

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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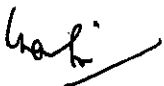
No. O.A. 1278 of 2013

Heard on: 11.9.2019

Order dated: 19.9.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Mrityunjoy Mukherjee,
Son of Late K.P. Mukherjee,
Aged about 52 years,
Working as Postal Assistant in Foreign Post,
Kolkata,
Residing at EB/1/11, D.B. Nagar,
Baguiati,
Kolkata - 700 059.
2. Sushanta Bhattacharya,
Son of Late M.N. Bhattacharya,
Aged about 57 years,
Working as Postal Assistant in Foreign Post,
Kolkata,
Residing at 119,
Sarat Chatterjee Road (Shibpur),
Howrah - 711 102.
3. Pradip Majumdar,
Son of Late S.N. Majumdar,
Aged about 47 years,
Working as Postal Assistant in
Foreign Post, Kolkata,
Residing at Vill. - Nabarun Palli,
P.O. Sodepur,
Kolkata - 700 110.
4. Netar Ch. Dey,
Son of Late B. Ch. Dey,
Aged about 53 years,
Working as Postal Assistant in Foreign Post,
Kolkata,
Residing at Debendra Dutta Sarani,
P.O. Duttapukur,
North 24 - Pgs.
5. Bhola Lall,
Son of late R.P. Lall,
Aged about 55 years,
Working as
Postal Assistant in Foreign Post,
Kolkata,
Residing at
32, Jogendra Basak Road,



(Baranagar),
Kolkata - 700 036.

... Applicant

- V E R S U S -

1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Communication & IT,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi - 110 001.

2. The Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi - 110 001.

3. The Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
Kolkata - 700 012.

4. The Postmaster General (Mails),
Office of the Chief Postmaster General,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.

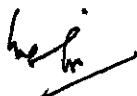
5. The Superintendent of Foreign Posts,
Kolkata, 12, Kiran Shankar Roy Road,
Kolkata - 700 001.

6. Assistant Director of Postal Services (Mails),
Office of the Chief Postmaster General,
West Bengal Circle,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 700 012.

7. The Assistant Superintendent,
Foreign Parcel Import,
Foreign Post,
12, Kiran Shankar Roy Road,
Kolkata - 700 001.

.... Respondents

For the Applicants : Mr. S.K. Dutta, Counsel



For the Respondents : Ms. M. Bhattacharya, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"8.(a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to move this application jointly.

(b) An order holding that the deputation of the applicants who are the Postal Assistant of Foreign Post, Kolkata outside the duties and responsibilities of Foreign Post and their deputation to perform the job of RMS Wing in particular the jobs to be performed by the staff of lower grade namely, Mail Guards/Mail Agents are totally arbitrary and illegal.

(c) An order quashing and/or setting aside the impugned letter dated 11/16.7.2013 and directing the Respondent Nos. 2 and 3 to issue necessary directions for not deputing the applicants to do the job of other wings of the Postal Department including the RMS Wing.

(d) An order directing the respondents to produce/cause production of all relevant records.

(e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3.1. The applicants have prayed for liberty for joint prosecution of this O.A. On being satisfied that the applicants share a common interest and are pursuing a common cause of action, liberty is granted accordingly under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987. The M.A. is disposed of accordingly.

3.2. The submissions of the applicants, as articulated through their Ld. Counsel, are that the applicants are Postal Assistants in Gr. 'C' category. Their duties and responsibilities are confined to the Foreign Post Office, Kolkata and they are all discharging their functions as per Foreign Post Manual. The applicants further aver that they are not liable to be transferred outside Foreign Post or perform duties and functions of other wings such as the RMS. The grievance of the applicants is that they are

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being compelled to perform the duties and functions of the RMS Wing of the Department and, particularly, those of Mail Guard/Mail Agent. The post of Mail Guard/Mail Agent, being lower in category and in grade, the applicants have lodged protests with the respondent authorities, and, thereafter, have approached this Tribunal to ameliorate their grievances.

