



**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. 52/2020**

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/ 2019-20/1791 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 01/2009 – 11/2018.

The total damages assessed is Rs. 3,49,270/- (Rupees three lakh forty nine thousand two hundred and seventy 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 01/2009 - 11/2018. 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 1. 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 1 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 9 order dated 17.12.2019. The

appellant submitted letter dated 30.12.2019 seeking clarification on the method of calculation. No reply was 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.1,65,739/- was levied as damages for the alleged delay in payment of contribution with regards to T.C.George. Sri T.C.George was placed under suspension pending vigilance enquiry. Since the vigilance report did not recommend any action, his suspension for the period from 26.12.2012 – 02.03.2014 was regularised, salary was paid on 10.10.2017 and consequently there was delay in remittance of contribution. The respondent assessed an amount of Rs. 8,583/- due to the delayed remittance of inspection charges for the period from November 2016 which was remitted on 24.01.2017. It was admitted during the course of the hearing that it was a bonofide mistake that there

was delay in remittance of inspection charges. An amount of Rs. 8,880/- was levied in view of the delayed remittance of contribution in respect of Smt. Rathikumari. Smt. Rathikumari joined the appellant as a Junior Assistant on 07.05.2015. Since her wages were more than Rs.15,000/- at the time of joining, she was excluded from EPF contribution. Subsequently she informed that she was a member of Employee's Pension Scheme from 2008 and therefore the company remitted the contribution on 26.07.2017. The respondent levied the damages of Rs. 86,863/- which emanated from the delayed payment of contribution in respect of arrear payments on account of anomaly relating to the period from 01/2013 – 07/2017. This happened because of the rectification of anomaly raised by various employees. There was no wilful omission on the part of the appellant. The rest of the assessed damages involve the delayed payment of contribution in respect of DA arrears paid by the appellant establishment. The DA arrears are paid as and when the Government issues orders. The appellant has no control over declaring of DA by the Government. From the above, it is clear that the delay in remittance of contribution was not at all intentional and was beyond the control

of the appellant establishment. It is a 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 in ***McLeod Russel India Vs RPFC 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 decisions.

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 01/2009 – 11/2018 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, for the wage months 01/2009 – 12/2012 and 12/2014, 01/2015 – 05/2015, the damages under Sec 14B have already been assessed and paid by the appellant. The representative of the appellant also produced challans in token of remittance. The appellant further submitted that these payments pertain to arrears paid to superannuated members as well as payments of arrear dues paid to some staff members towards belated promotion and higher qualification

allowance sanctioned belatedly. The representative of the appellant also pointed out that all other belated remittance pertains to DA arrears for the period from 07/2016 – 01/2018 paid on due month basis on the basis of the orders of Government of Kerala. After verification of the records produced by the appellant and the records maintained by the respondent organisation, it was decided to exclude the assessment of damages for the wage months 01/2009 – 12/2012 and 12/2014 – 05/2015. A revised delay statement was generated and provided to the appellant. 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 constrained 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 organisations 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 10.10.2019. 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 in 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 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 merely based on certain blanket statements. Unless there is 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 01/2009 to 11/2018 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 bonofide mistake. The same was remitted on 24.01.2017 when the mistake was pointed by the Enforcement Officer.

2. The delay in remittance of contribution in respect of Sri.T.C.George was due to the fact that there was a vigilance enquiry against him which was subsequently closed. His services were regularised and his salary and allowances were paid on 10.10.2017.
3. The delay in remittance of contribution in respect of Smt.Rathikumari was due to the fact that she was an excluded employee at the time of joining the appellant establishment. However it was pointed out that she was a member of Employees' Pension Scheme w.e.f 2008 and therefore she was given the membership retrospectively and remitted the contribution on 26.07.2017.
4. There was a further delayed remittance in view of the correction of anomalies of salary of the employees during the period from 01/2013 – 07/2017.
5. 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 Pension 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 Sri.T.C.George and Smt.Rathikumari also the learned Counsel for the appellant

submitted that there was no deliberate or intentional delay. It was also pointed out by the learned Counsel for the appellant that the delay in remittance was due to the correction in anomaly of wages to the employees for the period from 01/2013 – 07/2017 was also beyond the control of the appellant.

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