

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM –
LABOUR COURT NO. II, NEW DELHI**

I.D. No. 253/2019

Sh. Rajender Kumar vs. Oriental Bank of Commerce

Sh. Rajinder Kumar (Sh. Rajender Singh)
S/o. Sh. Bholu Ram
R/o RZ-13K, G/F, J-Block,
Gali no. 62, West Sagarpur,
South West Delhi-110046.

Also at
RZD-3/29, 1st Floor, Vashist Park
South West
New Delhi-110046.

...Applicant/Claimant

Versus

Through its Chief Manager/
Concerned official
The Oriental Bank of Commerce
Branch at 26-B, choti mandi,
Janakpuri, New Delhi-110058.

Oriental Bank of Commerce
HRD Department, Head Office
Plot no. 5, Institutional Area,
Sector-32, Gurugram-122001.

...Managements/respondents

Award
21.05.2026

Only issue in the present case that requires adjudication is whether the respondent bank has been able to prove the misconduct of the claimant. Before parting the decision, the brief facts of the present case is required to be reproduced herein. On 20.11.2019, a reference

was sent to this Tribunal, by the Deputy Chief Labour Commissioner (C), New Delhi in the following words:

“Whether the action of the management of Oriental Bank of Commerce in terminating the services of the workman Sh. Rajender w.e.f. 31.05.2007 is just, fair and legal? If not, what relief the workman concerned is entitled to and from which date?”

At the relevant time, the claimant was working with the respondent w.e.f. 11.09.1985 on the post of Clerk-cum-Cashier as a permanent employee and was drawing last salary of Rs. 13,859.70/- per month. Certain financial misappropriation took place in the respondent bank on 05.06.2004, 08.06.2004, 15.06.2004 and 19.06.2004, wherein customers of the bank had deposited amounts worth Rs. 1,50,000/- and were issued counterfoils thereof by the claimant herein, but the said amounts did not reflect in their respective bank accounts. Accordingly, complaints were lodged and an enquiry was set up by the bank, wherein the claimant was found guilty of the offence of embezzlement vide order dated 31.05.2007. The disciplinary authority also affirmed the punishment of dismissal from service.

In between, an FIR was lodged in July, 2004 under section 409 IPC in the PS- Hari Nagar, New Delhi IPC, which culminated in charge-sheet and a trial took place where the Ld. Metropolitan Magistrate vide order dated 23.11.2015 held the claimant guilty under section 409 IPC and sentenced him to simple imprisonment for a period of three years with a fine of Rs. 5,000/-. In an appeal filed by the claimant before the session court challenging the impugned order of the Ld. Metropolitan Magistrate, the claimant was acquitted of the charges framed under section 409 IPC vide judgment dated 19.05.2016. Subsequently, he preferred an appeal as provided under the banking regulations, which was dismissed by the appellate authority in 2016. Thereafter, the claimant took recourse before the conciliation officer where the dispute resulted in the present reference.

After completion of pleadings, the following issues had been framed:

1. Whether the proceeding is maintainable.

2. Whether the action of the management of Oriental Bank of Commerce in terminating the services of the claimant is legal and justified.
3. Whether the domestic enquiry was concluded against the claimant properly following the principles of Natural Justice.
4. To what relief the claimant is entitled to.

Issue no. 3 was treated as the Preliminary Issue. The domestic enquiry was held to be vitiated for want of compliance of principles of Natural Justice. Now, issue no. 1, 2 and 4 remain to be decided.

The management, in order to prove the misconduct, produced its witness Sh. Gajender Singh Tyagi for deposition. The witness had superannuated from the services of the bank on 31.12.2009. At the relevant time, he was working as Manager in the capacity of Hall In-charge at the Janakpuri Branch of the erstwhile Oriental Bank of Commerce. The witness, in his affidavit, submitted that the workman was issued a charge-sheet dated 11.05.2005, wherein it was alleged against him that he had taken money from customers of the bank and had not deposited the same in their respective accounts. The workman was working as Clerk-cum-Cashier at the Janakpuri Branch of the erstwhile Oriental Bank of Commerce and was in charge of the cash seat.