3.3. The applicants have advanced the following grounds, inter alia, in support of their claim:-

(a) That, the action of the respondents in directing the applicants to perform the duties of Mail Guards/Mail Agents are highly arbitrary and tainted with malice.

(b) That, an employee cannot be forced to do a job outside the field of his duties and that of a lower post/grade in accordance with law.

4.1. The respondents have controverted the averments of the applicants by arguing as follows:-

(a) A new Mail Motor Schedule, referred to as MMS hereafter, was introduced w.e.f. 6.8.2012 by the office of the Respondent No. 3, namely, the Chief Post Master General, West Bengal Circle, Kolkata, and, in terms of the said order, Foreign Mails were to be collected from the Mail Agency in Howrah RMS and delivery of such mails to respective offices was to be conducted through MMS No. 004.

In partial revision of the said order, it was further directed on 11/16.7.2013 as follows:-

"Foreign Mails are to be received from Mail Agency (MA). Howrah RMS by deputing one Postal Assistant of Foreign Post, Kolkata who will accompany the MMS vehicle as are being done in respect of other foreign mails/consignments received from Kolkata Dock Point."

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(b) That, among the five applicants (i) Shri Bhola Lal is working at Customs Examination Department (CED), located in the same building at 12, Kiran Shankar Roy Road, Kolkata, which does not involve performance of outdoor duty, since 1.7.2013 [i.e. from even before filing of this O.A. on 27.9.2013] on being transferred on rotation in accordance with Sub-rule 6B of Rule 60 of Postal Manual Volume IV (ii) Sri Mritunjoy Mukherjee is working as Cashier (with Special Allowance) since 11.6.2014 after his willingness to work as Cashier with Special Allowance, at Accounts Branch, was accepted (iii) Susanta Bhattacharya was transferred on rotation to Customs Examination Department (CED), located in the same building at 12, Kiran Shankar Roy Road, Kolkata in accordance with Sub-Rule 6B under Rule 60 of Postal Manual Volume IV and (iv) Shri Pradip Majumder is working at Business Office, located in the same building at 12, Kiran Shankar Roy Road, Kolkata, in the interest of service since 03.01.2015 with a view to improving the performance of that unit.

4.2. The respondents, in compliance with directions of the Tribunal dated 30.10.2014, had filed a supplementary affidavit on 17.4.2015, in which they had placed the structure of the Postal Department and have further provided a detailed description of the nature of work before implementation of the order, as impugned, and the potential nature of work of Postal Assistants upon implementation of the order in the case of all five applicants.

4.3. The respondents have concluded that the Postal Assistants perform more laborious work during indoor duty than that at Howrah point and, hence, their grievance is unsustainable and relief claimed thereupon does not deserve any consideration.

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5. The primary issue for adjudication in this matter is whether the applicants have been prejudiced by the order dated 11.7.2013/16.7.2013 and whether such order implied any reduction in rank and status of the applicants concerned.

6.1. At the outset, we refer to the order, as impugned, and would quote the same as hereunder:-

“
DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL
WEST BENGAL CIRCLE, KOLKATA - 700 012.

To
The Superintendent,
Foreign Post,
Kolkata

No. MLS/TSO Sch./MMS/12

Dated: 11.7.2013

16.7.2013

Sub: Partial modification of MMS Schedule.

In partial revision of this office memo no. MLS/TSO Sch./MMS/12(A) dated 27/07/2012 containing details of Mail Motor Schedule including MMS Sch No. 004, the following orders are issued with immediate effect.

Foreign mails are to be received from MA Howrah RMS by deputing one Postal Assistant of Foreign Post Kolkata who will accompany the MMS vehicle as are being done in respect of other foreign mails/consignments received from Kolkata Dock point. The deputed official will also perform the mail exchange work with other offices as mentioned in the above schedule.

