



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Wednesday the, 5<sup>th</sup> day of January 2022)

**APPEAL No. 51/2020**

Appellant : M/s. Kerala Minerals & Metals Limited  
Sankaramangalam, Chavara  
Kollam – 691 583.

By M/s. B.S.Krishnan Associates

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office,  
Ponnamma Chambers – 1  
Kollam – 691 001

By Adv.Pirappancode V S Sudheer

This case coming up for final hearing on 29.09.2021 and this Tribunal-cum-Labour Court on 05.01.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KLM/10315/PD/2019-20/1789 dated 17.12.2019 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 01/2014 –

01/2017. The total damages assessed is Rs. 2,85,547/- (Rupees two lakh eighty five thousand five hundred and forty seven only)

2. The appellant is a company registered under Companies Act 1956. The appellant company is covered under the provisions of the Act. The appellant company is exempted from EPF and EDLI Scheme. The appellant company is complying with the respondent organisation in respect of Employees' Pension Scheme 1995. The respondent issued a notice dated 06.08.2019 alleging delay in remittance and proposing to levy damages and interests for belated remittance of contribution for the period from 01/2014 – 01/2017. The appellant was also offered a personnel hearing on 30.08.2019. A true copy of the said notice is produced and marked as Annexure 2. The appellant sought an adjournment vide Annexure 3 letter dated 28.02.2019. The appellant submitted a letter dated 10.10.2019 narrating the details of various payments made for each wage months shown in Annexure 2 notice. A true copy of the said letter is produced and marked as Annexure 6. Ignoring the contentions of the appellant, the respondent issued the Annexure 10 order dated 17.12.2019. The appellant

submitted letter dated 30.12.2019 seeking clarification on the method of calculation. No replies received from the appellant establishment. It is not identifiable from the impugned order as to how the appellant calculated the damages. The appeal is filed on the basis of the oral information furnished by the respondent during the interaction with the officers of the appellant, reserving its right to raise additional issues at the time of hearing. .

3. An amount of Rs. 2,07,169/- is imposed by way of damages with regard to short remittance of inspection charges relating to the period from September 2014 to October 2016 which was remitted on 24.01.2017. It was brought to the notice of the respondent that it was a bonafide mistake regarding the rate of inspection charges payable by them. During the inspection by an Enforcement Officer of the respondent, the mistake was pointed out and the same was corrected immediately. There was no lapses on the part of the appellant. An amount of Rs. 6557/- is levied as damages for delayed payment of contribution in respect of Sri.Siyad. Sri Siyad joined KMML as an Executive Trainee on 20.12.2014 with wages beyond Rs.15000/-and was therefore excluded as per EPF Scheme as

amended in 2014. Subsequently it was brought to the notice of the appellant that Sri. Siyad was contributing to EPF when he was employed in Travancore Titanium Products Limited. The appellant therefore enrolled Sri. Siyad under Pension Scheme and remitted the contribution. Assessment of damages for belated remittance of contribution is unsustainable. The delayed remittance of contribution in respect of DA arrears for the period from 07/2015 – 03/2016, 01/2016 – 06/2016, 02/2016 – 03/2016 and 01/2014 to 06/2014 is also considered by the respondent authority for assessing damages. It was clarified to the respondent that the DA arrears are being paid as and when the Government Orders are issued and the appellant has no control over the declaring the Dearness Allowance by the Government. The imposition of damages on belated remittance of contribution due to payment of dearness allowance arrears is also not sustainable. Since the contribution is paid as and when the DA is announced by the Government and the same is released to the employees which cannot be treated as delayed remittance of contributions. It is settled law that the power under Sec 14B of the Act is Quasi Criminal and therefore existence of mensrea is a relevant factor to be considered while

imposing damages under the said provision. The Hon'ble Supreme Court of India in ***Mcleod Russel India Ltd. Vs Regional Provident Fund Commissioner and Others***, 2014 (15) SCC 263, held that in the absence of mensrea no damages by way of penalty can be imposed. In ***Assistant Provident Fund Commissioner, EPFO and Another Vs RSL Textiles India Pvt. Ltd.***, Civil Appeal No.96-97/2017, the Hon'ble Supreme Court reiterated the above position.

