

\$~S-20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 286/2021 & CM APPL. 725/2021

VIRENDER

..... Petitioner

Through Mr.Raj Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through

Mr.Akshay Amritanshu with
Mr.Anirudh Shukla, Advocates for
UOI.

%

Date of Decision: 08th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 19th October 2020 passed by the Respondent No. 3, while hearing a revision petition, against appellate order dated 30th/31st December, 2019 dismissing the appeal challenging the final order of removal from service passed by the Disciplinary Authority vide order dated 16th July 2019.

2. Learned Counsel for the petitioner submits that the material witness, Ex-Assistant Commandant/DDO Shri Tapan Kumar Mukharjee (PW-1), who was a signatory to the cheque No. 356555 dated 25th January 2019, had

not been examined in the departmental enquiry. According to him, non-examination of the material witness was prejudicial to the case of the petitioner as without the deposition of the PW-1, the Enquiry officer could not have proceeded to complete the departmental enquiry.

3. Learned Counsel for the petitioner submits that as recovery of Rs.23000 (Twenty three thousands only) had been made from the salary of the petitioner, he could not have been removed from the service vide order dated 19th October 2020 as that would amount to double jeopardy/punishment for the same offence.

4. Per contra, learned counsel for the respondents refers to the final order of removal dated 16th July, 2019 passed by the Disciplinary Authority, wherein it was held that the statement of PW-1 was not recorded with the consent of the petitioner. Since learned counsel for the respondents has placed heavy reliance on the final order of removal from service, the relevant portion of the same is reproduced hereinbelow:-

“.....Prosecution witness serial number 01 was summoned vide inquiry notice No.355, 395, 448 of dated 16.04.2019, 26.04.2019 and 09.05.2019 in series for the day to day proceedings for dated 25.04.2019, 08.05.2019 and 15.05.2019 respectively, but the prosecution witness No.01 never presented in the departmental enquiry proceedings. Due to which the statement of prosecution witness number 01 could not be recorded. The presenting officer requested the Enquiry officer in this regard to proceed with the inquiry without recording the statement of PW 01 and after perusal of the same, the inquiry was carried out and completed without recording the statement of PW-01 with the consent of the accused force member. After recording the statement of the prosecution, the statement of DW-01 and DW-02 of the defense was also recorded on 20.05.2019 and 21.05.2019 respectively

and departmental inquiry was completed..... Therefore, according to his statement, HC/Clerk Virender has admitted his mistake and error himself. In the above statement, the accused force member himself admitted that he made a withdrawal of Rs 23,000/- from the SBI, Kandsar branch through cheque number 356555. Since HC/Clerk Virender was posted under Office Order No.3591 dated 10.10.2017 as in-charge of non-governmental section, it was his responsibility to ensure all the transaction matters as in-charge as per rules. Despite being a clerk, his statement that “he withdrew Rs.23,000 at the behest of his senior HC/clerk J.K. Gurjar” does not seem to be correct or reasonable, because at that time he himself was working as in-charge and it was his own responsibility to do the transaction of money as per rules. Transaction of financial matters does not seem to be true at the behest of any other force member without the approval of the competent authority and without making any P.V. (payment voucher).....Even assuming that he did this by relying on his senior, then after a few days when he did not find his complete entry and P.V., he should have exposed the matter himself, but he did not do it, which shows that he never told anyone about this matter of financial embezzlement, even after fully knowing it, because he himself was involved in this and without his involvement such withdrawal, fraud and embezzlement was not possible.”

5. Having heard learned counsel for the parties, this Court finds that PW-1, Sh.Tapan Kumar Mukharjee was not examined in the departmental enquiry with the consent of the petitioner.

6. Further, in the present case the deposition of PW-1 is not of much relevance as he was only a signatory to the cheque and withdrawal from the bank was neither denied nor disputed by the petitioner. What was in dispute was as to how the cash withdrawn was spent and why it was not accounted for by the petitioner. Consequently, the petitioner cannot raise any grievance on this ground.

7. From the impugned order, it is also apparent that the petitioner had admitted his mistake/error.

8. There is no question of double jeopardy inasmuch as the recovery of the defalcated amount and disciplinary proceedings are separate and independent remedies and one cannot operate as a bar against the latter.

9. Consequently, the present writ petition and pending application being bereft of merit are dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

JANUARY 08, 2021

KA