the parcel handling contractor M/s Eastern Railway Howrah Licensed Porters Labour Handling Goods

Contract Cooperative Society, 10/3, Kings Road, Howrah(W.B.) were attended as respondents.

EARLIER ENQUIRY

The Hon'ble Supreme Court was pleased to pass an order on 28.4.2000 in this writ petition directing the Asstt. Labour Commissioner(Central) Kolkata to conduct an enquiry on the following issues.

1. Whether the petitioners had worked as contract labour continuously for the period as claimed by them.
2. Whether the work performed by the petitioners was of perennial nature.

The learned Asstt. Labour Commissioner (Central) Kolkata in his report dated 05-07-2000 sent to the Hon'ble Supreme Court made the following findings.

That the workers have been engaged continuously for years together by the Eastern Railway, Howrah through Contractor Cooperative Societies which has been substantiated by the payment sheets and other registers prepared by the Contractor-Cooperative Society duly countersigned by the Railway administration.

That the nature of the job and the activities of loading, unloading, shifting, transshipment etc. undertaken by the workers on day to day basis are incidental to and necessary for the Railway. It goes further to prove that the job is of perennial nature."

Thus, the learned Asstt. Labour Commissioner (Central), Kolkata had verified all the petitioners as having worked continuously for years together and also that the work of parcel handling was of permanent and perennial nature.

PROCEEDINGS OF THE CURRENT RE-SCRUTINY OF RECORDS

Notices were issued by me on 12.11.2003 to all the parties to appear in my office along with whatever records they might be in possession of regarding the petitioners.

Joint sittings of the Railway officials, the parcel handling contractors and the representatives of the petitioners were held in my office on 18.12.2003, 8.1.2004, 6.2.2004 and 18.3.2004. The Railway Administration was represented by Sh. S.K. Singh, Senior Divisional Commercial Manager, Sh. S.K. Ghose, Asstt. Personnel Officer, Sh. S.K. Maitra, Asstt. Law Officer and Sh. J. Prasad, A.C.M. Eastern Railway, Howrah Division.

The petitioners were represented by Sh. Raghavendra Gumashta, General Secretary of the National Federation of Railway Porters, Vendors and Bearers, New Delhi(only on 18.12.2003 during the first sitting) Sh. Asit Dey, Asstt. Secretary, Sh. Rajendra Show, Executive Committee Member and Sh. Lali Singh, President of the Petitioners Union of Howrah in the rest of the sittings. The parcel handling contractors were represented by Sh. S.K. Nanhe, Secretary of the Shalimar Labour Contract Cooperative Society Ltd. Howrah. Sh. Pradip Biswas and Sh. Subhash Sarkar of the same contractor society. On the fourth day of hearing all the parties submitted that they had nothing more to submit or file and, therefore, the proceedings were closed with the direction to all the parties that they would be summoned again, if needed.

All the parties were given full and equal opportunities to submit all the papers/documents/records that they might have intended to file, make oral statements without restraint and exchange views as also discuss and deliberate with each other freely without any limitation of time in my presence.

I directed all the parties to supply copies of all the papers/documents/records etc. filed by them to the opposite parties and allowed all the parties to peruse inspect the original records produced by the opposite parties. I ensured that free and frank discussion was held in my presence without any hesitation. It was also ensured by me that no party could get any cause of complaint that it was not given sufficient and equal opportunity to submit its views.

All the parties had read fully understood and agreed with the proceedings recorded in the file and signed the record sheets of the proceedings on each day of hearing.

On 18.12.2003 the Railway through the Senior Divisional Commercial Manager, Eastern Railway, Howrah filed letter number Com/HB/HWH/Parcel Contract/98/Pt.II dated 17.12.2003 along with which a list of contractors who had worked from the year 1991 to 2003-04 was submitted. It was stated in the letter that the present contractor, M/s Shalimar Labour Contract Cooperative Society Ltd. was asked by the Railway to supply necessary documents related to the parcel porters but the contractor failed to do so.

However, the secretary of the Shalimar Labour Contract Cooperative Society Ltd. submitted copies of register of payment of wages for the month of September, 2003 on which the Chief Parcel and Luggage Inspector of Howrah had certified under his signature and seal that the payment of wages was made by the Contractor to 290 labours who are the petitioners.

