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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2390 OF 2022

Jhamman Singh
Indian Inhabitant,
aged 71 yrs.
Deputy Commissioner
of Customs (Retired)
Residing at A-602,
Gurudristi CHSL,
MHADA Layout, S.V.P. Nagar,
Four Bungalows, Andheri (W),
Mumbai 400 053. **.. Petitioner**

Versus

1. **The Union of India**
   Through the Secretary to
   The Government of India
   Ministry of Finance
   Department of Revenue
   North Block,
   New Delhi – 110 001

2. **The Chairman**
   Central Board of Indirect
   Taxes & Customs
   Government of India,
   Ministry of Finance,
   Dept. of Revenue,
   North Block,
   New Delhi – 110 001

3. **The Commissioner of**
   Customs (General),
   New Custom House,
   Ballard Estate,
   Mumbai 400 001

4. **The Registrar of the**
   Central Administrative
   Tribunal, Bombay Bench,
   Mumbai, constituted
   Under Section 4 of the
   Administrative Tribunals

Act, 1985 (Act 13 of 1995)
Having office at 4th Floor,
Gulestan Bldg., Prescot Road,
For, Mumbai – 400 001. .. Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy, Ms.Kavita Anchan, Ms. Seema Sorte and Mr. Karthik Pillai for petitioner.
Mr. R. R. Shetty with Mr. Prasenjit Khosla for respondents.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

Date: 2nd FEBRUARY, 2024

ORAL JUDGEMENT [Per Chief Justice]:

1. Heard Mr. Ramesh Ramamurthy, learned counsel representing the petitioner and Mr. R. R. Shetty, learned counsel representing the respondent.

2. Proceedings of this petition filed under Article 226 of the Constitution of India assail the validity of the order dated 26th April, 2013 whereby the petitioner has been inflicted with the punishment of withholding of 10% of monthly pension for a period of three years.

3. Under challenge in this petition is also the judgment and order dated 23rd January, 2020 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as the "Tribunal") whereby the Original Application No. 436 of 2014 challenging the punishment order dated 26th April, 2013 was dismissed.

4. The necessary facts, which are relevant for the purposes of appropriately deciding the issue raised in this petition, are stated thus. The petitioner while working on the post of Assistant Commissioner, Customs, was issued a charge-sheet dated 20th /24th August, 2007 which contained three charges. Articles of charges contained in the charge memorandum are extracted hereinbelow: -

> *"**Article of Charge- I**: That he erroneously cancelled three bank guarantees concerning Bills of Entry Viz. 1) S/9-RE-105/2003 Gr. V-A, 2) S/9-RE-106/2003 Gr. V-A and 3) S/9-RE-128/2003 Gr. v-A, without proper scrutiny and verification of documents put up to him and without ensuring compliance of the norms prescribed by the Notification No. 27/2002 dated 01.03.2002.*
>
> ***Article of Charge- II**: That he failed to notice that the extension of time for re-export in respect of three Shipping Bills viz. 1) 1000000467, 2) 1000000470 and 3) 1000000468 all dated 13.02.2004 was given by an un-authorised officer and that differential duty had also not been realized from the importer as prescribed by the Notification No. 27/2002 dated 01.03.2002.*
>
> ***Article of Charge – III**: That he failed to conduct and maintain proper supervision on the functioning of Group V-A and also failed to take all possible steps to ensure the integrity and devotion of duty of the government servants for the time being under his control and authority, while he was posted as Assistant Commissioner of Customs, Group V-A, New Custom House, Mumbai.*
>
> *By the above acts of commission and omission, Shri Jhamman Singh, Assistant Commissioner, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."*

5. On the basis of imputation of alleged misconduct, thus, the petitioner was charged of the afore-mentioned charges and according to the respondents he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a government servant which amounted to breach and violation of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as "the Conduct Rules, 1964). The petitioner submitted his reply to the charge-sheet denying the charges and accordingly the disciplinary proceedings were carried on against him, on conclusion of which the Inquiry Officer submitted his report on 17th September, 2008. The petitioner in the meantime retired from government service on 30th June, 2010 on his attaining the age of superannuation while working as Departmental Representative in the Customs, Central Excise and Service, Appellate Tribunal, Western Zonal Branch at Mumbai.

