

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1072 OF 2019

V.P. Rane

...Petitioner

Versus

Bank of Maharashtra

...Respondent

Mr. Jaiprakash Sawant, for the petitioner.

Mr. Kanhaiya Yadav i/b Mr. Neel G. Helekar, for the respondent-
State.

**CORAM : DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : 13th SEPTEMBER, 2022

P.C. :

1. The Central Government, by an order dated 13th June 2011, issued in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 referred an industrial dispute to the Central Government Industrial Tribunal No.2, Mumbai (hereafter "Tribunal", for short) for adjudication. The order of

reference required the Tribunal to decide:

“Whether the action of the management of Bank of Maharashtra in not considering the candidature of Shri V.P. Rane, Special Assistant, for the post of Officer Cadre (JMGS-I) is legal, just and proper? What relief the workman concerned is entitled to?”

2. After hearing the parties, the Tribunal passed an order dated 7th June 2017 reading as follows:

“ORDER

(1) It is declared that action of first party management in not considering the candidature of concerned workman Shri Rane, the then Special Assistant for the post of Officer Cadre is unjustified and improper.

(2) It is open to the concerned workman to make the representation to the concerned authorities for retrospective promotion and if such representation is made by him the same shall be considered by the concerned authorities appropriately in accordance with law.

(3) If the representation is allowed the concerned workman should be considered forthwith for promotion retrospectively w.e.f. 1.9.2009 and if he is promoted, he will get the balance of arrears of pay along with 8% per annum interest and other consequential benefits.”

3. Availing the liberty granted by the Tribunal, the petitioner submitted a representation dated 16th October 2017 before the Bank of Maharashtra, his employer, seeking promotion to the post of Officer Cadre (JMGS-I) w.e.f. 1st September 2009 together with all consequential benefits.

4. The representation dated 16th October 2017 of the petitioner stood rejected as it appears from the communication dated 24th October 2018 of the Assistant General Manager (HRM), Bank of Maharashtra, which reads thus:

“This has reference to your representation dt. 16.10.2017 in terms of Award dtd.7.6.2017. The representation was placed before the Departmental Promotion Committee. The Committee observed that you are not eligible to appear for promotion process in terms of circular No.AX1/ST/BPS/Cir.66/2009 dtd.22/07/2009. Therefore, your representation dtd.16.10.2017 is not considered favourably by the Committee.”

5. This order dated 24th October 2018 is the subject matter of challenge in this writ petition at the instance of the petitioner, who has since retired from service in October 2013.

6. We have heard Mr. Sawant, learned advocate for the petitioner and Mr. Yadav, learned advocate for the respondents.

7. The petitioner having retired from service, the question of his actual promotion to the post of Officer Cadre (JMGS-1) would not survive. We need to consider whether the petitioner is entitled to notional promotion.

8. Our attention has been drawn by Mr. Sawant to the decision of the Supreme Court reported in 2008 (3) L.L.N.621 (**Dev Dutt Vs. Union of India and Ors.**). Paragraphs 36, 39 and 40 of the said decision are relevant for the purpose of a decision on this writ petition and the same are, accordingly, extracted below:

"36. In our opinion, fair play required that the respondent should have communicated the "good" entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Art. 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or Government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from caesar to caesar. All this would be conducive to fairness

and transparency in public administration, and would result in fairness to public servants. The state must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

9. Although the impugned order does not specify the reason as to why the Departmental Promotion Committee did not consider the petitioner eligible for promotion, we have found from paragraph 9 of the reply affidavit of the respondents that the rating below “good” in the Special Confidential Report dated 8th August 2009 impeded consideration of the petitioner’s case for promotion. Obviously, this rating was considered by the Departmental Promotion Committee of the respondents as an adverse entry in the petitioner’s confidential report. However, it is not in dispute that such rating below “good” in the Special Confidential Report was never communicated to the petitioner. The petitioner, thus, suffered civil consequences without being aware of such an adverse entry. Needless to observe, such an action of the respondents was in the teeth of the decision in **Dev Dutt** (supra).

10. In that view of the matter, we dispose of the writ petition by granting liberty to the petitioner to make a further representation before the respondents seeking upgradation of the adverse entry in the Special Confidential Report to a rating of “Good”, within a period of a fortnight from today. If such representation is received, the respondents shall consider the same in accordance with law. In the event the rating is

upgraded to "Good", the petitioner shall have the benefits of promotion to the post of Officer Cadre (JMGS-1) w.e.f. the date such promotion was due. Should the representation be rejected, the respondents shall pass a reasoned order and communicate the same to the petitioner. This exercise be completed as early as possible but positively within two months from the date of receipt of representation from the petitioner.

11. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)