

Factor affecting job satisfaction in banks

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----- Duties and obligations of paying banker and collecting banker ----- Under N. I act, 1881.

PAYING BANKER * A Banker on whom a cheque is drawn should pay the cheque when it is presented for payment. * This cheque paying function is a distinguished one of a banker. * This obligation has been imposed on him by sec. 31 of the N. I Act, 1881. * A banker is bound to honour his customer's cheque, to the extent of the funds available and the existence of no legal bar to payment. Again, for making payment the cheque must be in order and it must be duly presented for payment at the branch where the account is kept. * The paying banker should use reasonable care and diligence in paying a cheque, so as to abstain from any action likely to damage his customer's credit. * If the paying banker wrongfully dishonours a cheque, he will be asked to pay heavy damages. * At the same time, if he makes payment in a hurry, even when there is sufficient balance, the banker will not be allowed to debit the customer's account.

If he does so, it will amount to sanctioning of overdraft without prior arrangement, and later on, the customer can claim it as precedent and compel the banker to pay cheque in the absence of sufficient balance. His position is very precarious and is in between the devil and the deep sea.

PRECAUTIONS BEFORE HONORING A CHEQUE In order to safeguard his position, the paying banker has to observe the following precautions before honouring a cheque. Presentation of The Cheque (a) Type of the cheque: Before honouring a cheque, he must find out the type to which it belongs.

Cheques may generally be of two types- open or crossed. If it is an open one, the payment may be made at the counter. If it is crossed, the payment must

be made only to fellow banker. If it is specially crossed, the payment must be specifically made to that banker in whose favour it has been crossed. If there are 'A/C Payee' and 'Not Negotiable' crossings the paying banker need not worry, as they are the directions only to the collecting banker. If the paying banker pays a cheque contrary to the crossing, he is liable to the drawer.

Therefore, he must pay special attention to the type of a cheque. b) Branch:

The Paying banker should see whether the cheque is drawn on the branch where the account is kept. If it is drawn on another branch, without any prior arrangement, the banker can safely return the cheque. (c) Account: Even in

the same branch, a customer might have opened two or more accounts.

Hence, the paying banker should see that the cheque of one account is not used for withdrawing money from another account. (d) Banking hours: The

paying banker should also note whether the cheque is presented during the banking hours on a business day. Payment outside the banking hours does

not amount to payment in due course. e) Mutilation: If a cheque is torn into pieces or cancelled or mutilated, then, the paying banker should not honour it. He should return the cheque for the drawer's confirmation. In a case

cheque is torn accidentally, the drawer must confirm it by writing such words as 'Accidentally torn by me' and affixing his full signature. A cheque torn into two or more pieces is generally returned with a remark 'Mutilated'.

Form of cheque: Printed form: The cheque must be in proper form. It must satisfy all the requirements of law. The customers should draw cheques only on the printed leaves supplied by the bankers.

Unconditional order: The cheque should not contain any condition. If it is a conditional one, the paying banker's position will become critical and he may

not honour it. Date: Before honouring a cheque, the bank must see whether there is a date on the instrument. If it is undated, it cannot be regarded as a valid instrument. If a cheque is ante-dated, it may be paid if it has not become stale by that time. A cheque, which is presented after six months, from the date of its issue, is a stale one. If a cheque is post-dated, he should honour it only on its due date.

Amount: The next important precaution is that the banker should see whether the amount stated in the cheque, both in words and figures, agree with each other. If the amount is stated only in figures, the banker should return it with a remark 'Amount required to be stated in words'. However if the amount stated only in words, the banker may honour it. Supposing , there is a difference in the amount stated in words and figures, then the banker can take any one of the following courses available to him: i) He can dishonour the cheque with a memorandum ' words and figures differ' or i)He can honour the amount stated in words According to Sec. 18 of the N. I. Act, if the amount undertaken or ordered to be paid is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid. ' However in practice, if the difference is insignificant, payment is sometimes made. But usually the paying banker returns the cheque under such circumstances, since there is an audit objection to the practice of honouring such cheques. III. Sufficient balance: There must be sufficient balance to meet the cheque.