6. On retirement of the petitioner, however, the departmental proceedings continued in terms of provisions contained in Rule 9 (2) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules, 1972"). The matter was sent to the Central Vigilance

Commission and the Commission in its second stage advice opined that the case appeared to be a fit case for imposition of major penalty of reduction to a lower stage in time scale of pay for two years. The petitioner was provided with the copy of the report of the Central Vigilance Commission, who submitted his comments and representation to the said report vide letter dated 6th October, 2009. Reference of the matter was also made to the Union Public Service Commission (UPSC), whereupon the UPSC vide its communication dated 2nd January, 2013 advised imposition of penalty of withholding of 10% of monthly pension for a period of three years. The petitioner submitted his representation to the said advice tendered by the UPSC vide his letter dated 9th March, 2013.

7. The Disciplinary Authority, however, passed the impugned order dated 26th April, 2013 whereby the penalty of withholding of 10% of monthly pension for a period of three years has been imposed upon the petitioner.

8. The petitioner filed Original Application before the Tribunal challenging the punishment order dated 26th April, 2013 where the proceedings ended in dismissal of the Original Application by the Tribunal vide judgment and order dated 23rd January, 2020. It is this judgment and order dated 23rd

January, 2020 passed by the Tribunal, apart from the punishment order dated 26th April, 2013, which are under challenge in this writ petition.

9. Impeaching the punishment order as also the judgment and order passed by the Tribunal, Mr. Ramamurthy, learned counsel for the petitioner has vehemently argued that the impugned order of punishment is absolutely illegal as in absence of any clear finding of loss to the government and also in absence of finding of doubtful integrity or any allegation of corruption or doing the favour to any third party, the impugned punishment could not have been inflicted upon the petitioner. It has further been argued that there is no material or document or record which goes on to prove grave misconduct on the part of the petitioner and, hence, in absence of grave misconduct or any pecuniary loss caused to the government, Rule 9 of the Pension Rules, 1972 is not attracted in this case, which vitiates the punishment order.

10. Mr. Shetty, learned counsel representing the respondents, on the other hand, has opposed the writ petition and submitted that the Disciplinary Authority on the basis of appropriate evaluation of the evidence and material available on record has reached to the conclusion that the petitioner in discharge of his duty misconducted himself in terms of the provisions contained in Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Conduct Rules, 1964 and, hence, the punishment of withholding of 10% of monthly pension has rightly been inflicted on the petitioner which does not call for any interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

11. We have carefully considered the respective submissions made by the learned counsel representing the parties and have also gone through the records available before us on this writ petition.

12. The charges, as contained in the charge memorandum, have already been extracted above, according to which the petitioner was charged with the allegation of erroneously cancelling three bank guarantees concerning three Bills of Entry, without proper scrutiny and verification of documents and without ensuring compliance of the provisions contained in the notification dated 1st March, 2002. The second charge as per charge memorandum against the petitioner was that he failed to notice that the extension of time for re-export in respect of three Shipping Bills was given by an un-authorised officer and that differential duty was also not realized from the importer in terms of the notification dated 1st March, 2002. The last charge against the petitioner was that he failed to conduct and maintain proper supervision on the functioning of his subordinate employees and also failed to take all possible steps to ensure integrity and devotion of duty of the government servants who were under his control and authority while petitioner was posted as Assistant Commissioner of Customs, Group V-A, new Custom House, Mumbai.

13. As per the imputation of charge, the allegation against the petitioner was that a pre-dated Bill of Lading dated 28th February, 2004 was presented by the importer on 21st May, 2004 whereas the "Let Export Order" was granted after 28th February, 2004, however, the petitioner failed to check the said date and failed to maintain absolute integrity and shown lack of devotion to duty by cancelling three bank guarantees without proper scrutiny and verification of documents.

14. While denying the charges, the defence taken by the petitioner to the memorandum of charges was that the bonds and bank guarantees were cancelled on the basis of Bill of Lading dated 28th February, 2004 which was within six months from the date of import clearance of goods and that cancellation was done based on the recommendations made by the Appraisal Officer and thereafter when it came to the notice of the petitioner that the documents were manipulated and facts were suppressed by the importer, recovery was initiated by him against the importer. Further defence taken by the petitioner was that there was no allegation of any mala fide intent on his part and at the most the imputation of charge may amount to "error in cancellation". The petitioner also stated in his defence that at the most cancellation of the bonds and bank guarantees in respect of three Bills of Entry pertaining to the same importer may amount to bona fide error which occurred in the course of good faith in an attempt made at compliance of the requirements. Further defence taken by the petitioner was that an error of judgment or mere carelessness or negligence of duty does not amount to misconduct and that the differential amount of duty was protected by issuance of demand notice on 16th September, 2005 itself. It is also the case of the petitioner that there is no loss to the revenue as the recovery of the differential amount of duty was made from the importer.

