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

+ W.P.(C) 7547/2007

MD. KASIM ..... Petitioner  
Through Counsel

versus

CHIEF EXECUTIVE OFFICER  
JANTA CO. OPERATIVE BANK LTD ..... Respondent  
Through Mr. Bahar Barqui, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

% **ORDER**  
**28.05.2008**

1. The petitioner Mohd. Kasim has filed the present writ petition seeking Mandamus against the Janta Co-operative Bank Ltd. to reinstate him in service with consequential benefits including back wages.
2. The petitioner was working as a Peon in Janta Co-operative Bank.
3. By an order dated 9<sup>th</sup> January, 1997, the petitioner was dismissed from service after holding disciplinary proceedings. The said order has attained finality.

4. Learned counsel for the petitioner, however, submits that he is entitled to reinstatement in service in view of the judgment dated 26<sup>th</sup> August, 2006 passed by Additional Sessions Judge acquitting him from criminal charges under Section 408/34 of the Indian Penal Code. He has drawn my attention to paragraphs 9 and 10 of the said judgment which read as under :

“9. Convict/appellant Mohd. Kasim, is admittedly a Peon of the complainant Bank and he has accompanied the money bag in which convict/appellant Bhupinder Singh Maan while taking the money bag in which convict/appellant Bhupinder Singh Maan had kept Rs.8 lacs and as such there is no entrustment of money to him. Further, there is also no evidence on record qua convict/appellant Mohd. Kasim of common intention and participation in a sense of pre-arranged plan or concert with convict/appellant Bhupinder Singh Maan to commit a criminal act.

10. In the light of the above discussion and for the reasons given therein, I am of the considered view that the Ld. Trial Court was justified in holding the conviction of appellant Bhupinder Singh Maan u/s 408 IPC but the court has fallen in error in holding appellant Mohd. Kasim guilty of offence u/s 408/34 IPC as he was simply a Peon and was never entrusted with any money by his employer/complainant bank.”

5. Learned counsel for the petitioner in support of his contention relies upon judgment of the Supreme Court in ***G. M. Tank Vs. State of Gujarat & Ors.*** reported in (2006) 5 SCC 446.
6. The Disciplinary Authority had passed the order of dismissal on 9<sup>th</sup> January, 1997. The said order was passed in the departmental proceedings which were initiated against the petitioner. The petitioner did not challenge the said order in appeal as provided in the Rules or before this court till this Writ Petition was filed in 2005.
7. The learned Additional Sessions Judge in his judgment dated 26<sup>th</sup> August, 2006, while examining the question whether the petitioner herein had committed an offence under Section 408 of the Indian Penal Code, had examined the question of entrustment. He has held that the petitioner was not entrusted with any money by the employer and therefore, no offence under section 408 of the Indian Penal Code 1908 was made out. Learned Additional Sessions Judge also held that there was no evidence to hold that the petitioner had common intention or had acted in concert with the other accused one, Mr. Bhupinder Singh Maan to commit the criminal act. It may be noted that Mr. Bhupinder Singh Maan's conviction was sustained by the Additional Sessions Judge.

8. The order dated 9<sup>th</sup> January, 1997 passed by the Disciplinary Authority is an elaborate order which deals with evidence and material which was produced before the Enquiry Officer. The Disciplinary Authority while upholding the findings of the Enquiry Officer has observed as under :

“Article 1: That the said Sh. Md. Qasim while working as Peon in the Janata Co-operative Bank Ltd., Darya Ganj, New Delhi, committed gross misconduct on 5.11.1994, on the same date, at around 11:30 A.M. the said Sh. Md. Qasim was asked by Sh. P.S. Pathania, the then Accountant of the said bank to carry a cash bag containing currency in the following denomination :

6,000 x 100 = Rs.6,00,000/-

400 x 500 = Rs.2,00,000/-

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Rs.8,00,000/-

The said Rupees eight lakhs was duly received and acknowledged in the cash-in-transit Register by Sh. Bhupinder Singh Mann, Accounts Clerk/Cash Clerk of the Janata Co-operative Bank for depositing the said amount in the Bank of Baroda which is located at 1st Floor of the same Building in which the Janata Co-operative Bank Ltd, is located i.e. 3830, Lal Kothi, Darya Ganj, New Delhi-2. The cash bag containing as aforementioned was handed over by Sh. Bhupinder Singh Mann to Sh. Md. Qasim for carrying the same to the Bank of Baroda. After about 5 to 7 minutes Sh. Bhupinder Singh Mann came back and reported to Sh. Pathania that on opening the cash bag in the cash cabin of Bank of Baroda, 4 packets (each containing 100 notes) of rupees 500 aggregating to Rs2,00,000/- were found missing from the cash bag. As a result the said amount was not deposited with the Bank of Baroda as per instructions. From the above, it is apparent that Sh. Md. Qasim connived

with Sh. Bhupinder Singh Mann in the misappropriation of the aforesaid amount of Rs.2,00,000/-. By the said act, the said Sh. Md. Qasim has exhibited lack of devotion, honesty and diligence which constitutes gross misconduct on his part. Thus, he has acted in a manner unbecoming of an employee of the Janata Co-operative Bank Ltd.