Encl: As mentioned above.

(M.K. Biswas)
Asstt. Director of Postal Services (Mails)”

The following are inferred from the impugned order:

- (i) This is an internal communication from the office of the respondent No. 3 to the office of respondent no. 5. The applicants have not brought on record any Office Order whereby it can be inferred that there were any directions upon the applicants to perform the job of Mail Guards/Mail Assistants by the respondent authorities.

As the order, as impugned, is not directed to the applicants, articulation of their grievances, on the basis of an inter-office communication, is premature.

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- (ii) The said communication also states that Postal Assistant of Foreign Post, Kolkata is to be deputed for receipt of Foreign Mails from Mail Agency, Howrah RMS.
- (iii) The communication also details that the Postal Assistant of Foreign Post is to accompany the MMS vehicle as per the prevalent practice in respect of other foreign mails/consignments received from Kolkata Dock Point.
- (iv) The order as impugned, further affirms that it is an established practice for deputing Postal Assistants to receive Foreign Mails at the Kolkata Dock Point.

6.2. We next refer to Annexure R-2 to the reply dated 2.8.2012 which refers to the introduction of the new MMS Schedule. The relevant direction is extracted as hereunder:-

"Now for introduction of schedule 004 and sch-317 Asstt. Supdt. Foreign Parcel Import is requested to make arrangement for providing staff in the morning shift for Sch-004 (Duty hours 06:30 to 14:30 hrs.) as well as for late hours dispatch through Sch-317 by revising the duty hours of PAs and MTS (Gr. 'C') working at Central Despatch Section from 10.00 to 18.00 hrs. and 13.00 hrs to 21.00 hrs.

Moreover all other sections are also directed to take necessary action, so that mail bags closed for TSO should be transferred to Central dispatch Section for onward transmission through Sch. No. 317 in time without any detention. Till any further instruction mails for Kolkata APTMO should be dispatched through Sch No. 317."

What transpires from the above is that the Assistant Superintendent of Foreign Parcel Import was requested to make arrangements for providing staff in the morning shift and in late hours by revising the duties of PAs and MTS to facilitate dispatch of mails meant for the North East Region in consonance to the proposed shifting of speed post operation of Kolkata RMS to APMC, Kolkata.

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This brings us to the issue as to whether the Postal Assistants are responsible for exchange of foreign mails (receipt / dispatch) and we proceed to do so in the illustrative context of Applicant No. 1.

6.3. The nature of work performed outdoors by applicant No. 1, Shri Mriyunjoy Mukherjee, Postal Assistant, before the implementation of the order and what would be his nature of work after implementation of the order, as disclosed by respondents in their supplementary affidavit, is reproduced as below:-

Name of the applicant: Shri Mriyunjoy Mukherjee, Postal Assistant.