15. The inquiry report dated 17th September, 2008 submitted by the Inquiry Officer is worth noticing in this case.

Inquiry Officer has recorded a finding that there is no dispute that the Charged Officer (i.e. the Petitioner) himself initiated action for issuance of demand as soon as he came to know that re-export took place after expiry of six months from the date of importation and that differential amount of duty has been protected by issuance of demand notice. Inquiry Officer further goes on to return a finding that the bonds and bank guarantees were only mechanisms for recovery of differential amount of duty in case a party did not pay the amount voluntarily and once the duty is not paid, the same can be recovered under Section 142 of the Customs Act, 1962. There is also a finding recorded by the Inquiry Officer that there is no revenue loss because of cancellation of bonds and bank guarantees by the petitioner. These findings are recorded in paragraph 18.11 of the Inquiry Report, which is extracted herein below: -

> *"18.11 There is no dispute that the Charged Officer initiated action for issuance of demand as soon as he came to know that re-export took place after expiry of six months from the date of importation. The differential amount of duty has been protected by issuance of demand notice (Ex.D-I) which has been confirmed vide Order-in-Original (Ex.D-II) passed by Commissioner of Customs (Imports), Mumbai. In the Order-in-Original (Ex.D II), the Commissioner of Customs (Imports) has held that the liability in the instant case is a continuing liability till the conditions of the said notification are satisfied and the time bar under section 28 of the*

Customs Act, 1962 would not apply. I also find that the Bond and Bank Guarantee were mere mechanism for recovery of the differential duty in case the party did not pay up the amount voluntarily. Once the duty differential is payable, the same can be recovered under section 142 of the Customs Act, 1962. In any case, cancellation of bonds and bank guarantees cannot change the position regarding duty liability of the importer. This can at most make the job of the department a bit difficult to recover the differential duty. Therefore, there is no revenue loss because of cancellation of bonds and bank guarantees by the Charged Officer. However, cancellation of Bonds and Bank Guarantees has made the recovery of differential amount of duty."

16. On the basis of analysis of the evidence available on record, the Inquiry Officer also recorded a finding that there is no allegation that the petitioner had any mala fide intention and also that the circumstances suggest that the petitioner had cancelled the bonds and bank guarantees on the recommendation of the Appraiser and hence, the charge that the petitioner failed to maintain absolute integrity or acted in a manner unbecoming of a government servant are not proved. Para 18.13 of the inquiry report in this regard is relevant to be extracted, which reads as under: -

"18.13 Considering above, the approval of note of Appraiser for cancellation of bonds and bank guarantees, by the Charged Officer without scrutinizing all the relevant documents, was not a correct decision. If the Charged Officer was little careful and had scrutinized all the papers, he could have detected that the `Let Export Orders' were given in the subject three cases after the expiry of six months from the dates of importation. He could have also detected that Bill of Lading date i.e.

28/02/2004 which is prior to `Let Export Order' dates, is wrong and accordingly, could have disallowed cancellation of bonds and bank guarantees. Therefore, I am of the view that the cancellation of bonds and bank guarantees by the Charged Officer without ensuring payment of differential amount of duty and without scrutinizing all the documents in file, shows lack of devotion to duty on his part. As there is no allegation in the Charge memorandum that the Charged Officer had any malafide intention and also circumstances of case suggest that the Charged Officer cancelled the bonds and bank guarantees relying on the Bills of Lading and recommendation of the Appraiser, I am of the view that charges that the Officer failed to maintain absolute integrity or acted in a manner unbecoming of a government servant, are not proved."