4. The respondent filed counter denying the above allegations. EPF and MP Act is a social welfare legislation and therefore the provisions of the Act shall be interpreted liberally. The appellant establishment is covered under the provisions of the Act and is exempted from the provisions of EPF Scheme and EDLI Scheme. The appellant establishment is complying with the respondent organisation with regard to Employees' Pension Scheme 1995. The appellant establishment is allowed to contribute to the Pension Fund, in excess of statutory wage limit, in accordance with the provisions of the Pension Scheme. The appellant failed to remit the contributions for the period from 01/2014 – 01/2017 in time which attracted damages under

Sec 14B of the Act. The respondent, therefore, issued notice dated 06.08.2019 along with the statements specifying the amount of dues, due date of payment, actual date of payment and the period of delay committed by the establishment. The proposed damages were also furnished in the statements. The appellant was also given an opportunity for personnel hearing. The enquiry was adjourned to 13.08.2018 and 29.09.2019 on the request of the appellant. On 11.10.2019, an authorised representative of the appellant attended the hearing and filed a written statement dated 10.10.2019. According to the appellant, the delayed remittance of contribution pertains to DA arrears which was remitted in bulk along with the regular dues for 06/2014. As per the existing provision, the bulk remittances were shown on due month basis. The appellant also requested that the date of remittance appearing in the notice may be corrected as 19.07.2019 for the wage months 01/2014 – 06/2014 and 20.08.2014 for the wage month 07/2014. The appellant produced copies of ECR challans to prove the split up made by them. On verification of notice, it was found that the remittance made for the months 12/2016(2Nos) on 17.01.2017 and 19.01.2017 can be excluded since the head offices granted 5

days grace period for making payments for 12/2016 vide circular dated 12.01.2017. After verification of the documents produced by the appellant, it was decided to change the date as requested by the appellant. Accordingly the delay statement and calculation sheet was revised. After taking into account all the submissions made by the appellant, the respondent issued the impugned orders. The appellant had challenged the earlier 14B and 7Q orders before the Hon'ble High Court of Kerala and many of these cases are pending thereby delaying the recovery of damages. Whenever the appellant is revising the pay due to pay revision or due to retrospective payment of DA arrears, the respondent is constraint to revise the pension of the members of EPF. Thus on one hand, the respondent organisation has to issue pension on the basis of higher wages with retrospective effect, the contribution of which was received belatedly and on the other hand the appellant establishment is reluctant to pay penal damages and interests. Had the appellant paid the pension contributions on due month basis, the organisation would have been able to invest the money which would compensate the higher pension paid with retrospective effect. The appellant was given more than adequate opportunity.

However a representative of the appellant attended the hearing only on 11.10.2019. Since the appellant establishment is allowed to contribute on full wages, the members of the appellant establishment will be receiving huge pensionary benefits when compared to the members of the other covered establishment wherein the contribution of the latter are limited to the statutory wage ceiling. The pensionary benefits are directly proportional to the contribution remitted by the appellant. When the pensionary benefits are calculated on the basis of actual salary in excess of statutory wage limit, it results in a situation where employees contributing on low wage end up cross subsidising the higher waged employees. When the enhanced pension to the employee is effected, the computation of pension from 2009-2010 onwards is done adjusting the arrear amount received against each due month since 2009-2010, whereas the arrear due is respect of his account was only received in the year 2012. In such cases, the respondent organisations loses the quantum of value, it could have earned had the appellant made the remittance in time. On one hand, the appellant is defaulting in payments on some ground or other and on the other hand they are reluctant to pay penal damages and interests on the belated payments and thus



preventing this implementation of welfare legislation. The Hon'ble High Court of Madras, in **Assistant Commissioner Vs EPF Appellate Tribunal** and **Sri. Rani Laxmi Spinning and Weaving Mills Ltd.**, WP(C) No. 4633/2012 held that "*the Tribunal cannot adopt a mechanical approach of reducing damages nearly based on certain blanket statements. Unless there is an adequate proof to establish and there is a reason to believe that the company was declared as sick, then alone, such a discretionary power of reducing damages can be exercised and not otherwise. The proviso clause undoubtedly provides power to Tribunal to reduce the damages. However, reduction must be done on exceptional circumstances where any party filing an application is able to establish that the reasons are genuine and accordingly, the discretionary power should be exercised by the Tribunal, so as to reduce the quantum of damages*".