If the funds available are not sufficient to honour a cheque, the paying banker is justified in returning it. So, before honouring a cheque, he must

check up the present state of his customers account. IV. Signature of the drawer: The next important duty of a paying banker is to compare the signature of his customer found on the cheque with that of his specimen signature. If he fails to do so and if he pays a cheque, which contains a forged signature of the drawer, then, the payment will not amount to payment in due course. Hence, he can not claim protection under Sec. 85 of the N. I. Act.

If the signature has been too skillfully forged for the banker to find it out, even then the banker is liable. However, if the customer facilitates the forgery of his signature by his conduct, then, the banker will be relieved from his liability. Legal bar: The existence of legal bar like Garnishee Order limits the duty of the banker to pay a cheque. Garnishee order refers to the order issued by a court attaching the funds of the judgment debtor (i. e. , the customer) in the hands of a third party (i. e. , the banker). The term 'Garnishee' refers to the person who has been served with the order.

This Garnishee proceedings comprise of two steps. As a first step 'Garnishee Order Nisi' will be issued. 'Nisi' means 'unless'. In other words, this order gives an opportunity to the banker to prove that this order could not be enforced. If the banker does not make any counterclaim, this order becomes absolute one. This 'garnishee Order absolute' actually attaches the account of the customer. If it attaches the whole amount of a customer's account, then, the banker must dishonour the cheque drawn by that customer. He can honour his cheques to the extent of the amount that is not garnished.

Endorsement:

Before honouring a cheque, the banker must verify the regularity of endorsement, if any, that appears on the instrument. It is more so in the case of an order cheque, which requires an endorsement before its delivery. For instance, if there is per pro endorsement, the banker must find out the existence of authority. Failure to do so constitutes negligence on the part of the paying banker. Per pro endorsement is an endorsement made by an authorized agent. Prior information about the delegation of authority to the agent must have been given to the banker. Otherwise, a banker is not legally bound to accept this type of endorsement.

CIRCUMSTANCES UNDER WHICH A CHEQUE CAN BE DISHONORED

Countermanding: Countermanding is the instruction given by the customer of a bank requesting the bank not to honour a particular cheque issued by him. When such an order is received, the banker must refuse to pay the cheque. If a customer informs by telephone or telegram regarding the stopping payment of a cheque, the banker should diplomatically delay the payment, till written instructions are received. If the situation is very critical, he can return the cheque by giving a suitable answer like 'payment countermanded by telephone and postponed pending confirmation.

Therefore, countermanding instructions, once received, must be kept as a constant record. A 'stopped payment' register may be maintained for ready reference. Upon the receipt of notice of death of a customer: When a banker receives written information from an authoritative source, (preferably from the nearest relatives) regarding the death of a particular customer, he should not honour any cheque drawn by that deceased customer. If the

banker is unaware of the death of a customer, he may honour the cheque drawn by him.

Death puts an automatic end to the contractual relationship between a banker and his customer. Upon the receipt of notice of insolvency: Once a banker has knowledge of the insolvency of a customer, he must refuse to pay cheques drawn by him. Upon the receipt of notice of insanity: Where a banker receives notice of a customer's insanity, he is justified in refusing payment of the cheque drawn by him. The banker should make a careful note, when the lunacy order is received. It is advisable that the banker should act upon a definite proof of the customer's insanity like a doctor's certificate, a court order etc.

Upon the receipt of notice of assignment: The bank balance of a customer constitutes an asset and it can be assigned to any person by giving a letter of assignment to the banker. Once an assignment has been made, the assignor has no legal rights over the bank balance and therefore, if any cheque is drawn by him, the banker should refuse to honour it. When a

breach of trust is intended: In the case of a trust account, mere knowledge of the customer's intention to use the trust funds for his personal use, is a sufficient reason to dishonour his cheque.