17. Regarding Charge No.II also the finding of the Inquiry Officer, as can be found in inquiry report, is to the effect that the charge that the petitioner failed to maintain absolute integrity or acted in a manner unbecoming of a government servant are not proved. The said finding can be found in para 19.6 of the inquiry report, which is extracted hereinbelow: -

"19.6 Even if, it is presumed that it was the responsibility of the Assistant Commissioner, Group-VII export to realize the differential amount of duty, the Charged Officer was required to verify as to whether differential duty, if any, was paid, before cancellation of bonds and bank guarantees. There is no dispute on the fact that it was the prime responsibility of the Appraiser to verify all the documents submitted by the importers along with the application for cancellation of bonds and bank guarantees. The Appraiser failed to point out the liability of the importer about the differential amount of duty and recommended cancellation of bonds and bank guarantees. The Charged Officer approved the note of Appraiser without scrutinizing all the documents, himself, which shows lack of devotion on his part. The failure of the Charged Officer to notice non-payment of

differential amount of duty by the importers, was due to improper scrutiny of documents as mentioned in the Article of Charge-I. However, as there is no allegation in the Charge Memorandum that the Charged Officer had any malafide intention and also circumstances of case suggest that the Charged Officer cancelled the bonds and bank guarantees on the basis of Bills of Lading and recommendation of the Appraiser, I am of the view that charges that the Officer failed to maintain absolute integrity or acted in a manner unbecoming of a government servant, are not proved."

18. In respect of Article of Charge-III, the Inquiry Officer was convinced that there was no evidence to suggest that any omissions or commissions by the subordinate officers of the petitioner had taken place on many occasions and hence, the charge was not proved. Paragraph 20.2 of the Inquiry Officer's report is extracted hereinbelow: -

"20.2 From the evidences brought on record during the inquiry proceedings, I find that Charged Officer had only one month experience of working as the Assistant Commissioner in Import Group. The application of the importer for cancellation of bonds and bank guarantees was scrutinized by the Appraiser, who was an experienced Appraiser. The Appraiser proposed cancellation of bonds and bank guarantees without pointing out the duty liability of the importer. The Bill of Lading which is issued after clearance of goods by the Customs, submitted by the importer showed issuing date as 28/02/2008 which was within stipulated period of 6 months. Therefore, approval of proposal of Appraiser for cancellation of bonds and bank guarantees, by the Charged Officer without personally verifying the `Let Export Order' dates on the shipping bills, appears to be a bonafide mistake. The evidences brought before me do not show any other instance where the Charged Officer had committed such mistakes. For a single failure on the part of the Charged Officer to detect an error in the instant case, it cannot be said that he failed to conduct

and maintain proper supervision on the functioning of the Group V-A. In the instant case, the Charged Officer approved the proposal of the Appraiser for cancellation of bonds and bank guarantees. There is no evidence on record to show that the Charged Officer had knowledge of alleged failure on the part of the Appraiser working under him. The evidence brought on record show that the Appraiser working under the Charged Officer was an experienced officer and had worked in Special Intelligence and Investigation Branch (SIIB) of Imports and Exports. If the Appraiser working under the Charged Officer failed to scrutinize the documents properly in one case, it cannot be said that the Charged Officer failed to conduct and maintain proper supervision on the functioning of Group V-A or failed to ensure absolute integrity and devotion to duty of his subordinate officers. I am convinced that for sustaining such charge repeated incidences are required. There is no evidence to suggest that such omissions and commissions by the subordinate officers had taken place on many occasions. Therefore, the article of charge-III is not proved."

19. Having recorded the findings in respect of all the three Articles of Charges by specifically finding that charges that Charged Officer failed to maintain absolute integrity or he is unbecoming of a government servant, were not found proved and no evidence was found that any omission or commission by the subordinate officers of the petitioner had taken place. Inquiry Officer, however, in para 21 of the inquiry report proceeds to record that charge in Article of Charge-I is proved, charge in Article of Charge-II is partly proved and charge in Article of Charge-III is not proved. The Inquiry Officer also states in the inquiry report that by such act of commission and omission, the petitioner exhibited lack of devotion to duty and thereby contravened the provisions of Rule 3(1)(ii) of the Conduct Rules, 1964, however, violation of Rule 3(1)(i) and 3(1)(iii) of the Conduct Rules, 1964 were not found proved. In his final analysis, Inquiry Officer in inquiry report states that the petitioner exhibited lack of devotion to duty and thus contravened Rule 3(1)(ii) of the Conduct Rules, 1964, however, the violation of other two rules, namely Rule 3(1)(i) and 3(1)(iii) were not found proved by him.