5. There is no dispute regarding the fact that there was delay in remittance of pension fund contribution and inspection charges by the appellant establishment. The appellant establishment is exempted from the provisions of EPF Scheme and also EDLI Scheme. The appellant is complying with

respondent only in respect of Employee's Pension Scheme 1995. There was delay in remittance of contribution for the period 01/2014 to 01/2017 and therefore the respondent issued notice directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. Appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed a detailed written statement elaborating the reason for delayed remittance of contribution. According to the appellant,

1. The delay in remittance of inspection charges for the period from 09/2014 – 10/2016 was due to a bonafide mistake. The same was remitted on 24.01.2017 when the mistake was pointed by the Enforcement Officer.
2. The delayed remittance of contribution in respect of Sri.Siyad was due to the fact that he was an excluded employee at the time of joining the appellant establishment. Later when it was brought to the notice of the appellant that he was a member of the Employee Pension Scheme earlier, the appellant enrolled him to

Pension Fund and remitted the contribution retrospectively.

3. The delay in rest of the payment was due to the fact of delayed declaration of dearness allowance by the State Government.

6. According to the learned Counsel for the appellant, there is absolutely no justification for levying damages on belated remittance of contribution consequent on delayed declaration of Dearness Allowance by the State Government. The appellant will be in a position to remit the contribution only when the DA is declared by the State Government and arrears are released to the employees.

7. According to the learned Counsel for the respondent, timely contribution under Employees' Pension Scheme is vital for running the welfare scheme in a proper manner. When retrospective payments in the form of DA or arrears of pay are released, the respondent is liable to consequently revise the benefits under the Scheme to the employees. This is particularly true in respect of the appellant, in view of the fact that the appellant is allowed to remit pension contribution on full wages

whereas the other establishments covered under the Scheme are contributing on the statutory limit. The apprehension expressed by the learned Counsel for the respondent is that there will be a reverse cross subsidisation of benefits if the appellant is allowed to go scot free for belated remittance of contribution. According to the learned Counsel for the respondent, the appellant cannot plead any ground for belated remittance of contribution for ignorance of law or not following the prescribed requirement of taking form 11 when a new employee joins the appellant establishment. The learned Counsel for the respondent also relied on the decision of the Hon'ble High Court of Madras in ***Assistant Provident Fund Commissioner Vs Employees Provident Fund Appellate Tribunal and Another (Supra)***, to argue that the Tribunal shall not interfere with the assessment of damages by the respondent authority.

8. The learned Counsel for the appellant relied on the earlier decisions of Hon'ble Supreme Court to argue that there is no mensrea in belated remittance of contribution by the appellant. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional***

**Provident Fund Organisation**, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in **Mcleod Russell India Ltd. Vs Regional Provident Fund Commissioner**, 2014(15) SCC 263 and **Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Pvt. Ltd.**, 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”*

The above judgement of the Hon'ble Supreme Court finally settled the question whether the intention of parties in delayed

remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

9. The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Kerala in ***Kerala Minerals and Metals Ltd. Vs Regional Provident Fund Commissioner***, W.P.(C)No. 14294/2015 wherein the Hon'ble High Court of Kerala held that damages under Sec 14B cannot be levied in the case of arrears of wages paid on retrospective implementation of wage settlements. It is to be noted that the above decision was taken by the Hon'ble High Court on a finding that mensrea is applicable to a proceedings under Sec 14B of the Act. In view of the recent decision of the Hon'ble Supreme Court cited above the legal position with regard to mensrea has undergone sea change and is not relevant in a proceedings under 14B of the Act.

10. The learned Counsel for the appellant has elaborately taken this tribunal through the reasons for delayed remittance of contribution. The delayed remittance of contribution in respect of DA arrears is a valid reason and the appellant cannot be held fully responsible for the delay. With regard to the delayed

remittance of inspection charges and contribution in respect of Mr. Siyad, the appellant cannot escape the liability at all. In view of the above, the appellant is entitled for some relief with regard to payment of damages.

11. Considering the facts, circumstances, pleadings and arguments in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 70% of the damages.

Hence the appeal is partially allowed the impugned order under Section 14 B of the Act is modified and the appellant is directed to remit 70% of the damages.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer