

The Banking Ombudsman in India

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Abstract: Ombudsman is 'public safety valve' against mal – administration. A good system of administration, in the ultimate analysis has to be responsible and responsive to the people. An ombudsman has become a standard part of the machinery of any democratic government in the modern world. Owing to intensive increase in governmental activities the occasions of individual grievance multiplied. In the flush of power, the administration very often exhibits a tendency to disregard individual rights and interest in the name of public good. In these circumstances, the quest for an effective control – mechanism over the administration has led the people to the institution of Ombudsman.

Keywords: Banking Ombudsman, Indian Law

I. INTRODUCTION

Generally, the ombudsman is a judge or a lawyer or a high officer and his character reputation and integrity are above board. He is appointed by the parliament and thus, he is not an officer in the administrative hierarchy. He is above party politics and is in position to think and decide objectively. There is no interference by the parliament in the discharge of his functions he make reports to the parliament and sets out reaction of citizens against the administration. He makes his own recommendations to eliminate the causes of complaints. Ombudsman is thus in a strong position to redress individual grievances arising out of the bad administration. In Indian banking sector the Banking Ombudsman scheme was formulated by the Reserve bank of India in 1995 under Section 35 A of the Banking Regulation Act, 1949. to provide an expeditious redressal grievance mechanism to bank. The scheme, which became operational in June 1995, provided an institutional and legal frame work to bank customers to resolve all their complaints relating to provisions of banking services and other specified matters. The ombudsman attempted to resolve the customer complaints by settlement through agreement, recommendations for settlement and or by passing an award. The scheme has undergone revision in 2002 and further in 2006; and has been extended to regional rural banks and schedule banks.¹ In view of the dynamic nature of banking and to ensure that the Scheme remains updated, it has been revised periodically. The Scheme, so far, has been revised five times since its inception, the latest being in July 2017. Considering that the Scheme is a speedy, effective and inexpensive means for complaint redressal, the Reserve Bank has continuously fine-tuned the BOS, to suit the emerging requirements of the customers. In this context, several measures have been introduced during 2016-17, to enhance consumer protection. The scope of the Scheme has been expanded by adding new grounds of complaints viz. mis-

selling of financial products through banks and deficiency in banking services provided through mobiles have been included as grounds for lodging complaints. Further, the pecuniary limit of the BO for passing an award now stands doubled at Rs. two million while the grounds for filing an appeal against the decision of the BO have been expanded to enhance the opportunity available to the aggrieved customer.

II. MEANING OF BANK OMBUDSMAN

Ombudsman is one of the stranger words in our language, on the tongue, in print and in meaning. It came from Sweden and it is derived from Old Norse, meaning literally, "administrative man". It has come to denote someone in any organization who receive complaints investigate and acts on them who mediate disputes and in general attends to problem involving interpersonal working relationships. An ombudsman is thus someone who handles complaints and attempts to find mutually satisfactory solutions. According to the Oxford dictionary, the word 'ombudsman' means an official appointed by government to investigate individual complaint against public authority etc. it therefore, presupposes that the institution of ombudsman when so appointed is to look into or investigate in to the complaints against the 'public body' made by the public, who adversely affected or their interest is jeopardized due to laxity or deficiency of service, or rendered by 'public Body'.² According to the Banking Ombudsman Scheme 2006 'Banking Ombudsman' means officers of the Bank in the rank of Chief General Manager or General Manager to be known as Banking Ombudsmen to carry out the functions entrusted to them by or under the Scheme.³ The appointment of Banking Ombudsman under the above Clause may be made for a period not exceeding three years at a time.

III. POWERS AND JURISDICTION OF BANKING OMBUDSMAN

¹ Banking Ombudsman Scheme, 2006, The Reserve Bank of India.

² Concise Oxford Dictionary, 2000

³ Clause 4 of the Banking Ombudsman Scheme 2006

The Banking Ombudsman shall receive and consider complaints relating to the deficiencies in banking or other services filed on the grounds mentioned in clause 8 irrespective of the pecuniary value of the deficiency in service complained and facilitate their satisfaction or settlement by agreement or through conciliation and mediation between the bank concerned and the aggrieved parties or by passing an Award as per the provisions of the Scheme. ⁴The Banking Ombudsman shall send to the Governor, Reserve Bank, a report, as on 30th June every year, containing a general review of the activities of his Office during the preceding financial year and shall furnish such other information as the Reserve Bank may direct and the Reserve Bank may, if it considers necessary in the public interest so to do, publish the report and the information received from the Banking Ombudsman in such consolidated form or otherwise as it deems fit.⁵

IV. COMPLAINT MECHANISM TO BANK OMBUDSMAN

Any person may file a complaint with the banking ombudsman having jurisdiction alleging deficiency in Banking including internet banking or other service.⁶ However, the Negotiable Instrument Act does not define the term Complaint however the term is defined under the banking ombudsman scheme 2006 as :- “ Complaint” means a representation in writing or through electronic means containing a grievance alleging deficiency in banking service as mentioned in clause 8 of the Scheme.⁷ Clause 8 of the Scheme provides that any person may file a complaint with the Banking Ombudsman having jurisdiction on any one of the following grounds alleging deficiency in banking including internet banking or other services.

- a) non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- b) non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
- c) non-acceptance, without sufficient cause, of coins tendered and for charging of commission in respect thereof;
- d) non-payment or delay in payment of inward remittances ;
- e) failure to issue or delay in issue of drafts, pay orders or bankers' cheques;
- f) non-adherence to prescribed working hours ;
- g) failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- h) delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of

- interest on deposits in any savings, current or other account maintained with a bank ;
- i) complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bankrelated matters;
- j) refusal to open deposit accounts without any valid reason for refusal;
- k) levying of charges without adequate prior notice to the customer;
- l) non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/Debit card operations or credit card operations;
- m) non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
- n) refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;
- o) refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- p) forced closure of deposit accounts without due notice or without sufficient reason;
- q) refusal to close or delay in closing the accounts;
- r) non-adherence to the fair practices code as adopted by the bank;
- s) non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank ;
- t) non-observance of Reserve Bank guidelines on engagement of recovery agents by banks; and
- u) any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.