20. The Disciplinary Authority, however, while passing the order of punishment dated 26th April, 2013, recorded a conclusion that the petitioner erroneously cancelled the bank guarantees without proper scrutiny and verification of documents and further that he also failed to notice that in respect of three Shipping Bills differential duty was not realized from the importer. In the same breath, however, the Disciplinary Authority also goes to give a finding that charge of lack of integrity against the petitioner could not be sustained, however, the Disciplinary Authority found misconduct against the petitioner warranting action under Rule 9 of the Pension Rules, 1972 and accordingly passed the order of punishment dated 26th April, 2013.

21. For considering the issues which have emerged in this petition, for our consideration and decision, it will be apposite to extract Rule 3 of the Conduct Rules, 1964, which is as under: -

> *"**3. General**. - (1) Every Government servant shall at all times—*
>
> *(i) maintain absolute integrity;*
>
> *(ii) maintain devotion to duty; and*
>
> *(iii) do nothing which is unbecoming of a Government servant.*
>
> *(iv) commit himself to and uphold the supremacy of the Constitution and democratic values;*
>
> *(v) defend and uphold the sovereignty and integrity of India, the security of the State, public order, decency and morality;*
>
> *(vi) maintain high ethical standards and honesty;*
>
> *(vii) maintain political neutrality;*
>
> *(viii) promote the principles of merit, fairness and impartiality in the discharge of duties;*
>
> *(ix) maintain accountability and transparency;*
>
> *(x) maintain responsiveness to the public, particularly to the weaker section;*
>
> *(xi) maintain courtesy and good behaviour with the public;*
>
> *(xii) take decisions solely in public interest and use or cause to use public resources efficiently, effectively and economically;*
>
> *(xiii) declare any private interests relating to his public duties and take steps to resolve any conflicts in a way that protects the public interest;*
>
> *(xiv) not place himself under any financial or other obligations to any individual or organization which may influence him in the performance of his official duty;*

(xv) not misuse his position as civil servant and not take decisions in order to derive financial or material benefits for himself, his family or his friends;

(xvi) make choices, take decisions and make recommendations on merit alone;

(xvii) act with fairness and impartiality and not discriminate against anyone, particularly the poor and the under-privileged sections of society;

(xviii) refrain from doing anything which is or may be contrary to any law, rules, regulations and established practices;

(xix) maintain discipline in the discharge of his duties and be liable to implement the lawful orders duly communicated to him;

(xx) maintain confidentiality in the performance of his official duties as required by any laws for the time being in force, particularly with regard to information, disclosure of which may prejudicially affect the sovereignty and integrity of India, the security of the State, strategic, scientific or economic interests of, the State, friendly relation with foreign countries or lead to incitement of an offence or illegal or unlawful gain to any person;

(xxi) perform and discharge his duties with the highest degree of professionalism and dedication to the best of his abilities.

(2)(i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

(ii) No Government servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.

(iv) A Government servant who has received oral direction from his official superior shall seek confirmation

of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.

Explanation I.- A Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of clause (ii) of sub-rule (1).

Explanation II.- Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of power and responsibilities."

22. The petitioner was charged in terms of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Conduct Rules as quoted above. Neither the inquiry report nor the order of punishment dated 26th April, 2013 passed by the Disciplinary Authority has recorded any finding about doubtful integrity of the petitioner. The Disciplinary Authority in his order, on the other hand, records a categorical finding that "the charge of lack of integrity against the Charged Officer could not be substantiated". It is also to be noticed that even the Inquiry Officer has not found any such material on record which would lead him to doubting the integrity of the petitioner; the finding rather is that there was no malice or mala fide intent on the part of the petitioner and further that there was no allegation of any corrupt practice or extending undue benefit to the importer, against the petitioner.

23. Accordingly, neither is there any material nor any finding recorded by the Inquiry Officer or the Disciplinary Authority about doubtful integrity of the petitioner even qua the conduct of the petitioner which became subject matter of disciplinary proceeding against him. To charge and punish a government servant for violation of Rule 3(1)(i) of the Conduct Rules, 1964, it should be proved that the officer concerned has failed to maintain absolute integrity. Since there is nothing on record which even remotely suggest that petitioner failed to maintain absolute integrity, no punishment on that count will be permissible against him. The finding recorded by the Inquiry Officer as also by the Disciplinary Authority are otherwise, as discussed above. Hence, in this view of the matter the petitioner in the instant case cannot be said to have found to have failed to maintain absolute integrity.

