

(2019) 12 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 12403 Of 2018

Satyendra Singh Gurjar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 3, 3(1)(i) (ii), 3(1)(i)(iii), 14, 15(4)

Citation : (2019) 12 BOM CK 0069

Hon'ble Judges : Ranjit More, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Devanshi Singh, Dr. Sujay Kantawala, Sajal Yadav, Aishwarya Kantawala, Sujit Sahoo, Ashok Shetty, M. Adhikary, Anamika Malhotra

Final Decision : Allowed

Judgement

N.J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. By this petition, the petitioner takes exception to the judgment and order dated 3rd November, 2017, passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai, in Original Application No.14 of 2015 ("OA", for short), whereby the OA filed by the petitioner assailing the Order in Original dated 11th March, 2014, finding the petitioner guilty of misconduct under Rule 15(4) of the Central Civil Services (CCA) Rules, 1965 ("CCS (CCA) Rules, 1965", for short) and imposing a penalty of reducing the pay of the petitioner by three stages for the period of one year, without cumulative effect, and the order in appeal dated 24th September, 2014, dismissing the appeal there against, came to be dismissed.

3. The facts necessary for the determination of this petition can be summarised as under:

(a) The petitioner was recruited as Appraiser (Customs) in the Civil Services

Examination, 1996. On 5th December, 2006, the petitioner was posted at Mumbai Docks. He was performing duty at STP (one of the node/point of Mumbai Docks). The consignment under the Bill of Entry No.727840 dated 4th December, 2006, was cleared by the petitioner through Custom House Agent ("CHA"), M/s. A. Abba & Sons, CHA No.11/396, in the name of M/s. Ratan Enterprises, Gujarat.

The goods in the consignment were declared to contain Tooth Brushes, Baby Diapers, Plastic bowls etc. of total declared value of Rs.3,03,359/-.

(b) Post clearance, the officers of the Directorate of Revenue Intelligence (DRI), Mumbai Zone, intercepted the truck bearing No. MH-43 E-1345 outside the dock premises. The Bottle Seal No.160620, BAYLINES of the shipping line affixed at the port of loading, Dubai, was found intact which indicated that the consignment was cleared without examination. On detailed examination, it was found that a large variety of wrist watches (4,959 pieces) bearing brand name of 'Titan' and 'Fast Track', in 10 cartons, were concealed in the declared imported goods. Those watches were not declared in the bill of entry.

(c) On further enquiry, it transpired that the petitioner had recorded a report of examination in respect of the subject consignment before issuing the out of charge order, by making an endorsement, "opened and examined 40 packages in the presence of the CHA by I. S. Gurjar dated 5th December, 2016, at 12.55 pm." It further transpired that the said container was not lying in the area i.e. STP, the examination of which was entrusted to the petitioner. The petitioner thus cleared the consignment by making a false report that he had examined 40 packages in the said consignment, despite the said consignment not being detained in the area under his jurisdiction.

(d) Apart from the prosecution initiated against the petitioner and others by CBI, ACB, Mumbai, by a Memorandum dated 18th February, 2011, a charge-sheet was served upon the petitioner under Rule 14 of the CCS (CCA) Rules, 1965.

The Articles of Charge read as under:

ARTICLE OF CHARGE - I

Shri. S. S. Gurjar, Appraiser, while functioning as Appraiser at Sewree Tiber Pond in the month of December, 2006, had entered into a conspiracy with Shri Mohammed Ghouse Karim, Imran Chasmawala, importers and Shri Ramesh Pandey, employee of CHA M/s. Abba & Sons (No.11/396) and had extended undue favour to them in discharge of his official duty by granting clearance to an important consignment Container No.IALU4553921 in respect of Bill of Entry No.727840 dated 04.12.2006 and issued an Out of Charge order No.12911 dated 5th December, 2006 for the removal of the said Container from the Customs Notified Area which was not under his jurisdiction and also that he was not permitted to do so.

ARTICLE OF CHARGE - II

Shri. S. S. Gujar, Appraiser had not at all examined the Import Consignment loaded in Container No.IALU4553921 under Bill of Entry No.4553921 dated 04.12.2006. However, Shri. S. S. Gujar, Appraiser had cleared the aforesaid consignment lying at Frere Basin - 1 not within his jurisdiction, using his user ID Number on the EDI System by calculatingly feeding an Examination Report of having "Opened and examined 40 pkgs in the present of CHA" and had generated the fallacious documents to make an impression that the consignment had been examined and had given the out of charge.