- 2. x x x x
- 3. x x x x
- 4. x x x x
- 5. x x x x

6. And whereas the undersigned being the disciplinary authority on behalf of the Board has considered the Inquiry Report alongwith all the enclosures of the Inquiry Report and all other relevant documents including the representation of Sh. Md. Qasim on Inquiry Report and holds that the charge against the said Sh. Md. Qasim is fully established. I on behalf of the Board fully agree with the findings of the Inquiry officer. It is apparent from the Report of the Inquiry Officer that Sh. Bhupinder Singh Mann accepted the fact in writing and also orally before the Inquiry Officer that he received the aforesaid cash bag containing Rs.6,00,000/- from the cashier. Sh. Md. Qasim also accepted the fact before the Inquiry Officer that he carried the same cash bag alongwith Sh. Bhupinder Singh Mann to the Bank of Baroda located in the same Building. In view of this the contention of Sh. Md. Qasim that he was unaware about the contents of the bag does not hold good. During the course of the Inquiry it has been firmly established that Sh. Bhupinder Singh Mann counted the currency notes amounting to Rs.8,00,000/- and thereafter put the said money in the Bag-in-question. It is thereafter, that he put his signature in the cash-in-transit Register in token of his acceptance of Rupees eight lakhs in the denomination as described in the charge-sheet and Sh. Md. Qasim has fully accepted that he carried the same cash bag which Sh. Bhupinder Singh Mann handed over to him. Besides,

Sh. Md. Qasim has not produced any evidence during the course of the Inquiry to prove that he was absolutely unaware about the contents of the bag. Besides in the past on several occasions he has been assigned the task of carrying the cash bag to the same Bank of Baroda and since he was in the service of the Bank since 1.3.1977. He was fully aware about the routine and normal functioning of the Bank. The contention of Sh. Md. Qasim that the Report of the Inquiry Officer is biased is clearly an after thought. It is worthwhile to mention here that the said Sh. Md. Qasim has appeared before the Inquiry Officer from the very beginning and has fully participated in the Inquiry before the said Dr. M. Mustafa, the Inquiry Officer. Neither at the beginning of the Inquiry nor during the course of the Inquiry the said Sh. Md. Qasim raised any objection about the impartiality of the Inquiry Officer. Therefore he is clearly estopped from raising the point of bias against the Inquiry Officer at this stage. Further, the contention of Sh. Md. Qasim that the Inquiry Officer has incorrectly come to the conclusion that he is vicariously responsible for the shortage for Rs.2,00,000/- is only a bald statement. Sh. Md. Qasim has not supported his contention by any logic or reasoning or evidence. In view of this the said contention of Sh. Md. Qasim also cannot be sustained. The rest of the points made by Sh. Md. Qasim are totally devoid of any merit. I on behalf of the Board have gone through the proceedings of the domestic Inquiry. I on behalf of the Board find that in the said Inquiry Sh. Md. Qasim was given full opportunity to defend himself and at no point of time he even made any allegation about any violation of principles of natural justice in making his defense. It is noteworthy that even in the representation on the Inquiry Report he has not alleged any violation of the principles of natural justice.”

9. The decision in the case of **G. M. Tank** (Supra) is distinguishable.

In the said case, the Supreme Court had applied “no evidence principle” as is apparent from para 17 of the said judgment. On this basis the appellant therein was granted relief. However, the Supreme Court noticed that there is distinction between departmental proceedings and criminal proceedings against an employee charged for committing a criminal offence. The two proceedings are separate and distinct and operate in different fields. In departmental proceedings, penalty is imposed for violation of the service Rules. The object of criminal trial is to inflict an appropriate punishment to the offender for the criminal act. There is a public element involved in a criminal trial. The degree of proof required for conviction in criminal trials is different, from proof required in departmental proceedings. In criminal law the onus is on the prosecution and an offender can be punished only if the offence is proved beyond reasonable doubt. Benefit of doubt goes to the accused. Departmental proceedings are decided on preponderance of probability. Reference in this regard can be made to two decisions of the Supreme Court in **Ajit Kumar Nag Versus General Manager (PJ), Indian Oil Corporation Ltd., Haldia & Ors.** 2005 (7) SCC 674 and **Depot**

***Manager, A.P. SRTC Versus Mohd. Yusuf Miya & Ors. (1997)***  
**2 SCC 699.**

10. The charge against the petitioner in the criminal proceedings was under Section 408 of the Indian Penal Code, whereas the charge against the petitioner in the departmental proceedings was different and wider as is apparent from Article I of the charge quoted above. Additional Sessions Judge while allowing the appeal of the petitioner in the criminal case, had observed that the money in question was entrusted by the employer (i.e. the bank) to Mr. Bhupinder Singh Maan and not the petitioner. This is clear from para 8 of the judgment of learned Additional Sessions Judge, which reads as under :-

“8. Thus, from the statement of PW5 Ram Niwas Sharma, Cashier and PW3 P.S. Pathiana, Accountant, it is crystal clear that Rs.8 lacs was entrusted to convict/appellant Bhupinder Singh Maan by his employer to deposit the same in Bank of Baroda.”

11. Thus, the dismissal order dated 9<sup>th</sup> January, 1997 cannot be set aside merely on the ground that the petitioner was subsequently in 2006 acquitted in the criminal case.
12. The respondents in the counter affidavit have also pointed out that the petitioner had earlier filed a civil suit in 1997 challenging his order of dismissal. However, in the counter

affidavit, the final outcome of the said suit has not been mentioned. The respondents have also raised an objection in the counter affidavit that the writ petition under Article 226 of the Constitution of India is not maintainable against them as they are not a State under Article 12 of the Constitution of India. It appears that the petitioner has concealed the fact that he had filed a civil suit for declaration and permanent injunction against the respondent/bank. However, I am not going into this aspect as the final outcome of the suit has not been mentioned in the counter affidavit. I am also not going into the question of maintainability of the writ petition in view of the concession granted by the counsel for the respondent-Bank but make it clear that this issue if required can be examined in another matter. The issue is left open.

In view of the findings given above, the writ petition is dismissed. No costs.

**SANJIV KHANNA, J.**

**MAY 28, 2008.**  
**Vld/P/vld**