

District Consumer Disputes Redressal Commission-I (North District)

[Govt. of NCT of Delhi]

Ground Floor, Court Annexe -2 Building, Tis Hazari Court Complex, Delhi- 110054

Phone: 011-23969372; 011-23912675 Email: confo-nt-dl@nic.in

Consumer Complaint No.:316/2014.**Sh. Vinod Kumar,****S/o Sh. Sher Singh,****Village- Mittathal, District-Bhiwani,****Tehsil-Bhiwani (Haryana)**

...

Complainant

Vs

The Chief Manager**Punjab National Bank,****E-83, Shastri Nagar Branch,****Delhi-110052.**

...

Opposite Party No.1**The Chief Manager****Punjab National Bank,****ATM Cell, 9th Floor,****Antariksh Bhawan, 22, K. G. Marg,****New Delhi-110001.**

...

Opposite Party No.2**ORDER****15/02/2024****Ashwani Kumar Mehta, Member:**

(1) The instant complaint has been filed under Section 12 of the Consumer Protection Act, 1986. The brief details of facts, as alleged by the Complainant, are that the complainant is a permanent resident of village Mittathal, District & Tehsil Bhiwani (Haryana) and being a constable with Railway Protection Force; he was posted in Delhi when he got opened a saving bank account No. 13XXXX010XXXX764 in Punjab National Bank, Shastri Nagar Branch, Delhi in the year 2004. His monthly salary used to be transferred in his said saving bank account and an ATM cum Debit Card was also issued to him against said saving bank account. It has been stated by the complainant that he has never given his ATM card to anyone anytime.

(2) It has further been alleged that on 05/07/2013, he was posted in Patiala (Punjab) when he went to his nearest ATM Centre to withdraw an amount of Rs.5,000/- and became surprised to see his account balance. He got updated his passbook and came to know that a total amount of Rs.80,000/- (Rs. Eighty thousand only) has been debited from his said account on 28/06/2013, 29/06/2013 and 30/06/2013 in total 08 transactions of Rs.10,000/- each. Thereafter, the complainant gave his written representation to the Chief Executive officer, Punjab National Bank, Shastri Nagar, Delhi on 09/07/2013 about the above referred illegal withdrawal from his saving bank account. Photocopy of representation dated 09/07/2013 is annexed with the complaint as Annexure-C/1. On the very same date, he filed a written complaint to the S.H.O., Sarai Rohilla Police Station, Delhi about the said illegal withdrawal from his account. Photocopy of complaint dated 09/07/2013 is annexed with the complaint as Annexure-C/2. Though the bank official did not send any written reply but on 16/07/2013, a sum of Rs.30,000/- was credited in his said saving bank account (Rs.10,000 X 3 = Rs.30,000/-).

(3) It has further been stated that the Complainant again went to the concerned branch of Punjab National Bank and asked about the remaining balance of Rs.50,000/-. The concerned bank officials did not give any satisfactory reply and tried to dilly dallying the issue. After several visits of the complainant once again an amount of Rs.10,000/- was credited into the said saving bank account of the complainant on 02/09/2013. Thus till that point of time, total amount of Rs. 40,000/- was reversed back into his account. The complainant made several visits and send several communications to the concerned bank officials of the said branch of the Punjab National Bank through email in different dates and even the bank officials also sent email to the concerned bank departments in this regard. On 24/10/2013, the Chief Manager, Shastri Nagar, Delhi sent e-mail to the Chief Manager, TRD Antriksh Bhawan, ATM Cell and asked to make arrangement to reverse the amount. Photocopies of emails sent to each other on different dates have been annexed with the complaint as Annexure-C/3 (Colly). After the above referred email dated 24/10/2013, once again a sum of Rs.10,000/- was credited in the saving bank account of the complainant on 28/10/2013. As such, a total amount of Rs.50,000/- (Rupees Fifty thousand only) has been credited in the account of the complainant i.e. on 16/07/2013 (Rs.30,000/-), on 02/09/2013 (Rs.10,000/-) and on 28/10/2013 (Rs.10,000/-). Photocopy of bank statements are annexed with the complaint as Annexure-C/4.