Nature of work before implementation of the order	Nature of work after implementation of order
The official was working at Foreign Parcel Import Section.	The official was working at Foreign Parcel Import Section.
Outdoor duty	Outdoor duty
<p>(a) When allotted duty for collection of foreign mails from Kolkata Dock where only one Postal Assistant was engaged by rotation (from among the total pool of Pas) to count and check the condition of incoming parcel bags as and when those arrive in shipment from foreign countries transmitted by ship and received with assistance of one Multi Tasking Staff, and to accompany Mail Van or hired vehicle for bringing those bags to Foreign Post at 12, Kiran Shankar Roy Road, Kolkata - 700 001.</p> <p>(b) When allotted for duty with MMS Schedule No. 48, to receive bags from Mail Agency, Howrah RMS for distribution at 12, K.S. Roy Road and at 8 A & B, Pollock Street from 10.00 hrs. to 18.00 hrs. and other work.</p>	<p>When allotted duty for collection of foreign mails from Kolkata Dock where only one Postal Assistant was engaged by rotation from among the total pool of Postal Assistants subject to his turn to count and check the condition of incoming parcel bags as and when those arrive in shipment from foreign countries transmitted by ship and received with assistance of one Multi Tasking Staff, and to accompany Mail Van or hired vehicle for bringing those bags to Foreign Post at 12, Kiran Shankar Roy Road, Kolkata - 700 001.</p>
OR	OR
Indoor Duty	
When allotted at Eastern Section/Continental Mail Opening/Continental Detain branches of Foreign Parcel Import with assistance of a Group of MTS-	
<p>(a) To open inward foreign parcel bags and check CP-87 (parcel Bill)/Customs Declaration on the</p>	<p>When allotted for one week on rotation subject to his turn from among the other Postal Assistants, to perform duty with MMS Schedule No. 004 with assistance of one MTS from 7.00 to 15.00 hrs.</p> <p>(a) To count and check the condition of incoming parcel bags from foreign countries received via Mail Agency, Howrah RMS and collect those bags his signature from Mail Agent, Howrah RMS and be accountable for all the bags so collected by him.</p> <p>(b) To accompany the Mail Van to bring those bags to Foreign Post at 12, Kiran Shankar Roy Road and 8 A & B, Pollock Street, Kolkata - 700 001 and also to Kolkata Air Foreign, RLO Building, Kolkata -</p>

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body of parcels, to repack/recluse damaged parcel, if any, for dispatch.

- (b) To sort out parcels according to destinations.
- (c) To close parcel bags after necessary preparation of work papers manually and/or computer etc.
- (d) To maintain relevant registers and also to dispatch closed bags from respective sections.

OR

When allotted at Central Despatch point of Foreign Parcel Import-

- (a) To receive closed bags from MMS Schedules viz., no 003, 004 and 107 and to distribute all receive closed bags to concerned sections of Foreign Post.
- (b) To close parcel bags with parcel received from different branches of Foreign Parcel Import Section and also to dispatch closed bags centrally received from different sections of Foreign Post, Kolkata after preparation of work papers etc.
- (c) To maintain relevant registers manually and/or on computer.

700 001 by that Mail Van for transferring those bags to respective premises with the physical assistance of Multi Tasking Staff.

OR

Indoor duty

When allotted at Eastern Section/Continental Mail Opening/Continental Detain branches of Foreign Parcel Import with assistance of a Group of MTS -

- (a) To open inward foreign parcel bags and check CP-87 (parcel Bill)/Customs Declaration on the body of parcels, to repack/recluse damage parcel, if any, for dispatch.
- (b) To sort out parcels according to destinations.
- (c) To close parcel bags after necessary preparation of work papers manually and/or computer etc.
- (d) To maintain relevant registers and also to dispatch closed bags from respective sections.

OR

If allotted for duty at Central Despatch Point -

- (a) To receive closed bags from MMS schedules viz., no. 003, 004 and 107 and to distribute all receive closed bags to concerned sections of Foreign Post.
- (b) To close parcel bags with parcel received from different branches of Foreign Parcel Import Section and also to dispatch closed bags centrally received from different sections of Foreign Post, Kolkata after preparation of work papers etc.
- (c) To maintain relevant registers manually and/or on computer.

The official has been working at Cashier (with Special Allowance), Accounts Branch of Foreign Post, Kolkata since 11.6.2014 after his application for willingness to work as Cashier was accepted.