ARTICLE OF CHARGE - III

Shri. S. S. Gujar, Appraiser, with a deliberate and malafde intention, to help S/ Shri Mohammed Ghouse Karim, Imran Chasmawala, importers and Shri Ramesh Pandey, employee of CHA M/s. Abba & Sons (No.11/396) and to avoid payment of proper Customs duty, acted dishonestly, for illegal monetary consideration and to cause loss of revenue to the Government Exchequer and wrongful gain to the importers. He did not deliberately detect the undeclared imported goods which were concealed in the said Container No.IALU4553921 to cause loss of Revenue in exchange of his own monetary consideration.

(e) The disciplinary proceedings commenced. Mr. Bidhan Chandra, the then Deputy Commissioner of Customs, was appointed as Inquiry Officer to enquire into the aforesaid charges framed against the petitioner. The Inquiry Officer, after the conclusion of inquiry, submitted the report. The Inquiry Officer held that Charge-I and Charge-III, above, were not proved.

As regards Charge-II, the Inquiry Officer concluded as under:

"9.23 Once it is established that there was no conscious and deliberate act on part of the CO in issuing the out of charge of B/E NO.727840 dated 04.12.2006, what remain is merely a statement of facts and therefore I hold that article of charge II is proved partially to the extent of its factual content only without attributing any ill motive and malafde on part of CO."

(f) In view of the aforesaid finding of the Inquiry Officer, the disciplinary authority sought second stage advice from the Directorate General of Vigilance, Customs and Central Excise. After receipt of the advice, vide Memorandum dated 3rd January, 2014, the disciplinary authority disagreed with the findings of the Inquiry Officer that the article of Charge-II was partially proved and recorded a tentative view that the article of Charge-II against the petitioner was fully proved. The petitioner was, thus, called upon to submit a representation on the tentative views recorded by the disciplinary authority.

(g) After consideration of the representation of the petitioner, the disciplinary authority by its Order in Original dated 11th March, 2014, held that the disciplinary authority found no reason to disagree with the finding of the Inquiry Officer in respect of Article of Charge-I and Charge-III. As regards the Article of Charge-II, the disciplinary authority disagreed with the Inquiry Officer and held

that the article of Charge-II was proved conclusively and the action of passing an out of charge order by the petitioner, without actually examining the contents of the consignment was deliberate and willful in character and, thus, there was gross dereliction of duty on the part of the petitioner. Thus, it mounted to misconduct within the meaning of Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964. The disciplinary authority proceeded to impose a penalty of reduction of pay by three stages from Rs.21,680/- + Rs.5,400 (Grade Pay) to Rs.19,370/- + Rs.5,400/- (Grade Pay) in the time-scale of pay of Rs.9300 - 34,500 + 5,400 (Grade Pay) for a period of one year with effect from 15th March, 2014 without cumulative effect.

(h) The petitioner assailed the aforesaid order of the Disciplinary Authority before the Appellate Authority. Mr. A. K. Kaushal, the then Chief Commissioner of Customs, Zone-I, who heard the appeal, was persuaded to dismiss the appeal and confirm the finding of misconduct as well as the penalty imposed by the disciplinary authority on the petitioner, by order dated 24th September, 2014. The Appellate Authority recorded that the act of the petitioner in attending to a consignment not under his jurisdiction, feeding a false examination report without examining its contents and ordering "out of charge" squarely fell in the category of gross misconduct or gross dereliction of duty and was in breach of the CCS (Conduct) Rules, 1964.

(g) The petitioner challenged the orders of the disciplinary authority as well as the appellate authority by preferring Original Application No.14 of 2015 before the Central Administrative Tribunal. A Bench of tribunal, by the impugned judgment and order, found no reason to interfere with the orders impugned before it. The tribunal was of the view that neither the conclusion arrived at by the disciplinary authority was unjustified nor the penalty imposed by the disciplinary authority disproportionate to the proved misconduct. Thus, the tribunal, in view of the limited power of judicial review, was persuaded to dismiss the application.

4. Being aggrieved by and dissatisfied with the dismissal of the Original Application, the petitioner has invoked the writ jurisdiction of this Court.