It was alleged against the workman that on 05.06.2004, one customer of the bank namely Sh. Manpreet Singh had come to the branch to deposit a sum of Rs. 20,000/- in his SBI account no. 1044 maintained with the branch. The claimant, being the cashier, had accepted the cash from the customer and had also issued the receipt bearing his signatures in token of receipt of the amount from the customer. Similarly, in three other instances on 08.06.2004, 15.06.2004 and 19.06.2004, he had accepted sums of Rs. 24,000/-, Rs. 48,000/- and Rs. 60,000/- respectively on the said dates, but did not deposit the cash in their respective accounts. This led to lodging of an FIR, which culminated into filing of a charge-sheet and thereafter conviction of the claimant.

The following documents were exhibited by the claimant in his evidence:

1. Ex. CW1/1 – True copy of Aadhaar Card.
2. Ex. CW1/2 – True copy of Salary Slip.

3. Ex. CW1/3 – True copy of letter by account holder to the management.
4. Ex. CW1/4 – True copy of legal notice sent by customer/account holder to the management.
5. Ex. CW1/5 – True copy of letter dated 26.06.2004.
6. Ex. CW1/6 – True copy of attendance register of the claimant.
7. Ex. CW1/7 – True copy of Charge Sheet dated 11.05.2005.
8. Ex. CW1/8 – True copy of letter dated 23.05.2005.
9. Ex. CW1/9 – True copy of letter dated 27.02.2006.
10. Ex. CW1/10 – True copy of letter dated 02.03.2006.
11. Ex. CW1/11 – True copy of letter dated 15.07.2006.
12. Ex. CW1/12 – True copy of letter dated 29.09.2006.
13. Ex. CW1/13 – True copy of punishment order dated 30.12.2006.
14. Ex. CW1/14 – True copy of order dated 31.05.2007 confirming the punishment order.
15. Ex. CW1/15 – True copy of various enquiry proceedings.
16. Ex. CW1/16 – True copy of reply dated 16.01.2007 against proposed punishment order dated 30.12.2006.
17. Ex. CW1/17 – True copy of reply dated 27.06.2007 against order dated 31.05.2007.
18. Ex. CW1/18 – True copy of enquiry report dated 30.08.2006.
19. Ex. CW1/19 – True copy of Judgment of Ld. Metropolitan Magistrate dated 23.11.2015.
20. Ex. CW1/20 – True copy of Judgment of Appellate Court dated 19.05.2016.
21. Ex. CW1/21 (Colly) – True copy of letter dated 20.10.2016 along with order.
22. Ex. CW1/22 – True copy of letter dated 12.12.2016.
23. Ex. CW1/23 – True copy of medical documents of the claimant.
24. Ex. CW1/24 (Colly) – True copy of various miscellaneous correspondences between the parties.
25. Ex. CW1/25 – True copy of legal notice dated 20.02.2018.

In rebuttal, the respondent did not examine any witness. The entire argument of the claimant is that the management failed to prove the misconduct on his part because it neither brought the complete record of the enquiry proceedings nor produced any counterfoil so as to prove the misconduct against him. He drew attention of this Tribunal to the testimony of Sh. Pawan Kumar, wherein Sh. Pawan Kumar, through his legal notice dated 25.03.2005 exhibited as MW-PK2 issued through his advocate, stated that he had deposited a sum of Rs. 24,000/- on

11.06.2004, i.e., on the day when the claimant was on leave. It is further his case that he was falsely implicated and had not embezzled any money. According to him, when the counterfoil itself has not been produced, no question arises regarding issuance of any such counterfoil by the claimant.

The case of the claimant primarily rests upon the fact that he was honorably acquitted by the Sessions Court vide order dated 19.05.2016 and only thereafter filed an appeal before the respondent authority, which was dismissed. Hence, the delay cannot be attributed to him. He further drew attention to the testimony of Sh. P.K. Goyal in FIR No. 725/2004, wherein he had stated that during the relevant period, the accused used to visit Mata Chanan Devi Hospital, Janakpuri, Delhi for collection of money, and the money so collected from Mata Chanan Devi Hospital was deposited correctly and honestly in the branch of Oriental Bank of Commerce at Janakpuri Branch. Further, an amount of Rs. 25,000/- taken from the wife of the claimant was deposited in the sundry account, which amount had allegedly been taken as a loan from HDFC Bank. Accordingly, he submitted that his termination be declared illegal and unjustified.

