

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, DELHI**

D-1/45/2019

M/s Air India SATS Airport Services Private Limited. Vs. RPFC Delhi (Central).

Present: Ms. Kanika Sharma, proxy for the Appellant.
None for the Respondent.

Order Dated-22.05.2025

1. This order shall dispose off an application filed under **order VI Rule 17 R/w Section 151 of CPC** filed by the appellant seeking amendment of the appeal. Ld. Counsel for the appellant submitted that at the time of filing of the appeal she was not aware that before expiring of the statutory period respondent had initiated the recovery proceeding and in contravention of the legal provision had already recovered the amount of Rs.16,36,964/-. Hence, she had made prayer that she be allowed to amend the appeal by incorporating the said fact, inserting a new para, being para 6(XXXII) in the appeal, so as to bring the factum of recovery of damages. The Para 6 which as follows:-

“It is submitted that even before the filing of the present appeal, the respondent, in violation of the settled position of law, had already recovered the amount of damages awarded by way of the impugned order to the tune of Rs.16,36,964/-(Rupees Sixteen Lakhs Thirty Six Thousand Nine Hundred and Sixty Four Only) vide bank Transfer ID M3124365 dated 14.05.2019 from the appellant bank account bearing no. 061005002096 of ICICI Bank at Delhi. It is further submitted that the respondent ought to have allowed the appellant to avail his remedies to challenge the impugned order before initiating the recovery proceedings, and in the absence of the same, the recovery of damages undertaken by the respondent is unsustainable in the eyes of law.”

She also want to insert a new prayer, being para no. 9(ii) in the appeal, so as the enable the appellant so seek the consequential relief of refund of the recovered amount in case it succeeds.

“9(ii) Direct the respondent to refund to the appellant the already recovered amount of damages to the tune of Rs.16,36,964/-(Rupees Sixteen Lakhs Thirty Six Thousands Nine Hundred and Sixty Four Only), along with pendent lite and future interest @9% per annum.”

2. Respondent has filed the reply of the above said application opposing the prayer and had submitted there is nothing in the entire scheme of the Act which precludes or debars the authority, to proceed further, after the orders are passed, quantifying the amount to be recovered, until the appeal period of 60 days expires. He submits that appellant/applicant is relying on a case law **“M/s G4S Secure Solutions V/s The Regional Provident Fund”** in which it was held by single bench judge of the Hon’ble Karnataka High Court that since 60 days period is granted to be defaulting party to challenge the order, the Provident Fund Commissioner cannot pass any order of attachment during that period. However, Provident Fund Commissioner has filed the writ appeal and in the writ appeal the order was reversed. He submits that the prayer clause is misconceived hence, the application is liable to be dismissed.

3. I have heard the arguments at par and perused the records. The appeal was filed on 20.05.2019 assailing the order passed by Regional Provident Fund Commissioner/respondent on 25.03.2019. Earlier to filing of this appeal a writ petition was filed by the appellant stating that presiding officer of CGIT was on leave. The writ petition was allowed and the operation of the impugned order dated 25.03.2019 was stayed in the absence of the respondent. It is also a matter of fact that on 14.05.2019 much before the expiry of the appeal, entire amount was recovered by the appellant authority.

4. Appellant wants to incorporate the said facts in the appeal because the same was not in his knowledge earlier. So far so, the respondent argument is that there was no illegality in recovering the amount much before the filing of appeal is concerned, that has no merit. In this respect, the circular of the department dated 25.05.2023 issued to all the Addl.CPFCs of Zonal offices is required to be reproduced:-



कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
 धर्म एवं रोजगार मंत्रालय, भारत सरकार
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
 मुख्य कार्यालय / Head Office
 भविष्य निधि भवन, 14, भीकाजी कामा प्लेस, नई दिल्ली-110066
 Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi-110066
 Website: www.epfindia.gov.in, www.epfindia.nic.in



File No. Compliance/SLP37088/2022/57328 /1258

Dated:- 25.05.2023

To,

30 MAY 2023

All Addl. CPFC(HQ)/ACCs, Zonal Offices,
 All OICs, Regional Offices.
 All OICs, District Offices

Subject- Initiation of recovery action u/s 8F of the Act –reg.

Madam /Sir,

Hon'ble Bombay High Court in its judgment dated 22.02.2022 in WP No 7814/2022 (Bhiwandi Nizampur Municipal Corporation vs The Regional Provident Fund Commissioner II, Regional Office, Thane) has held as under:-

"9(b). The respondents are ordered that henceforth, in any matters u/s.7A, there shall be no order directing the assessee to deposit the amount within the appeal period since it creates an embargo on the rights of the assessee to avail of the remedies permissible under the EPF and MP Act, 1952.

9(c). The respondent authorities are hereby directed that henceforth in all matters u/s.7A Assessment, steps u/s.8F shall not be initiated until the Appeal period as prescribed u/s.7-I is exhausted.

10. The learned Registrar (Judicial) is directed to circulate this order to all the Regional Provident Fund Commissioners in India and the directions should be followed scrupulously."

2. The said judgment dated 22.02.2022 of the Hon'ble Bombay High Court has not been interfered with by the Hon'ble Supreme Court which has dismissed the SLP filed under Dy No. 37088/2022 against the said order vide order dated 23.1.2023. Copies of both the judgments are enclosed.

3. In view of the position above, the directions of the Hon'ble High Court referred above should be followed scrupulously.

(Issued with the approval of the CPFC)

Encl: As above.

Yours faithfully,

(R.M. Verma)

Additional CPFC(HQ)(Compliance)

Copy to:-

1. OSD to CPFC
2. FA & CAO, CVO, Director (PDNASS), All ACC(HQ)s and ACCs at HO, All ZTIs
3. ACC(HQ)/ACC(Recovery) HO for information and necessary action.
4. Rajbhasha section: For Hindi version.

In that order it was mentioned that there shall be no order directing the assessee to deposit the amount within the appeal period since it creates an embargo on the rights of the assessee to avail of the remedies permissible under the EPF & MP Act, 1952. Department appeal against the order passed by the Bombay High Court was dismissed, on 23.01.2023 itself by the Hon'ble Supreme Court.

5. In view of the fact that the appellant is not aware about the recovery already made before filing of the appeal within the appeal period, amendment sought by the appellant is necessary, hence, the applicant order VI Rule 17 R/w Section 151 of CPC is allowed. Put up the matter on 14.08.2025.

Sd/-
Atul Kumar Garg
(Presiding Officer)