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**(2012) 12 GAU CK 0007**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 470 of 2012**

Dulal Sutradhar

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 06-12-2012

**Acts Referred:**

**Citation :** (2013) 2 GLT 936

**Hon'ble Judges :** S.C. Das, J; Iqbal Ahmed Ansari, J

**Bench :** Division Bench

**Advocate :** P.D. Nair, Mr. G. Alam and Mr. H. Rahman, for the Appellant; A.K. Sarkar, Standing Counsel, Railway and Mr. M. Chanda, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Iqbal Ahmed Ansari, J.—This writ petition puts to challenge the order, dated 03.11.2011, passed, in O.A. No. 43 of 2011, by the learned Central Administrative Tribunal, Guwahati Bench, whereby the learned Tribunal has held that the respondent No. 6, who is hereinafter referred to as the private respondent, was eligible for promotion to the post of Senior Programmer/Senior System Analyst and, hence, the penal, approved by the Union Public Service Commission (in short, "UPSC") shall be acted upon. We have heard Mr. P.D. Nair, learned counsel appearing for the petitioner, and Mr. A.K. Sarkar, learned Standing Counsel, NF Railway, for the respondent Nos. 1 to 5. We have also heard Mr. M. Chanda, learned counsel, appearing for the private respondent.

2. By putting to challenge the order, dated 03.11.2011, aforementioned, the petitioner herein contends that he ought to have been impleaded as one of the parties to OA No. 43 of 2011, wherein the decision, as indicated hereinbefore, has been rendered, the ground of raising such a contention being, inter alia, that the private respondent, had earlier filed OA No. 32 of 2008, wherein the present petitioner stood impleaded as respondent No. 6 and, in the said OA, while seeking promotion to the post of Senior Programmer/Senior System Analyst in EDP Centre, NF Railway, Maligaon (redesigned as IT cadre), he had also

challenged the promotion of the present petitioner to the said post with effect from 07.09.2006.

3. By order, dated 31.03.2010, O.A. No. 32/2008 was disposed of by learned Tribunal without, however, directing promotion of the private respondent herein and without interfering with the present petitioner's promotion to the post of Senior Programmer/Senior System Analyst. This apart, the learned Tribunal, in its earlier order, dated 31.3.2010, passed in OA No. 32 of 2008, instead of entering into the merit of the issues, raised before it, observed that if the applicant, i.e., the private respondent herein made any representation on the aforesaid aspects highlighting his grievances, the same shall be considered objectively and appropriately in accordance with rules and law by the respondent Nos. 1 to 5 by making reasoned and speaking order within a period of four months from the date of receipt of the representation, which could be made by the private respondent herein, but as regards validity of promotion accorded to the present petitioner, who stood impleaded in OA No. 32 of 2008, as respondent No. 6, no observation was made.

4. Following disposal of the OA No. 32 of 2008, in the manner as mentioned hereinabove, the private respondent herein filed a representation, dated 13.04.2010, wherein, apart from seeking promotion to the post aforementioned, the private respondent herein also contended that not only the empanelment of the present petitioner as Programmer, but even his promotion to the post of Senior Programmer were illegal. The NF Railway did not, however, allow the representation was made by the private respondent.

5. In fact, while turning down the private respondent's request for promotion to the post of Senior Programmer, the authorities concerned observed, in its order, dated 24.01.2011 that the private respondent had been encoded, in the IT Centre, with effect from 01.04.2005, as Senior Engineer (IT) by office order, dated 23.03.2010. The private respondent herein would be able to appear whenever selection for the post of Programmer was held, provided that he, otherwise, satisfied the eligibility criteria.

6. It is against the order, dated 24.1.2011, aforementioned, that the OA No. 43 of 2011, which has given rise to the present writ petition, was made and, in the later Original Application No. 43 of 2011, the private respondent sought for being promoted as Senior Programmer/Senior System Analyst and to set aside and quash the letter, dated 24.01.2011, and also the letter, dated 20.05.2005.

7. The sequence of events as depicted above make it clear that in the latter original appeal, namely, OA No. 43/2011, the present petitioner ought to have been impleaded as a party so that he could have placed his case before the learned Tribunal, for, we find that the present writ petitioner too, same as the private respondent, has challenged the eligibility of the private respondent not only against his empanelment, but also questioning his eligibility for being considered for promotion to the post of Senior Programmer.

8. Situated thus, we are of the considered view that all the material facts, which ought to have been placed before the learned Tribunal, had not been placed before the learned Tribunal and, on the basis of the facts as had been placed by the private respondent herein vis-?-vis the case, which the official respondents had pleaded, the Original Application No. 43 of 2011 was disposed of by the impugned order, dated 03.11.2011. This inference gets reinforced, when we notice that the contention of the present petitioner, if sustained, would have a bearing on not only the eligibility of the private respondent to be considered for promotion to the post of Senior Programmer, but would also make the present petitioner senior to the private respondent.

9. Considering the fact that we are not inclined to express any view or opinion on the comparative merits of the cases, which the present petitioner and the private respondent have placed, and, at the same time, we are also of the view that without considering the case of the present petitioner and without according him an effective opportunity of hearing, an appropriate decision on the subject-matter of dispute cannot be reached. We, therefore, in the interest of justice, set aside the order, dated 03.11.2011, and remand the OA No. 43/2011 to the learned Tribunal for rendering a decision afresh after having considered the respective cases of all the parties concerned including the present petitioner after according them to have their say in the matter.

10. Before parting with this writ application, we make it clear that the observations made in this order are all tentative in nature and the learned Tribunal shall be free to give its own independent finding as may be warranted by the facts of the present case and the law relevant thereto.

11. Considering the fact that the private respondent has not been promoted to the post of Senior Programmer, his promotion to the said post shall not be made until the matter is heard and decided by the learned Tribunal. Lest the penal, which includes the petitioner, becomes expires and makes the OA No. 43 of 2011 infructuous, because of delay, which may take place in disposal of OA No. 43 of 2011, we make it clear that so long as the decision is not rendered by the learned Tribunal in OA No. 43 of 2011, the empanelment of the private respondent herein, which was the subject-matter of consideration in OA No. 43 of 2011, shall continue to survive.

12. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.