5. We have heard Mrs. Devanshi Singh, the learned Counsel for the Petitioner and Mr. Shetty, the learned Counsel for the Respondents, at some length. With the assistance of the learned Counsels for the parties, we have also perused the material on record, especially, the report of the Inquiry Officer, the Order in Original and the order on appeal and the impugned order, passed by the tribunal.

6. Mrs. Singh mounted a multi-fold challenge to the findings recorded by the disciplinary authority and confirmed by the appellate authority. Firstly, according to the learned Counsel for the petitioner, the disciplinary authority on the same set of facts and material could not have drawn a divergent conclusion as regards the "culpability of the petitioner", when the petitioner was exonerated of Charge-I and Charge-III, which expressly dealt with the element of intent to cause

wrongful gain to the importer and/or wrongful loss to the revenue. There was no element of any mens rea on the part of the petitioner. Secondly, the disciplinary authority accorded unjustifiable reasons to disagree with the findings recorded by the Inquiry Officer. The Inquiry Officer had relied upon the statement of defence witnesses which established beyond the pale of controversy that the system was not full proof and an Appraiser, who was not in-charge of a particular area, could accidentally issue an out of charge order even in respect of a consignment lying in the jurisdiction of another Officer. Thirdly, the material on record does not indicate that there was gross negligence on the part of the petitioner which amounted to misconduct. Lastly, the Appellate Authority, despite recording a finding to the effect that the circumstances negated the allegation in the concluding part of Article of Charge-II, which speaks about mala fide intention of the petitioner to create false document, committed a gross error in upholding the findings of the disciplinary authority.

7. The learned Counsel for the petitioner would further urge that the pivotal question which warranted consideration was: whether there was misconduct on the part of the petitioner. In view of the justifiable reasons assigned by the Inquiry Officer based on cogent evidence and material, the disciplinary authority could not have disagreed with the findings of the Inquiry Officer as regards "misconduct". The Tribunal lost sight of this crucial aspect and misdirected itself in concentrating more on the proportionality of the penalty, urged the learned Counsel for the petitioner.

8. Per contra, Mr. Shetty, the learned Counsel for the respondents, stoutly submitted that the finding of the disciplinary authority is impeccable. The facts which reflect the misconduct of the petitioner are rather indisputable. One, the petitioner gave an out of charge order for a consignment which was not within his jurisdiction. Two, the petitioner gave the out of charge order without examining the consignment, which was the primary duty of the petitioner. Three, the petitioner made false endorsement that he had examined 40 packages out of the consignment. Four, the falsity of the report of physical examination was borne out by the fact that the consignment had unbroken bottle seal of the port of import. Five, on examination of the consignment by the DRI, 4,959 wrist watches worth of Rs.1,09,36,000, were found concealed therein. In this factual background, according to Mr. Shetty, the lack of devotion to duty on the part of the petitioner is established to the hilt, though the material on record indicates that the petitioner was not privy to the import of the goods by evading the duty.

9. Indisputably, the petitioner has been completely exonerated of Charge-I and Charge-III. Charge-I subsumes an allegation of conspiracy with the importer and employee of CHA. It further contained an indictment that the petitioner had extended undue favour to those persons in issuing the Out of Charge Order No.12911. Charge-III, attributed deliberateness and mala fide intention to the act of issuance of out of charge order with a view to help the abovenamed persons in evading the customs duty. Dishonesty was also attributed to the

petitioner for the said act of issuing out of charge order, namely, in order to have monetary consideration, and resultant wrongful gain to the importers and corresponding loss to the revenue.

10. The exoneration of the petitioner from Charge-I and Charge-III is concurred with by the disciplinary authority. In the final order in original, the disciplinary authority recorded that there was no reason to differ with the findings of the Inquiry Officer on Charge-I and Charge-III. Resultantly, the allegations of misconduct reflecting on the integrity of the petitioner have been proved to be not true. The entire spectrum of allegations ranging from conspiracy to wrongful gain to the petitioner and the importer on the one hand and wrongful loss to the revenue on the other hand have thus been not proved. In this backdrop, the question which comes to the fore is whether the act attributed to the petitioner falls within the dragnet of misconduct relatable to the lack of devotion to the duty or gross negligence.

11. The disciplinary authority deconstructed the article of Charge No. II in the following heads:

"(i) Charged Officer gave out of charge to the consignment without actually examining it.

(ii) Charged Officer calculatingly fed the examination report to create fallacious documents.

