

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL NO. 4724 OF 2008

[Arising out of Special Leave Petition (Civil) No. 13030 of 2006]

Anil Mishra .. Appellants

-versus-

Union of India & Ors. .. Respondents

J U D G M E N T

Markandey Katju, J.

1. Leave granted.

2. This appeal by special leave has been filed against the judgment of the Punjab and Haryana High Court dated 6.3.2006 in C.W.P. No.3526 of 2006.

3. Heard learned counsel for the parties and perused the record.
4. The appellant Anil Mishra was a Deputy Commissioner of Central Excise & Customs, Central Government. He filed an O.A. before the Central Administrative Tribunal, Chandigarh Bench, challenging the adverse entry made to him for the year 2000-01 vide letter dated 16.1.2002.
5. Against that adverse entry he had earlier filed a representation which was rejected by the Chief Commissioner by order dated 14.7.2003. Against the order of the Chief Commissioner, the appellant made further representation to the Central Government, which was rejected by the Competent Authority of the Central Government, which has been conveyed by the Under Secretary to the Government of India by his letter dated 30.9.2004.
5. Before the Tribunal the appellant submitted that the adverse entry had been made *malafide*. This fact had been considered by the Tribunal in para 9 of its order and the Tribunal observed that the appellant had not brought to its notice any extraneous factor or reason as to why the concerned authority should have acted in a *malafide* manner. Moreover, the

appellant's representation against that adverse entry was rejected by the Chief Commissioner, and his further representation to the Central Government was also rejected. Hence the Tribunal rejected the OA of the appellant.

6. Against the order of the Tribunal, the appellant filed a writ petition before the High Court, which was also dismissed. The High Court noted that the plea of bias had been considered by the Tribunal after an examination of the files and was rejected. The High Court also observed that the appellant's representation was rejected by the Chief Commissioner, who was a very senior officer, after seeing the record of the appellant, and the memorial filed by the appellant was also rejected vide order dated 30.9.2004.

7. We have perused the record and heard the learned counsel for the parties, and we see no reason to interfere with the orders of the High Court or the Tribunal. This is not a case where the adverse entry was not communicated to the appellant. It was not only communicated but the appellant made representation against the adverse entry, which was considered by the Chief Commissioner, who rejected the representation by a detailed speaking order of 5 pages. Further memorial to the Central

Government has also been considered and dismissed. Thus three senior officers have considered the appellant's case and rejected the same. We cannot sit as an appellate authority over these orders. The scope of judicial review of administrative orders is limited as has been repeatedly held by this Court, vide **Tata Cellular** vs. **Union of India**, AIR 1996 SC 11.

8. Learned counsel for the appellant submitted that the entries before 2000 and after 2000 were not adverse to the appellant, and hence the isolated entry for 2000 appears to be biased. This plea was not taken by the appellant before the Tribunal or the High Court, and hence we cannot allow it to be taken for the first time before us. Learned counsel for the appellant submitted that the appellant was not aware of the good entries before and after the year 2000, and hence the appellant could not bring it to the notice of the Tribunal and the High Court. He also submitted that the entries before the year 2000 and after the year 2000 are good entries, and this shows that the isolated entry in the year 2000 was for extraneous considerations.

9. We are of the opinion that if the appellant wanted to take this plea, he could have done it before the Tribunal or the High Court. Even if the

entries before or after 2000 had not been communicated to him, he could have filed an application before the Tribunal or the High Court for summoning of these entries, and the Tribunal and the High Court could have summoned the same. However, the appellant filed no such application before the Tribunal for summoning these entries. Hence the appellant has himself to blame.

10. Had the appellant taken such a plea before the Tribunal and the High Court, the respondent authorities would have had an opportunity to file a reply in rebuttal to this plea. Since the appellant did not take this plea before the Tribunal or the High Court, the department had no opportunity to reply to it. Hence we cannot allow this plea to be taken before us.

11. The Chief Commissioner and the Central Government are very high authorities and they have considered the representations of the appellant. No bias has been attributed to the Chief Commissioner or to the Central Government.

12. For the reasons given above, we find no merit in this appeal and hence it is dismissed. No costs.

.....J.
(Altamas Kabir)

.....J.
(Markandey Katju)

New Delhi;
30th July, 2008