It further provides that a complaint on any one of the following grounds alleging deficiency in banking service in respect of loans and advances may be filed with the Banking Ombudsman having jurisdiction:-⁸

- a) non-observance of Reserve Bank Directives on interest rates;
- b) delays in sanction, disbursement or non-observance of prescribed time schedule for disposal of loan applications;
- c) non-acceptance of application for loans without furnishing valid reasons to the applicant; and
- d) non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be;

⁴ Clause 7 of the Amended BOS, 2017

⁵ Clause 7 Sub clause 5 of BOS , 2006

⁶ Clause 81 of DOS, 2006 – Chapter - IV

⁷ Clause 3 Sub clause 6 OF BOS , 2006

⁸ Clause 8 Sub clause 2 of BOS , 2006

- e) non-observance of Reserve Bank guidelines on engagement of recovery agents by banks; and
- f) Non-observance of any other direction or instruction of the Reserve Bank as may be specified by the Reserve Bank for this purpose from time to time.

The Banking Ombudsman may also deal with such other matter as may be specified by the Reserve Bank from time to time in this behalf. It may reject a complaint at any stage if it appears to him that the complaint made is not on the grounds of complaints referred to clause -8 or otherwise not in accordance with sub clause (3) of clause 9; or,

- a) not on the grounds of complaint referred to in clause 8 or otherwise not in accordance with sub clause (3) of clause 9; or
- b) beyond the pecuniary jurisdiction of Banking Ombudsman prescribed under clause 12 (5) and 12 (6) or
- c) requiring consideration of elaborate documentary and oral evidence and the proceedings before the Banking Ombudsman are not appropriate for adjudication of such complaint; or
- d) without any sufficient cause; or (e) that it is not pursued by the complainant with reasonable diligence; or
- e) in the opinion of the Banking Ombudsman there is no loss or damage or inconvenience caused to the complainant.

V. FILLING OF COMPLAINT

Any person who has a grievance against a bank on any one or more of the grounds as mentioned under the scheme may himself or through his authorized representative (other than an advocate) make a complaint to the banking ombudsman within whose jurisdiction the branch or office of the bank complained against is located. Provided that a complaint arising out of the operation of credit cards and other types of services with centralized operations, shall be filed before the banking Ombudsman within whose territorial jurisdiction the billing address of the customer is located.⁹ As per the Amendment of 2017, Non-adherence to the instructions of Reserve Bank with regard to Mobile Banking / Electronic Banking service in India by the bank on any of the following: -

- I. delay or failure to effect online payment / Fund Transfer,
- II. unauthorized electronic payment / Fund Transfer, will also attract complaint.

Complaints to the OBOs can be made through various modes viz., hand delivery, post, courier, fax or e-mail. Complaints can also be lodged online through the CTS which is accessible from the website of RBI.

Award by the Banking Ombudsman

If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Banking Ombudsman may allow the parties, he may, after affording the parties a reasonable opportunity to present their case, pass an Award or reject the complaint.¹⁰ A copy of the Award shall be sent to the complainant and the bank. An award shall lapse and be of no effect unless the complainant furnishes to the bank concerned within a period of 30 days from the date of receipt of copy of the Award, a letter of acceptance of the Award in full and final settlement of his claim.

VI. APPEAL AGAINST THE AWARD

Any person aggrieved by an Award under clause 12 or rejection of a complaint for the reasons referred to in sub clauses (d) to (f) of clause 13, may within 30 days of the date of receipt of communication of Award or rejection of complaint, prefer an appeal before the Appellate Authority; Provided that in case of appeal by a bank, the period of thirty days for filing an appeal shall commence from the date on which the bank receives letter of acceptance of Award by complainant under sub. clause (6) of clause 12; Provided that the Appellate Authority may, if he is satisfied that the applicant had sufficient cause for not making the appeal within time, allow a further period not exceeding 30 days; Provided further that appeal may be filed by a bank only with the previous sanction of the Chairman or, in his absence, the Managing Director or the Executive Director or the Chief Executive Officer or any other officer of equal rank." The order of the Appellate Authority shall have the same effect as the Award passed by Banking Ombudsman under clause 12 or the order rejecting the complaint under clause 13, as the case may be.¹¹

VII. CONCLUSION

The Banking Ombudsman Scheme, a flagship program of the Reserve Bank, has evolved as an important pillar of the grievance redressal mechanism available to the customers of banks. In 2016-17, the OBOs handled over 1, 36,000 complaints of which 92 per cent were disposed within the year.¹² The complaints received by OBOs increased by 27 per cent in 2016-17. But there is a need to give some sort of legal backing to the ombudsman scheme in India. If the scheme is codified and the ombudsman given the power of an ordinary court of law, viz the power to summon witness, to call the disclosure of any document or information, to conduct an inquiry etc. will greatly facilitate its working most importantly, the ombudsman must be given powers of contempt because without this, all concerned can flout the direction the ombudsman. Last but not the least to instill

⁹ Clause 9, BOS, 2006

¹⁰ Clause 12, BOS 2006

¹¹ Clause 14 of BOS, 2006

¹² Banking Ombudsman Scheme 2006, Annual Report 2016-17, RBI

consumers confidence in the scheme, the RBI has to insure that the award of the ombudsman are implemented by the banks.

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