However, the wage register contained the names of 345 labourers to whom payment was made. The Chief Parcel and Luggage Inspector had not certified the payment to other than the 290 parcel porters.

Railway also filed copy of a letter number SLCCS/Supreme Court/Judgment/03 dated 28.11.2003 addressed to the Divisional Railway Manager, Eastern Railway, Howrah by the Secretary of the Shalimar Labour Contract Cooperative Society Ltd. the parcel handling contractor who had stated in the letter that all the labour of the Howrah Station Parcel(Railway) Contractor Majdoor Panchayat were working as parcel porters at Howrah under the different parcel handling contractors included the said Shalimar Society contained the names of 345 labourers.

On 08-01-2004 the Railway Administration made statement that it agreed with 290 names out of the list of 345 labourers submitted by the petitioners. It was also stated that the Railway was not in possession of any record pertaining to other labourers than the 290 with whose names the Railway agreed.

The petitioners through Sh. Asit Day and Sh. Rajendra Show submitted letter number HSPCMP/JUDGEMENT/2003 Dated 5-01.2004 along with the list of the petitioners and copies of the identity cards issued to them.

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The parcel handling contractor society submitted letter number SLCCS/Supreme Court/03-04 dated 08-01-2004 along with a list of parcel porters working at Howrah Station and some details about their working.

As stated above, the Railway Administration agreed with the names of 290 petitioner parcel porters out the aforementioned list.

I directed the Railway Administration, the parcel handling Contractors and the petitioners to sit together and sort out the seniority of the petitioners.

On 6.2.04 the Railway Administration filed letter number Com/HB/HWH/Parcel/Cont./98 dated 06-02-2004 vide which it submitted full details about the petitioner parcel porters after examining and verifying the same. Railway also stated that it had nothing more to submit.

On behalf of the petitioners a letter dated 06-02-2004 along with copies of the records of the working of the petitioners was filed. Copy of the record submitted by the petitioners was given to the representatives of the Railway including order of engagement of further 20 labourers in addition to 290 to pull up arrears work like LPO, shifting of parcels to other go down etc.

On 18.03.2004 both the Railway and the petitioners again stated that they did not have anything more to file or submit. The Railway administration had perused and studied the records and the documents filed by the petitioners. The petitioners also stated that they had studied and examined the documents/records/papers filed by the Railway. As such the proceedings were concluded on that day.

On 06-02-2004 the Railway had filed letter number Com/HB/Parcel/Contract/98 dated 6th February 2004 in which it was stated that out of the 345 parcel porters which appeared in the payment of wages sheet for the month of September, October and November 2003 the Chief Parcel and Luggage Inspector, Howrah had certified only for 290 labourers. Similarly out of the 345 Identity Cards, photostat copies of which were submitted by the Contractor Cooperative Society, only 290 had been countersigned by the Railway authorities and further 20 more Identity Cards signed by Asstt. Commercial Manager, Howrah.

Railway also filed the work study report dated 28.04.2003 regarding requirement of parcel porters at Howrah Station complex which assessed the need of 290 labourers including rests givers and no provision of leave reserves.

Copies of letters number III.PCS/I/CI/98-99 dated 11.10.1999, dated 26.3.99 and dated 30.10.2000 addressed to the Chief Parcel and Luggage Inspector, Eastern Railway, Howrah by the earlier parcel handling contractor, M/s Eastern Railway Howrah Licensed Porters Labour Handling Goods Contract Cooperative Society Ltd. requesting for counter signature on the identity cards for 258 parcel porters whose list was submitted with the letter were filed before me.

The present contractors M/s Shalimar Labour Contract Cooperative Society Ltd. Howrah showed a list of 345 labourers in the statement about their working for the period from 01-05-2002 to 30-04-2003 and from 04-03-2001 to 03-03-2002. However, the said contractor Society in the statement of working for the period from 1.6.2003 to 31.5.2004 gave a list of 345 labourers. Out of the 345 names, 321

names have been signed by the Secretary of Cooperative Society and the rest of the names from serial number 322 to 345 have not been signed by the Secretary of the contractor cooperative Society. As per fresh work study by Railway at Howrah agreed to engage 310 labourers to ensure Howrah Parcel work load and issued instruction to CPLI/Hwh for counter signature of 310 Identity Cards vide letter No.Com/HBI/HWA/Labour Contract/2004 dated 01.06.04. Copy of the above Railway letter was produced before me by M/s Shalimar Labour Contract Cooperative Society in the month of October 2004.

I have heard all the parties in details and minutely studied all the papers/documents/records etc. submitted and filed by all the parties. Free and frank deliberation and discussion was held and exchange of views took place in my presence without any limitation of time. I ensured that copies of all the papers/documents/records submitted by all the parties were supplied to the opposite parties. All the parties were afforded equal opportunity to express their views and file whatever papers they intended to file, give replies and counter replies of the averments made by the opposite parties.

After thoroughly studying all the documents produced before me and deeply considering the views and statements of all the parties I have arrived at the following conclusion without prejudice.

Railway Administration has filed the statement about the years for which the petitioners have worked. In that statement the Railway has verified the working of 289 petitioners leaving one parcel porter already expired and stated that they have worked for 13 to 01 years, but did not mention further engagement of 20 more parcel porters.

The period of working of the petitioners (in number of years) as submitted by the Railway is shown in the Annexure-HOWRAH-I with this report.

The issue of perennial nature of parcel handling has finally been decided by the Hon'ble Supreme Court in the judgment dated 22-08-2003 that the perennial nature of the work cannot be over ruled.

(Ambrish Sharma)
Asstt. Labour Commissioner(Central)
Allahabad
Formerly Asstt. Labour Commissioner(Central)"

8. From the enclosure appended to the report of the Assistant Labour Commissioner it appears that at Sl. No.161 the name Ram Shankar Shukla who has claimed to be the father/husband of the applicants is mentioned in the list of 310 names with the details at Sl.No.162 as under:-

Sl.No	Sl.No in W.P.	Name	Father's Name	Period of working claimed by the petitioners (in	Period of working admitted by the railway (in years)	Basis/Documents/grounds/records relied upon for verification of the period of working and authenticity of the petitioners.
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				years		
1	2	3	4	5	6	7
162	162	Ram Sankar Shukla	Gorakhnath Shukla	10	9	Letter No.COM/HB/HWH/PARCEL/CONTRACT/98 DATED 06-02-2004 of the Sr. D.C.M. Howrah Letter No.COM/CA/Misc./2003 dated 2.7.2003 COM/HB/HWH/1. AB-CONTRACT/04 OF 1.6.04

9. On the basis of above report of Asst. Labour Commissioner (Central), Allahabad, as per the directions of the Railway Board, 90 petitioners were called for screening vide letter No.COM/HB/HWH/Labour Contract/98/Pt.V dated 15.07.2005 written to the Secretary, Howrah Station, Parcel(Railway) Contractor Majdoor Panchayat. Out of 90 candidates 20 were found suitable and 19 were absorbed in the Railways.

10. Being aggrieved with the above situation the remaining petitioners of Writ Petition (C) 121 of 2000 again filed a Writ Petition(C) No.640/2007 before the Hon'ble Supreme Court and the Hon'ble Supreme Court disposed of the matter on 17.11.2009.

As per directives of the Hon'ble Supreme Court, remaining 291 petitioners from the list of Assistant Labour Commissioner (Central)/Allahabad were called for screening on different dates from 07.04.2010 to 29.04.2010.

11. However, from the records submitted by the railway authorities it appears that a Death Certificate at page 46, Annexure A-2 of the documents shows that Sri Rama Shankar Shukla, (father/husband of the applicants), son of Gorakh Nath Shukla died at the age of 47 years on 07.07.2008. Therefore, it is abundantly clear that he could not be present, when the screening, as per Hon'ble Supreme Court's order dated 17.11.2009, was held from 07.04.2010 to 29.04.2010(Annexure H1, page 86 of the attached documents).

12. As a result, the relief claimed by the applicant No.1 who is the son of Rama Sankar Shukla cannot be agreed to as Sri Rama Sankar Shukla cannot be deemed to be regularized in service from the date of judgment which was passed by Hon'ble Supreme Court of India on 22.08.2003 as on the relevant date of screening as ordered by Hon'ble Supreme Court in a later judgment

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dated 17.11.2009 his father was not present because he passed away on 07.07.2008. As the father could not be screened for absorption, he cannot be deemed to be absorbed. Hence, this O.A. lacks merit and deserves to be dismissed.

13. Accordingly the O.A. is dismissed. No cost.

(J. Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member

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