Defective title: If a person who brings a cheque for payment has no title or his title is defective, the banker should refuse to honour the cheque presented by him. For instance, a person who brings a cheque, which has been countermanded or which has been forged, has no title to it. Statutory Protection to a Paying Banker: Supposing, a paying banker pays a cheque,

which bears a forged signature of the payee or endorsee, he is liable to the true owner of the cheque. But, it is quite unjustifiable to make the banker responsible for such errors.

It is so because; he is not expected to know the signature of the payee or the endorsee. Therefore, law relieves the paying banker from his liability to the true owner in such cases. This relief is known as ' statutory protection. ' To claim protection under Sec. 85 of the N. I. Act, 1881, the banker should have fulfilled the following conditions: * He should have paid an order cheque. * Such a cheque should have been endorsed by the payee or his order. * It should have been paid in due course. PAYMENT IN DUE COURSE The cheque should have been paid in due course as per Sec. 0 of the N. I. Act. This concept of payment in due course has three essential features: (I) Apparent tenor of the instrument: To avail of the statutory protection, the payment should have been made according to the apparent tenor of the instrument. The apparent tenor refers to the intention of the parties, as it is evident from the face of the instrument. Example: If a drawer draws a cheque with a post-date, his intention is to make payment only after a certain date. If it is paid before the due date, this payment does not amount to payment in due course.

So also, the payment of a countermanded cheque does not amount to payment in due course. (ii) Payment in good faith and without negligence: Good faith forms the basis of all banking transactions. As regards negligence, the banker may sometimes be careless in his duties, which constitutes an act of negligence. If negligence is proved, the banker will loss the statutory

protection given under Sec. 85. Example: * Payment of a crossed cheque over the counter. * Payment of a post-dated cheque before maturity. * Failure to verify the regularity of an endorsement. iii) Payment to a person who is entitled to receive payment: The banker must see that the person, who presents the cheque, is in possession of the instrument and he is entitled to receive the amount of the cheque. Protection to a bearer cheque: Now this protection has been extended to bearer cheques also under sec. 85(2). If a bearer cheque is paid in due course, the banker is entitled to get protection. Statutory Protection in the case of a Materially Altered Cheque: A paying banker cannot normally claim any statutory protection for a materially altered cheque. However; Sec. 89 of the Negotiable instrument Act.

Gives protection in the case of a materially altered cheque provided, (1) He is liable to pay, (2) Such an alteration is not apparent and, (3) The banker has made the payment in due course. Recovery of Money Paid by Mistake: Under the following circumstances, money wrongly paid can be recovered:-

(i) Money received mala fide is recoverable: When a person receives money by mistake in bad faith, knowing that he is not entitled to receive that money, then, the banker is entitled to recover the same. (ii) Money paid under a mistake of fact is recoverable: For instance, a banker pays money to X, thinking that he is Y.

This is a mistake of fact regarding the identity of the parties. Y is under a legal duty to pay the money back to the banker. COLLECTING BANKER A collecting banker is one who undertakes to collect the amount of a cheque

for his customer from the paying banker. In collecting a cheque, the banker can act in two capacities namely (1) as a holder for value, and (2) as an agent for collection. The banker would be as a holder for value: (a) If he allows his customers to withdraw money before cheques paid in for collection are actually collected and credited. b) If any open cheque is accepted and the value is paid before collection, and (c) If there is a reduction in the overdraft account of the customer before the cheque is collected and credited in the respective account. In all these cases, the banker acquires a personal interest. A Banker as an agent: In practice, no banker credits a customer account even before a cheque is collected. He collects a cheque on behalf of a customer. So, he cannot acquire any of the rights of a holder for value. He has to act only as an agent of the customer. Duties of A Collecting Banker: i) Exercise reasonable care and diligence in his collection work: When a banker collects a cheque for his customer, he acts only as an agent of the customer. He should exercise reasonable care, diligence and skill in collection work. (ii) Present the cheque for collection without any delay: The banker must present the cheque for payment without any delay. If there is delay in presentment, the customer may suffer losses due to the insolvency of the drawer or insufficiency of funds in the account of the drawer or insolvency of the banker himself. In all such cases, the banker should bear the loss. iii) Notice to customer in the case of dishonour of a cheque: The N. I. Act has prescribed a reasonable time for giving the notice of dishonour. If he fails to do so, and consequently, any loss arises to the customer, the banker has to bear the loss. (iv) Present the bill for acceptance at an early date: As per sec. 61 of the N. I. Act, a bill of exchange must be

