

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

WRIT PETITION NO. 9967 OF 2019

H. G. Gund Versus The Flag Officer Commanding-in-Chief Western Naval Command	} } } }	Petitioner Respondents
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Mr. Jaiprakash Sawant for the petitioner.

Mr. P. M. Palshikar with Mr. A. A. Garge for the respondent.

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

DATE: SEPTEMBER 20, 2022

P.C.:

1. The writ petition was earlier dismissed by a coordinate Bench by an order dated 13th July 2022. However, such order dated 13th July 2022 was recalled by an order dated 26th August 2022 while allowing Review Petition No. 68 of 2022 filed by the petitioner. That is how the writ petition has been placed before us now.

2. The facts are noted in the orders dated 13th July 2022 and 26th August 2022. The petitioner is aggrieved by the order dated 25th April 2019 whereby the respondent, upon considering his claim for promotion in terms of the award dated 12th March 2018 passed by the Central Government Industrial Tribunal No. 2, Mumbai (hereafter "the Tribunal", for

short), declared him not fit for promotion. The ground for declining promotion to the petitioner is that he had been graded 'average'. Undisputedly, such grading was not communicated to the petitioner.

3. The Supreme Court in **Dev Dutt vs. Union of India and Ors.**, reported in 2008 (3) L.L.N. 621, and **Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and Ors.**, reported in (2015) 14 SCC 427, has held that such uncommunicated adverse remarks which bring about civil consequences cannot be acted upon. While disposing of Writ Petition No. 1072 of 2019 (**V. P. Rane vs. Bank of Maharashtra**), the decision in **Dev Dutt** (supra) had been placed before us by Mr. Sawant, learned advocate for the petitioner.

4. Although Mr. Palshikar, learned advocate for the respondent has submitted that the petitioner ought to approach the appropriate Government for having a reference made for adjudication by the Tribunal once again, we do not see any reason to accept such contention having regard to the fact that the petitioner has retired and that all the Tribunals in Bombay, which deal with disputes of the present nature, are not entirely functional.

5. In such view of the matter, we dispose of the writ petition by granting liberty to the petitioner to make a further representation before the respondent seeking alteration in the confidential reports to such grading in excess of 'average' which could make him eligible for promotion. If such representation is received within a period of a month from date, the respondent shall proceed to consider the same in

accordance with law. In the event of an upward grading, the petitioner shall have the benefit of promotion to the post of 'Highly Skilled Tradesman' w.e.f. the date his juniors were promoted. On the contrary, if the representation is not accepted, the respondent shall pass a reasoned order and communicate the same to the petitioner. This exercise shall be completed as early as possible, but preferably within 2 months from date of receipt of the representation of the petitioner.

6. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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