(iii) Charged Officer gave out of charge to the container which was not in his jurisdiction."

12. It is indubitable that the petitioner had given out of charge to the consignment without actually examining it and the said consignment was not then within his jurisdiction. Thus, item (i) and (iii) of the aforesaid heads were held to be duly proved by the Inquiry Officer as well. The controversy revolves around the proof of item (ii), namely, the petitioner calculatingly fed the examination report to create false document. In view of the exoneration of the petitioner of Charge-I and Charge-III, and the material on record which indicates that there was neither any conspiracy nor the petitioner had any inkling of the contents of the consignments which were found to have been imported by evading the customs duty, the Inquiry Officer was of the view that item (ii) above, was not proved.

13. The Inquiry Officer on the aspect of the alleged act being a calculated one held that the said head of Charge-II emanates from Article of Charge-I. Once it is found that there was no element of conspiracy or intent to favour the importers, the said head of Charge-II also falls. Secondly, on the aspect of the preparation of false report, the Inquiry Officer was of the view that if the petitioner desired to create a false document, it would have been in conformity with the norm of examination of at least 5% of the container and then the petitioner would have made an endorsement to the effect that he had examined 5% of the declared

1407 cartons and not 40 packages. Thirdly, the fact that two departmental Officers, namely, Mr. Madhuranjan Singh (DW-1) and Mr. H. C. Verma (DW-2) deposed about the circumstances under which the inadvertent out of charge order could take place and that such type of mistakes had occurred in the past, weighed with the Inquiry Officer. Thus, the Inquiry Officer concluded that there was no conscious and deliberate act on the part of the petitioner.

14. The disciplinary authority, disagreed with the said finding of the Inquiry Officer on the premise that the act of the petitioner, even in the absence of conspiracy or motive amounted to gross misconduct or gross dereliction of duty. The defence of the petitioner that at the relevant period the EDI system allowed all the Appraisers to issue out of charge orders in respect of all the consignments lying within the jurisdiction of Mumbai Docks, and thus there was an inadvertent mistake in issuing the out of charge order was not found to be worthy of acceptance. It was further noted that the petitioner did not adhere to the norm of inspecting and examining 5% of the consignment and instead made an incorrect endorsement; "opened and examined 40 packages", indicated that the act was done 'calculatingly'. Thus, the action was held to be deliberate and willful in character.

15. The pivotal question which thus warrants consideration is; whether, in the facts of the case at hand, the petitioner can be said to have committed misconduct warranting disciplinary action. It was strenuously urged on behalf of the petitioner that the proved facts, even if construed rather generously, do not make out a case of misconduct entailing penalty, as imposed by the disciplinary authority. In contrast, the respondents asserted that the misconduct is writ large.

16. The jurisprudential connotation of "misconduct" is required to be kept in view. The norm of conduct expected of an employee is often spelled out in the Code of Conduct or the Conduct Rules. The complained act or omission is thus required to be tested on the touchstone of it being in conformity with the conduct expected of the employee. Rule 3 of the Conduct Rules enjoins the civil servant to maintain absolute integrity and devotion to duty and refrain from an act or omission, which can be termed as that of 'unbecoming of a government servant'. Viewed through the prism of the statutory provision, the act or omission which is in breach of the prescription of conduct amounts to misconduct. Whether the complained act or omission amounts to misconduct is thus required to be judged in the context of the nature of such act or omission, the circumstances in which it occurred and its impact.

17. A profitable reference in this context, can be made to the judgment of the Supreme Court in the case of State of Punjab and others vs. Ram Singh Ex-Constable (1992) 4 SCC 54. In the said case, the respondent therein was dismissed from service on the charge that he was found roaming at the bus stand sporting service revolver, heavily drunk. It was urged on behalf of the respondent that taking alcoholic drink as such did not amount to misconduct. After referring to the definition of misconduct in the Law of Lexicon, the Supreme

Court expounded the import of the term misconduct in the following words.

"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:-

"A transgression of some established definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public Officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at page 821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily in definite. Misconduct in office may be defined as unlawful behaviour or neglect by a public Officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the

maintenance of law and order."