accepted. If a banker undertakes to collect bills, it is his duty to present them for acceptance at an early date. (v) Present the bill for payment: The banker should present the bills for payment in proper time and at proper place.

If he fails to do so and if any loss occurs to the customer, then, the banker will be liable. According to Sec. 66 of N. I. Act a bill must be presented for payment on maturity. (vi) Protest and note a foreign bill for non-acceptance: In case of dishonour of a bill by non-acceptance or non-payment, it is the duty of the collecting banker to inform the customer immediately. Generally he returns the bill to the customer. In the absence of specific instructions, collecting bankers do not get the inland bills noted and protested for dishonour.

If the bill in question happens to be a foreign bill, the banker should have it protested and noted by a notary public and then forwarded it to the customer. Statutory Protection to the collecting Banker: According to sec. 131 of the N. I. Act, statutory protection is available to the collecting Banker in the following cases: (i) Crossed cheques only: a collecting banker only for crossed cheques can claim statutory protection. It is so because, in the case of an open cheque, it is not absolutely necessary for a person to seek the service of a bank. ii) Collections on behalf of customers as an agent: a banker only can claim the above protection for those cheques collected by him as agent of his customers. iii) In good faith and without negligence: In order to get the protection under this section, a collecting banker must act in good faith and without negligence. Matter of negligence is of great importance. Basis of negligence: When a collecting banker wants to claim

protection under Sec. 131, he has the burden of proving that he has acted without negligence.

Gross negligence: If a banker is completely careless in collecting a cheque, then, he will be held liable under the ground of ' gross negligence. '

Examples: Collecting a cheque crossed ' A/C payee' for other than the payee's account: Account payee crossing is a direction to the collecting banker. If he collects a cheque crossed 'A/C payee' for any person other than the payee, then, this fact will be proved as an evidence of gross negligence.

FAILURE TO VERIFY THE CORRECTNESS OF ENDORSEMENT If a banker omits to verify the correctness of endorsements on cheques payable to order, he will be deprived of the statutory protection. i) Failure to verify the existence of authority in the case of per pro signatures: If a collecting banker fails to verify the existence of authority in the case of per pro signatures, if any, will be proved as an evidence of gross negligence. (ii) Negligence connected with the immediate collection: If, on the face of a cheque, there is a warning that there is misappropriation of money, the collecting banker should make some reasonable enquiry and only after getting some satisfactory explanations, he can proceed to collect cheques.

Examples: * Collecting a cheque drawn against the principal's A/c, to the private A/c of the agent without enquiry. * Collecting a cheque payable to the firm to the private A/c of a partner without enquiry. * Collecting a cheque payable to the company to the private account of a director or any other officer without enquiry. * Collecting a cheque payable to the employer to the private account of the employee would constitute negligence under sec. 131

of the N. I. Act. * Collecting a cheque payable to the trustee, to the private account of the person operating the trust account is another instance of negligence of a banker. iii) Negligence under Remote Grounds: Normally, we cannot expect a banker to be liable under certain circumstances. But, the bankers have been held negligent under those situations, which are branded as ' remote grounds. ' Examples: * Omission to obtain a letter of introduction from a new customer causes negligence. * Failure to enquire into the source of supply of large funds into an account, which has been kept in a poor condition for a long time, constitutes negligence.