In this context, the official while working as Postal Assistant, Foreign Parcel Import Section, applied for posting as Cashier, Accounts Branch in response to this office letter calling for willingness from eligible Postal Assistants of this division, to work as Cashier, Accounts Branch. Prior to that, the said Shri Mukherjee

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was causing lot of hindrances in smooth operation of Foreign Parcel Import Section, especially in the matter of regular execution of the order of Circle Office for collection of foreign mails from Mail Agency, Howrah RMS and dispatching those to respective destinations by accompanying schedule No. 004 of Mail Motor Service. He was also instigating other Postal Assistant and Multi Tasking Staff in the said section to create resentment among them in an attempt to create dislocation clandestinely. Copy of a report from the Assistant Superintendent, Foreign Parcel Import Section and show cause issued against him by the Superintendent, Foreign Post, Kolkata are enclosed (Annexure 1 and 2) for kind perusal. This office, therefore, had no other way but to ease him out of Foreign Parcel Import Section so that it can work smoothly, by accepting his application/willingness to work as Cashier, Accounts Branch of Foreign Post, Kolkata and he is working as Cashier (with Special Allowance) Accounts Branch, Foreign Post, Kolkata since 11.6.2014 in the same building located at 12, Kiran Shankar Roy Road, Kolkata - 700 001. His application for willingness to work as cashier is annexed (Annexure - 3).

- (a) From the above mentioned work chart, it transpires that the primary function that the applicant has been entrusted with is to work at the Foreign Parcel Import Section. It is a logical corollary that imports of Foreign Parcel will necessarily involve receipt of foreign mails from the relevant point.
- (b) The scope of receipt of mails from a point being associated essentially with outdoor duty, we next proceed to analyse the nature of outdoor duties delegated to applicant No. 1 prior to the said order as impugned.
- (i) To count and check the incoming parcel bags as and when they arrive in shipment from foreign countries and to receive

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the same with assistance of one multi tasking staff, and to accompany the Mail Van or hired vehicle for bringing this bags to the foreign post.

- (ii) To receive bags from the Mail Agency, Howrah RMS, for distribution at the foreign post, when allotted for duty with MMS Schedule No. 48.

It is noteworthy that receipt of bags from Mail Agency Howrah RMS was a part of the work schedule of applicant No. 1 prior to implementation of the order as impugned. It is also ascertained from records that the applicant has not chosen to contradict the contentions of the supplementary affidavit.

- (iii) If the order was implemented, the nature of work of applicant No. 1, who would continue to work at the foreign parcel import Section, would be as follows:-

(a) When allotted duty for collection of foreign mails from Kolkata Dock, the Postal Assistant would count and check the incoming parcel bags received with assistance of one Multi Tasking Staff and would accompany the Mail Van/Hired Vehicle for bringing those bags to the foreign post. We find there is no change in nature of duties in receiving this shipment.

(b) To perform duty in accordance with MMS Schedule No. 004 with assistance of one MTS from 7:00 hrs. to 15:00 hrs.

(c) To count and check the condition of incoming parcel bags received by Mail Agency at Howrah RMS, Kolkata, authenticate the receipt of the bags under his signature

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from the Mail Agent Howrah RMS and to be accountable for all the bags collected by him.

- (d) To accompany the Mail Van to bring this bags to Foreign Post and also to collect air foreign post for transferring such bags to respective premises with the assistance of Multi Tasking Staff.

In simple English, what we decipher is that when the Postal Assistant was to obtain delivery from Howrah RMS, the physical work would all be done with the assistance of one MTS and nowhere the Postal Assistant was contemplated to do the physical handling of the bags except in a supervisory capacity to ensure that the incoming parcels are in satisfactory condition and to remain accountable for the mail bags. Needless to say, a PA associated or entrusted with foreign parcel Import has to necessarily be responsible for the foreign mails collected under his supervision. Prior to issue of the order impugned, the applicant was to receive bags from MA, Howrah RMS in accordance with MMS 48, which was modified to MMS Schedule No. 004.

6.4. The applicants are sensitive to perform duties beyond that allocated under Postal Manual. The hand book on foreign posts operations describes the foreign Post Office as an "Office of Exchange" dealing with incoming and outgoing air mails article including articles and bags.