24. So far as Rule 3(1)(ii) of the Conduct Rules, 1964 is concerned, it mandates that every government servant shall at all times maintain devotion to duty and any breach thereof will amount to misconduct; however, Rule 3(1)(ii) has to be read with the aid of Explanation-I appended to Rule 3(2) of the Conduct Rules, 1964, which reads as under: -

> *"Explanation I.- A Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of clause (ii) of sub-rule (1)."*

If Rule 3(1)(ii) is read in conjunction with Explanation-I, as extracted above, an officer can be said to be lacking in devotion to duty only if there is some finding based on available records that he has habitually failed to perform the task assigned to him within the timeframe and with the quality of performance expected of him.

So far as the facts in the instant case are concerned, there is nothing on record; neither is there any finding recorded by the Inquiry Officer or by the Disciplinary Authority that the petitioner was habitual of failing in performance of the tasks assigned to him within the timeframe for the purpose and with the quality of performance expected of him. The petitioner was charged for solitary act of cancellation of bonds and bank guarantees without proper scrutiny and verification of documents put up before him, however, the explanation given by the petitioner was that he cancelled the bonds and bank guarantees on the recommendation of the

Appraisal Officer. Apart from the solitary incident in terms of the charge memorandum, nothing is available on record which may establish the charge of the petitioner having failed habitually in performance of the tasks assigned to him.

25. The Disciplinary Authority, however, has held the petitioner guilty of the charge of erroneously cancelling three bank guarantees without proper scrutiny and verification of documents put up before the petitioner and has, thus, reached the conclusion that the charge against the petitioner, thus, constituted grave misconduct warranting action under Rule 9 of the Pension Rules, 1972.

26. It is also to be noticed that the Inquiry Officer has recorded a clear finding that the petitioner initiated action for issuance of demand as soon as it came to his knowledge that re-export took place after expiry of six months from the date of importation. The Inquiry Officer has recorded a finding that the petitioner did not have any mala fide intention and that the circumstances of the case suggest that he cancelled the bonds and bank guarantees relying on Bills of Lading and on the recommendation of the Appraiser. The finding by the Inquiry Officer is also to the effect that the charge that the petitioner failed to maintain absolute integrity or acted in a manner unbecoming of a government servant are not proved.

27. We also notice that any penalty under Rule 9 of the Pension Rules, 1972 can precipitate in two circumstances, namely, (i) if a government servant is found guilty of grave misconduct or negligence and (ii) such misconduct causes pecuniary loss to the government. From a perusal of the Inquiry Officer's report as also the findings recorded by the Disciplinary Authority in the punishment order dated 26th April, 2013, breach of either Rule 3(1)(i) or 3(1)(ii) or 3(1)(iii) of the Conduct Rules, 1964 is not made out. There is no finding on record relating to pecuniary loss caused on account of the alleged misconduct of the petitioner in the order of punishment dated 26th April, 2013. In absence of finding of proof of charge of pecuniary loss to the government and also because on the basis of material available on record of the departmental proceeding, no breach of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Conduct Rules, 1964 is found, the impugned order passed by the Disciplinary Authority dated 26th April, 2013 inflicting punishment of recovering 10% of monthly pension for a period of three years, in our opinion, is not sustainable. While holding that the impugned order of punishment is not sustainable, we are conscious of the fact that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court would not interfere in the findings or even in the decision of the Disciplinary Authority, however, it is a case where punishment has been awarded without there being any finding in respect of either (i) pecuniary loss to the government or (ii) breach or violation of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Conduct Rules, 1964 for which the petitioner was charged, which calls upon us to interfere in the impugned order of punishment. The Tribunal, however, has utterly failed to appreciate the aforesaid aspects of the matter specially the fact that neither the charge of violation of Rule 3(1)(i), 3(1)(ii) or 3(1)(iii) of the Conduct Rules, 1964 was proved nor any charge of pecuniary loss to the government was found proved by the Disciplinary Authority.

28. For the reasons given above, the writ petition is allowed and the order of punishment dated 26th April, 2013 is hereby quashed. The judgment and order dated 23rd January, 2020 is also hereby quashed.

29. Consequences to follow.

30. There shall be no order as to costs.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT
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