Sh. Rajat Arora, Ld. AR for the management, stated that the burden of proof in departmental proceedings and criminal trials is different. In disciplinary proceedings, the standard of proof is not as strict as proof beyond reasonable doubt as required in criminal trials. Even the Trial Court had convicted the claimant believing the testimony of the witnesses coupled with the scientific evidence and, therefore, it cannot be said that the bank failed to prove the misconduct. Sh. Pawan Kumar (MD-PK2) (Exh.MW2/6) categorically stated that on four occasions, the claimant had issued counterfoils against receipt of different amounts from customers and had not deposited the same. An amount of Rs. 25,000/- was also found at the residence of the claimant, which was handed over by the wife of the claimant and deposited in the sundry account. The witnesses have appeared before the Trial Court and deposed accordingly. Even the investigation carried out by the police culminated into filing of a charge-sheet and ultimately resulted in conviction. Therefore, he submitted that the respondent has successfully proved the misconduct on the part of the claimant.

I have heard the arguments at length by the respective counsels for both the parties. The entire case of the claimant rests on the premise that he had been acquitted by the appellate court vide judgment dated 19.05.2016. Thereafter, the claimant approached the Conciliation Officer, which resulted in the present reference. It is further the case of the claimant that the management failed to examine any witness to prove that any cash had ever been handed over to him or that he had issued any counterfoil in this regard. According to the claimant, he had been falsely implicated in the present case and had nothing to do with the alleged misconduct. In fact, one witness, namely Sh. P.K. Goyal, in FIR No. 725/2004, admitted that during the relevant period, the claimant used to visit Mata Chanan Devi Hospital, Janakpuri, Delhi for collection of money, and that the money so collected from Mata Chanan Devi Hospital was deposited correctly and honestly in the Oriental Bank of Commerce, Janakpuri Branch.

On the other hand, the case of the management rests on the contention that the burden of proof in departmental proceedings is different from that of criminal trials. It is submitted that even the Trial Court, believing the version of prosecution, had convicted the claimant, and that he was subsequently acquitted by the appellant court merely by giving him the benefit of doubt. Therefore, according to the management. Therefore, it cannot be said that there was no misconduct on part of the claimant. The management further contended that it had brought witnesses to substantiate the fact that on four different occasions, four customers had handed over a total amount Rs. 1,52,000/- (details of which are given above), which was not deposited by the claimant. It is also argued that the lodging of FIRs and the statements recorded in the FIRs are sufficient to establish misconduct on part of the claimant. Further, no suggestion was put by the claimant to the management witnesses disputing the fact that when the amounts were not deposited in the customers' accounts, a crowd had been gathered with media and 'dhol'.

The management has placed reliance on the judgment of **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584**, where it was held that:

"12. The fact that the criminal court subsequently acquitted the respondent by giving the benefit of doubt, will not in any way

render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

In another matter titled **Ajit Kumar v. General Manager (PJ), Indian Oil Corporation Limited, Haldia and Others, 2005(7) SCC 764**, the Supreme Court held as under:

As far as acquittal of the appellant by a Criminal Court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a Criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution

and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside.

A Judgment of the Hon'ble Supreme court of India in the matter of **Bank of India v. T. J. B. Ganesh, reported in (2000) 7 SCC 679** is relevant, wherein it was held as under:

"The Bank deals with public money. Every employee of the Bank is required to act with absolute integrity and honesty in handling such money. Any breach of trust committed by a bank employee cannot be taken lightly. It has to be dealt with iron hands, because such misconduct has far-reaching consequences not only for the Bank but also for the confidence of the public in the banking system."

If we go through the evidence brought before this Tribunal as well as the material produced before the criminal court and relied upon by the claimant himself is considered, it stands proved by the management that the claimant was indulged in misconduct on four different occasions, by failing to deposit the amounts received from customers. Only non-production of the counterfoils by the management doesn't falsify the version of the management, which is supported by the evidence led before the criminal court as well as the testimony of the witnesses produced therein.

The relationship between a bank and its customers is of utmost faith and confidence. Any breach of trust affects the credibility of the bank in the eyes of the public. Since the misconduct on part of the claimant stands proved by the management, the punishment of dismissal in case of loss of trust cannot be said to be disproportionate. Therefore, this Tribunal doesn't find any illegality and unjustifiability in the action of the management in dismissing the claimant from service.

In light of the above findings, the reference is answered against the claimant and in favor of the management. Accordingly, the claim of the claimant stands dismissed. A copy of this award be sent to the appropriate government for notification under section 17 of the I.D Act. The case file is consigned to record room.

Dated 21.05.2026

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II