According to the applicants, the equivalent categories in an RMS are Sorting Assistants who are designated as Postal Assistants in Foreign Posts. The applicants contend that even if the Grade Pay of Postal Assistant and Sorting Assistant are same, the Postal Assistants cannot be compelled to do any job beyond that schedule in exchange of foreign mails. Interestingly, however, we find that applicant No. 1 has been

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working willingly as Cashier in foreign post although he is not duty bound in the Postal Manual to carry out functions of a Cashier. The respondents have highlighted that applicant No. 1 expressed his willingness to work as Cashier on receipt of Special Allowance.

6.5. As stated earlier, the issue to be decided is whether their job to supervise receipt of mails from the Howrah RMS point, prejudices the applicants in any fashion. There is no assertion that such supervision of receipt and collection amounts to a reduction in pay scale, grade pay or rank or status. There are no orders to substantiate that the Postal Assistants were directed to do jobs of Mail Guards or Mail Agents. It was made very clear that they will all be assisted by the services of an MTS and would only be responsible in a supervisory capacity for the receipt of foreign mails from the Howrah RMS point.

6.6. The respondents had tried to introduce this system given the fact that there were no Mail Guards or Mail Agents in the Foreign Posts whereas most of the Postal Assistants had been entrusted with little workload. It has been held in **Iswar Chandra Mohanty v. State of Orissa AIR 1966 Ori. 173 (DB)** that, whether in a particular case an order amounts to a reduction of rank, is a matter of substance and not of form.

7. In the instant matter, there was no substantial change in the work profile of the applicants. They were primarily meant to be incharge of receipt of Foreign Mails /Despatch thereof by the orders so impugned. They were only directed to work in a supervisory capacity to be responsible for mails received from Howrah, RMS in an extension of practice followed at the Kolkata Dock. There was not an iota of malice in the action of the respondents when they have not reduced the

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rank/Grade Pay, or modified the posting or any other facilities of the applicants in issue of the orders, so impugned. For the purpose of introducing a MMS 04 to be commensurate with probable charges in the Speed Post System, the respondents intended to change the duty hours of the Postal Assistants.

Hence, no malice is established in the conduct of the respondent authorities.

In **K. Gopaul v. Union of India, 1967 SLR 507 (SC)** the Hon'ble Apex Court ruled that there is no reduction in rank in the case of a transfer to a non-designated post, while observing as follows:-

"The rank in Government service does not depend on the mere circumstance that the government servant, in the discharge of his duties, is given certain powers."

8. In this O.A., the order as impugned was not perverse as it only intended to improve administrative efficiency in the Postal system by deputing Postal Assistants with little or no workload to receive foreign mails (which was anyway a part of their duties) from the Howrah RMS point. It is significant that even prior to the communication dated 11.7.2013/16.7.2013 (as impugned), the applicant No. 1 was entrusted with receipt of mails from Howrah RMS. The applicants have relied on the Establishment norms related to establishment of Foreign Post Office (Annexure A-1 to the O.A.). Page 122 of the same relates to "Foreign letter mail & bags received thereupon" and the first category thereof refers to "bags received from other Indian offices of exchange addressed to foreign countries." Bags received from other Indian offices of exchange may be received through Air as well as through the Railway system and would not necessarily be confined to Air or Shipping as the only source of receipt.

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Similarly, bags received on account of "foreign parcel export" (page 124 of establishment norms) enumerates bags received from other Indian cities which does not exclude receipt through Air & Rail.

8. Hence, we are of the considered view that the order so impugned is neither perverse, nor illegal or prejudicial to the applicants and would not like to intervene in the same.

Both the applicant and respondents would admit at the hearing, however, that ultimately the order was not implemented and the Postal Assistants continue to retain their earlier work profile. In such a situation, the apprehension of the applicants where no order was directed specifically upon them, in rushing to the Tribunal is a premature act and the O.A. should have been dismissed as infructuous at the outset.

Having heard the matter on merit, however, we proceed to conclude that the order as impugned, does not require intervention. Accordingly, the O.A. does not succeed and is dismissed on merit.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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