(emphasis supplied)

18. In the context of the thrust of the submission on behalf of the petitioner that there was no element of mens rea in the act of the petitioner of issuing out of charge order and, thus, it would not amount to misconduct, it may be advantageous to make a reference to the judgment of the Supreme Court in the case of Union of India and others vs. J. Ahmed (1979) 2 SCC 286. The Supreme Court adverted to the general connotation of the term 'misconduct', especially in the context of disciplinary proceedings. The observations of the Court in paragraphs 10 to 12 are instructive. They read as under:

"10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* (17 QB 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* (1959) 1 WLR 698]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* (61 Bom LR 1596), and *Satubha K. Vaghela v. Moosa Raza* (10 Guj LR 23). The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* [(1966) 2 SCR 434], in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* [(1967) 2 SCR 566], the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P. H. Kalyani v. Air France, Calcutta* [(1964) 2 SCR 104], wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of

efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand shah v. Manager, Ahmedabad Co- op. Department Stores Ltd. [(1978 19 Guj LR)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings."

(emphasis supplied)

19. The learned Counsel for the petitioner placed a strong reliance on the judgment of the Supreme Court in the case of Inspector Prem Chand vs. Govt. of NCT Delhi & ors. (2007) 4 Supreme Court Cases 566., wherein the observations of the Supreme Court in the case of Ram Singh (supra) were extracted. It was thereafter enunciated that an error of judgment in not seizing the tainted currency notes, after the accused did not accept the same, was not per se a misconduct. A negligence simplicitor also would not mean to a misconduct. The Supreme Court, adverted to the judgment of the Supreme Court in the case of J. Ahmed (supra) and held that the appellant Inspector cannot be said to have committed any misconduct.

20. The aforesaid pronouncements indicate that the act or omission, which is tainted with ill motive, moral turpitude and improper or unlawful behaviour with an element of willfulness therein or any fagrant violation of an express stipulation, squarely fall within the mischief of misconduct. Negligence, lapse in performance of duty, errors of judgment or innocent mistake, on the other hand, stand at the other end of the spectrum and generally do not constitute a

misconduct. In a given situation, a single act or omission or error of judgment would not ordinarily constitute misconduct though when such an error or omission results in serious or atrocious consequences the same may amount to misconduct. It is not an inviolable rule of law that the gross negligence or lapse in performance of duty entailing serious consequences may not amount to misconduct. Gross or habitual negligence in performance of duty may not involve mens rea yet it may still constitute misconduct for disciplinary proceedings.

21. In the backdrop of the aforesaid exposition of law, reverting to the facts of the case, it is pertinent to note that the cleavage in the opinion of the Inquiry Officer and the disciplinary authority was on the point of the petitioner having calculatngly fed and generated fallacious (false) document - item (ii) extracted above. The word "calculatngly" covers in its fold a mental element. It is impregnated with an idea of deliberateness. It implies that the action was taken after taking into account the foreseeable consequences thereof. The element of an intentional and deliberate act, therefore, was part of Charge-II attributed to the petitioner.

22. The disciplinary authority was of the view that the act was done "calculatngly" was borne out by the fact that the petitioner did not realise that he was attending to the unauthorised documents at three stages i.e. at the time of feeding examination report, at the time of giving out of charge order in the system and at the time of signing Out of Charge Order No.12911 for the said bill of entry.

23. The defence of the petitioner was that he issued the out of charge order on account of an inadvertent mistake as Rishikesh Shahi (DW-3), the employee of CHA, had tendered the bill in question along with five bills of entries of STP, which were within his jurisdiction. The out of charge order was issued as the EDI system had no location specific user ID and an appraiser had no way to know where exactly the container was lying. This defence was sought to be bolstered up by examining DW-3 Rishikesh Shahi, who deposed to the fact that he had given the bill of entry in question along with five bills of entries of STP to the petitioner and later realised that the bill of entry in question was also passed by the petitioner. The limitations in the EDI system were sought to be brought on record by the petitioner by examining Mr. Madhuranjan Singh (DW-1) and Mr. H. C. Verma (DW-2), who testified to the fact that on account of all the Appraiser being in a position to issue out of charge order, irrespective of the fact as to whether the consignment was within their jurisdiction, and the Appraisers being expected to make entries in 'Yes' or 'No' ('Y' or 'N') and the system generated out of charge order automatically, there was possibility of issuance of inadvertent out of charge orders. It was also brought on record that such mistakes did occur in the past as well.

24. The aforesaid material is required to be appreciated in the backdrop of the fact that the Inquiry Officer has found that there was no material to indicate that the petitioner had either conspired with the importer and CHA or had any nexus

with the import of the goods by evading the customs duty. The petitioner was unaware of the factum of the import of the goods by evading the customs duty. There was no intent to either assist the importer or CHA in the evasion of duty nor there was any animus to cause wrongful loss to the revenue. The disciplinary authority, on the other hand, construed that there was an element of calculated action for failure on the part of the petitioner to notice the inadvertent mistake and immediately report the same to the superior Officers.

25. In our view, the said factor is not germane to attribute the element of deliberateness, consciousness and willful action of preparing out of charge order, which the term "calculatingly" implies. The Inquiry Officer was justified in drawing an inference that the mental element in Charge-II drew its support and sustenance from the indictment against the petitioner in Charge-I, of which the petitioner was exonerated. We are persuaded to take this view for reasons more than one.

26. Firstly, the failure of the department to bring home the Charge-I to the petitioner dismantles the substratum of the charge as regards the ill motive on the part of the petitioner. Secondly, the failure to establish the charge of conspiracy against the petitioner snaps the link between the petitioner and other persons, who imported the goods by evading the customs duty. Thirdly, the fact that Charge-III could not be established leads to an inference that the act of the petitioner was not coupled with a deliberate mala fide intent to assist the importers and the exoneration of the petitioner from the said Charge-III leads to further inference that the petitioner did not give out of charge order for unlawful monetary or other extraneous consideration. Fourthly, if all these elements reflecting upon the state of mind of the petitioner are completely and thoroughly ruled out, then it would not be permissible to introduce the same element of deliberateness and willfulness by holding that the act was calculated one. Lastly, it is imperative to note that even the appellate authority recorded an express finding that the material on record negated the allegations in concluding part of Charge-II about the mala fide intent on the part of the petitioner to create false documents.

27. If the element of state of mind is thus completely effaced the matter gets restricted to the consideration of the aspect of the gross negligence or carelessness. There are circumstances which suggest that though there was lapse on the part of the petitioner in issuing out of charge order, undoubtedly without inspecting the consignment in question; yet it cannot be said to be such a gross negligence as would constitute misconduct. Mr. Ramesh Pandey (DW-3) testified to the fact of bill of entry being submitted along with five bills pertaining to the consignment within the jurisdiction of the petitioner and out of charge order being obtained inadvertently. To add to this, two of the department's Officers, namely, Mr. Madhuranjan Singh (DW-1) and Mr. H.C. Verma (DW-2) have deposed that the then prevalent system did not give the Appraisers the chance to examine whether the consignment in question was within the

jurisdiction entrusted to them. Thirdly, the petitioner made an endorsement of having examined 40 packages only. The consignment in question was reported to contain 1407 cartons. If the act of the petitioner was deliberate and with intent to create a false record, the petitioner would have made an endorsement of having examined at least 70 packages, to conform to the norm of inspection of 5% of the consignment.

28. In our view, these circumstance, if considered in conjunction with total absence of ill motive, mala fide intent or animus to cause wrongful gain to the importers and the petitioner, lead to a legitimate inference that the act on the part of the petitioner was the result of negligence and carelessness. It falls short of "misconduct".

29. The tribunal did not examine this aspect of the matter. The tribunal, on the other hand, posed unto itself the question of proportionality of the punishment. Since the Inquiry Officer and the disciplinary authority differed on the aspect of the culpability of the conduct, the tribunal ought to have examined the question of proof of misconduct. Thus, we are persuaded to interfere with the order of the tribunal as well as the orders of the disciplinary authority and the appellate authority.

30. The upshot of the aforesaid consideration is that the petition deserves to be allowed.

31. Hence, the following order.

(i) The petition stands allowed.

(ii) The impugned order of the Central Administrative Tribunal dated 3rd November, 2017, the Order in Original, dated 11th March, 2014, passed by the Commissioner of Customs and order in appeal passed by the Chief Commissioner of Customs dated 24th September, 2014, are quashed and set aside.

(iii) The finding of misconduct recorded by the disciplinary authority and the penalty imposed by the disciplinary authority of reduction in pay by three stages stands quashed and set aside.

(iv) The petitioner stands exonerated of the disciplinary proceedings initiated against him.

(v) There shall be order as to the costs.

(vi) Rule made absolute in the aforesaid terms.