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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 691/94

New Delhi: this the 14th day of January, 1997.

HON'BLE MR. S. R. ADIGE, MEMBER(A).

HON'BLE DR. A. VEDAVALLI, MEMBER(J).

Smt. Mukta Dhawan,
W/o Shri K.L. Dhawan,
R/o X-1378, Street No. 4,
Rajgarh, Gandhi Nagar,
Delhi - 110 031Applicant.
(By Advocate: Shri P.P. Khurana)
Versus

1. Union of India through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Member (Personnel & Vigilance),
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
New Delhi.
3. Principal Collector,
Customs & Central Excise,
Collectorate,
Central Revenue Building,
I.T.O.,
New Delhi - 110 002.
4. Deputy Collector (P & V),
Customs & Central Excise,
Collectorate,
C.R. Building,
I.T.O.,
New Delhi - 110 002Respondents.
(By Advocate: Shri R.R. Bharti).

JUDGMENT

BY HON'BLE MR. S. R. ADIGE, MEMBER(A).

In this O.A., Smt. Mukta Dhawan seeks quashing of the Disciplinary Authority's order dated 2.6.89 (Annexure-A3), the appellate authority's order dated 4.1.90 (Annexure-A4) and the Reviewing Authority's order dated 23.6.93 (Annexure-A5).

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2. She was proceeded against departmentally on two charges:

i) She and Shri Hari Singh, while functioning as Dy. Office Superintendent, Gold Cell and LDC Gold Cell respectively in Central Excise Collectorate Delhi during September, 1986 handed over Goldsmith Certificates issued by Superintendent Gold Cell for personal delivery at the premises of the applicant through one Shri Pal Singh a daily wager employed in that office, but not attached with Gold Control Branch, at the material time on closed holidays, instead of sending the same through registered post.

ii) Under instructions of Smt. Mukta Dhawan and Shri Hari Singh, Shri Pal Singh took a bunch of Goldsmith Certificates from office and on 15.8.86- Independence Day- approached one of the applicants at his house, showed him the Goldsmith Certificates issued in his favour and demanded Rs.200/- on their behalf as illegal gratification for delivering the same."

3. The Inquiry Officer held charge (i) proved against the applicant. Accepting the Inquiry Officer's findings, the Disciplinary Authority imposed the penalty of stoppage of 2 increments without cumulative effect vide impugned order dated 2.6.89 (Annexure-A3), which on appeal was reduced to stoppage of 1 increment without cumulative effect vide impugned order dated 4.1.90 (Annexure-A4). The review petition

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was rejected vide impugned order dated 23.6.93
(Annexure-A5) against which this OA has been filed.

4. We have heard applicant's counsel Shri Khurana and respondents' counsel Shri Bharti. We have also perused the materials on record and given the matter our careful consideration.

5. As pointed out by Shri Khurana, Charge (1) which has been held as proved against the applicant, has the following ingredients:

- i) that applicant Smt. Bhawna during August-September, 1986 handed over the Goldsmith Certificates to Shri Pal Singh.
- ii) that the said certificates were knowingly handed over to Shri Pal Singh for personal delivery to the applicant.
- iii) That such personal deliveries were to be made at the premises of the applicant.
- iv) that such personal deliveries at the premises of the applicant were to be made on closed holidays.
- v) that the said personal deliveries were made instead of sending them by registered post.

6. In his statement dated 24.9.86 Shri Pal Singh has stated that while he was working in Gold Control Cell, applicant gave him some Goldsmith Certificates to send by registered post but when he went to the Post Office, the staff there told him that the registry counter closed at 4 p.m., upon which he returned back

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and handed over the certificate to the applicant who then directed him to handover the registered letters personally to their personal addresses. Shri Pal Singh further stated that thereupon he went to their residence where he met Ramesh Kumar and gave him his registry certificate and told him that it was the applicant who had sent him. In his findings the Inquiry Officer has recorded that during examination in the departmental enquiry Shri Pal Singh confirmed that his statement dated 24.9.86 was correct, and during cross examination by the applicant also confirmed that he had gone to Ramesh Kumar's house to deliver the Goldsmith Certificate to him and that the acknowledgement of Ramesh Kumar in token of having received the Goldsmith Certificate was delivered to the applicant on 13.8.86.

7. As Shri Pal Singh's testimony has not been shaken in cross examination it cannot be said that there are no materials to hold that the applicant had knowingly handed over the said certificates to Shri Pal Singh for personal delivery to the applicants at their residences, although the normal procedure was to send them by registered post, which the applicant had herself adopted in the first instance. The identity of the 'Madam' referred to in Shri Pal Singh's statement dated 24.9.86 is not in doubt, as in the original Hindi version of his statement he has clearly mentioned that 'Madam' refers to the Dy. Office Superintendent i.e. the applicant. That being the position, no further evidence is required to corroborate Shri Pal Singh's statement, because it is well settled that the rules of evidence as applicable to criminal cases are not strictly

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applicable in departmental proceedings which proceed on the basis of the preponderance of probability of the alleged action.

8. The question whether 13.8.86 was a closed holiday or not is a question of fact but even if it was not the same cannot be used to assail the impugned order. Applicant has contended that she was on leave on that date, but the Inquiry Officer has clearly held for reasons recorded in writing, and difficult to disagree with that this contention is an afterthought.

9. Shri Khurana has argued that there were no directions to send these Gold Certificates only by registered post and in the absence of instructions the applicant cannot be held to have committed misconduct. From Shri Pal Singh's statement dated 24.4.86, which as stated above he confirmed in the D.E., we find that the applicant had herself been giving these certificates to him for despatch through registered post and it was because on the relevant date the Post Office was closed that she asked him to deliver the same by hand. Under the circumstance, the applicant cannot disclaim knowledge of the established procedure, and the authority had rightly held that as the officer-in-charge of the Gold Control Cell it was the applicant's responsibility to ensure that such vital legal documents were delivered to the concerned persons through established mode of delivery.

10. In this connection in UOI & Others vs. Upendra Singh - 1994(27 ATC 200, the Hon'ble Supreme Court while quoting the decision in H.B.Gandhi, Excise

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and Taxation Officer-cum-Assessing Authority, Kamal
Vs. Gopi Nath & Sons -1992 Supp.(2) SCC 312 affirmed
the following principle:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after recording fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

11. In the light of the above, we see no reason to interfere in the matter. The OA therefore fails and is dismissed. No costs.

A. Vedavalli

(DR. A. VEDA VALLI)
MEMBER(J)

Anjali
(S. R. ADIGE)
MEMBER(A).

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