(4) The complainant further approached the concerned branch of Punjab National Bank on several dates to reverse the rest defalcated amount of Rs.30,000/- but no action was taken.

(5) It has been contended that the complainant is suffering from tremendous mental torture as the opposite parties have illegally debited his hard earned money from his account. The act of the opposite parties clearly indicate their negligence and therefore, the complainant should be compensated for the loss or injury suffered by him due to the negligence of the opposite parties as per Section 14(1)(d) of the Consumer Protection Act.

(6) Therefore, the complainant has filed this complaint with the prayer of directions to the OPs to :-

- i. *Pay the above referred amount alongwith interest @ 18% per annum.*
- ii. *pay a sum of Rs.50,000/- towards the physical strain and mental agony suffered by the complainant;*
- iii. *pay a sum of Rs.25,000/- towards cost of this petition; and/or*
- iv. *Pass any such orders be passed as the Hon'ble Consumer Forum may deem fit and proper in the circumstances of the case in the interest of justice.*

(7) Accordingly, notices were issued to the OPs and in response, the OPs have filed joint reply giving preliminary objections/ submission as under:-

- i. the present complaint is devoid of any merits and without any cause of action against the Opposite Parties, therefore, the same is liable to be rejected. As per own version of the Complainant in Para 3 of the complaint, the ATM cum Debit Card was/is always in his physical possession. The alleged 8 debit transactions for a total sum of Rs.80,000/- (Rupees eighty thousand only) took place in the account in question on 28.06.2013 to 30.06.2013 through POSP (Point of Sale purchase), which cannot be completed without using confidential password of the said ATM cum Debit Card, which was/is also in the power and custody of the Complainant. Out of aforesaid Rs.80,000/-, a sum of Rs.70,000/-has already been reversed in the account in question on 16.07.2013, 02.09.2013, 28.10.2013 and 01.12.2013. The aforesaid debit and reverse taken place in the account in question is not attributed to the Opposite Parties in any manner, whatsoever as they never withdrawn/reversed the alleged amount from/in the account in question. alleged discrepant transactions in the account in question is only attributed to the Complainant and therefore it is the Complainant, who is solely liable and responsible for the same and the Opposite Parties cannot be held liable and responsible for the same on any account in any manner whatsoever. Therefore, the Complainant has no cause of action in his favour to institute the present complaint against the Opposite Parties.
- ii. the Complainant is liable to be prosecuted under Section 340 of the Criminal Procedure Code, 1973 for filing false Affidavit in the above mentioned case. The Complainant in the present case has falsely represented to in para 4 of the complaint that on 05.07.2013, when the Complainant went to ATM for withdrawal of Rs.5,000/- at Patiala (Punjab), then become surprised to see the balance of the account in question. As per the records maintained by the Opposite Parties, "SMS Alert" service has been subscribed and activated by the Complainant on Mobile No.7589330700, which exists till date. Even during the period 28.06.2013 to 30.06.2013, when the alleged 8 transactions took place, the "SMS Alert service was active on the same mobile number and the SMS alerts were sent on the same mobile number to the Complainant as the transactions were above Rs.5,000/-. Meaning thereby, the Complainant was always aware about the alleged 8 transactions which took place in the account in question with his consent, therefore he never complained of the same to the Opposite Parties.
- iii. the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The proceedings initiated by the Complainant under the Act are non est, null and void.

(8). Further while replying on merit, the OPs have stated that:-

i. the contents of para 1 of the complaint is denied as wrong and incorrect. It is vehemently denied that the Opposite Parties have illegally and unauthorizedly withdrawn the alleged amount from the account of the Complainant. As stated above, the entire alleged debit transactions took place in the account in question through POSP cannot be completed without using confidential password of the said ATM cum Debit Card, which was also in the power and custody of the Complainant. out of aforesaid Rs.80,000/-, a sum of Rs.70,000/-has already been reversed in the account in question. The aforesaid debit and reverse taken place in the account in question is not attributed to the Opposite Parties in any manner, whatsoever as they never withdrawn/reversed the alleged amount from the account in question. It is stated that alleged discrepant transactions in the account in question is only attributed to the Complainant and therefore it is the Complainant, who is solely liable and responsible for the same and the Opposite Parties cannot be held liable and responsible for the same on any account in any manner whatsoever. It is stated that the Opposite Parties cannot be penalized for the faults and negligence on the part of the Complainant. Rest of the contents of the para under reply is denied for want of knowledge and production of proof in support thereof. It is stated that the Complainant may be put to the strict proof of the averments made in the relevant para.

ii. the contents of para 4 of the complaint are denied as wrong and incorrect. It is denied that on 05.07.2013, when the Complainant went to ATM for withdrawal of Rs.5,000/- at Patiala (Punjab), then become surprised to see the balance of the account in question, as alleged or at all. It is further denied that when the Complainant got updated his passbook, he surprised to know that a total sum of Rs.80,000/- has been debited from the account in question, as alleged. The aforesaid version of the Complainant is false and frivolous to his knowledge. It is stated that as per the records

maintained by the Opposite Parties, "SMS Alert" service has been subscribed and activated by the Complainant on Mobile No.7589330700, which exists till date. even during the period 28.06.2013 to 30.06.2013, when the alleged 8 transactions took place, the "SMS Alert" service was active on the same mobile number and the sms alerts were sent on the same mobile number to the Complainant as the transactions were above Rs.5,000/-. Therefore, the Complainant was always aware about the alleged 8 transactions which took place in the account in question with his consent, therefore he never complained of the same to the Opposite Parties.

iii. the contents of para 5 (wrongly mentioned as para 4 in the complaint) are denied as wrong and incorrect. It is denied that the Complainant gave any written complaint on 09.07.2013 (Annexure-C/1) to the Opposite Party No.1, as alleged or at all. The Complainant has not placed any record/acknowledgment of receiving of the alleged complaint by the Opposite Party No.1 at any point of time. It is stated that the Opposite Parties have never received any such complaint dated 09.07.2013 from the Complainant at any point of time and the said complaint letter filed alongwith the complaint is a false, frivolous, forged, bogus and sham document created by the Complainant to benefit himself in the present proceedings.

(9) No rejoinder has been filed by the Complainant. However, evidence by way of Affidavit has been filed. The OP has also filed evidence by way of affidavit. Accordingly, the complaint has been examined in view of the facts of the case and averments/documents/Evidence put forth by the complainant & OPs and it has been observed that the OPs have contended very absurdly that the transactions have been made with the consent of the complainant for which he is liable to be prosecuted under Section 340 of the Criminal Procedure Code, 1973 for filing false Affidavit and on the other hand, the amount of seven transactions have already been reversed by the OPs on various dates before the date of filing this complaint by the complainant. This reflects the dubious conduct of the OPs while contesting the case on incorrect and concocted averments with the intention to mislead the commission to hide its faults/deficiency in service for which cost is liable to be imposed upon the OPs. Further, It has also been observed that:-

- I. The OPs have not filed any proof of delivery of SMSs to the Complainant as claimed in its reply.
- II. The OPs have denied the receipt of any information from Complainant about these fraudulent transactions, but has not explained as to why the inquiry about these transactions were initiated by it. The copies of email filed by Complainant with the complaint, are sufficient to corroborate that the OPs were very well about these transactions.
- III. It is evident from the bank statement that the Complainant has withdrawn Rs.5,000/- on 05/07/13 which proves that the Complainant has come to know about these transactions on 05/07/2013 which prompted him to lodge complaint with OP and the Police.
- IV. The OPs have stated in the affidavit dated 15-09-2017 that the transactions were done from Mobikwik app by the Complainant but failed to produce any evidence to establish that the said Mobikwik App account belongs to the complainant.
- V. The technical receipt of failed transaction filed with affidavit dated 15.09.2017 explains about the six transactions of Rs.10,000/- each (Total Rs.60,000/-) whereas the amount was deducted in eight transactions each (Total Rs.800000/-).

VI. From the statement filed by the OPs, it has been seen that Rs.80,000/- has been deducted as per details given below:-

Date	Amount
30.06.2013	10,000.00 Dr
30.06.2013	10,000.00 Dr
30.06.2013	10,000.00 Dr
29.06.2013	10,000.00 Dr
29.06.2013	10,000.00 Dr
29.06.2013	10,000.00 Dr
28.06.2013	10,000.00 Dr
28.06.2013	10,000.00 Dr

And amount of Rs.70,000/- has been credited/ reversed as per details given below:-

16-07-2013	10,000.00 Cr
16-07-2013	10,000.00 Cr
16-07-2013	10,000.00 Cr
02-09-2013	10,000.00 Cr
28-10-2013	10,000.00 Cr
01-12-2013	10,000.00 Cr
01-12-2013	10,000.00 Cr

As per above details of transactions, it is evident that an amount of Rs.10000/- has not been reversed by the OPs on the ground that it was a successful transaction but has failed to prove its contention with cogent evidence.

(10). In view of the above facts and circumstances, the instructions issued by the Reserve Bank of India vide DBR.No.Leg.BC.78/09.07.005/2017-18 dated 06.07.2017 regarding “Consumer Protection-Limiting Liability of Customers in Unauthorized Electronic Banking Transactions” are relevant in the matter because the burden of proving customer liability in case of unauthorized electronic banking transactions lies on the bank. The OPs were supposed to conduct inquiry about the unauthorized transactions and send suitable reply to the complainant but the same has not been conducted in this case because the report has neither been filed with the reply nor shared with the complainant. Therefore, the bank is liable to compensate the complainant.

(11). In view of the above observations, we are of the considered view that OPs have not reversed the complete amount of eight transactions and amount of Rs.10000/- of one transactions is yet to be reversed which is sufficient to conclude that the complainant has suffered directly due to deficient service of the OPs, in terms of the deficiency defined in the Act which includes any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained in relation to any service and includes any act of negligence or omission or commission by such person which causes loss or injury to the consumer.

(12) Therefore, we feel appropriate to direct the OPs to pay Rs.10000/- (Rupees Ten Thousand only), jointly and severally, to the complainant within thirty (30) days from the date of receipt of this order, with interest at the rate of 9% p.a. from 30-06-2013 (date of eighth fraudulent transaction) till the date of the payment. Besides, the OPs are also directed to pay Rs.25,000/-(Rupees Twenty thousand only) as compensation to the Complainant for the mental pain, agony and harassment. It is clarified that if the above said amount is not paid by the OPs to the Complainant within the period as directed above, the OPs shall be liable to pay interest @12% per annum from the date of expiry of 30 days period.

13). We also feel appropriate to impose cost of Rs.10000/- (Rs. Ten thousand only) upon the OPs for its attempt to misguide the commission. It further clarified that out of this amount of cost, Rs.5000/- (Rs. Five Thousand only) shall be paid to the complainant and remaining Rs.5000/- (Rs. Five Thousand only) shall be deposited in the “State Consumer Welfare Fund (L/Aid), SBI Account No.10310544717, IFSC No.SBIN0018175” within 30 days from the receipt of this order. It is clarified that if this amount is not paid to the Complainant & deposited in “State Consumer Welfare Fund (L/Aid) respectively, by the OP-2 within the period as directed , the OP-2 shall be liable to pay interest @12% per annum on this amount also from the date of expiry of 30 days period..

(14). Order be given dasti to the parties in accordance with rules. Order be also uploaded on the website. Thereafter, file be consigned to the record room.

ASHWANI KUMAR MEHTA

Member

DCDRC-1 (North)

HARPREET KAUR CHARYA

Member

DCDRC-1 (North)

DIVYA JYOTI JAIPURIAR

President

DCDRC-1 (North)