



सत्यमेव जयते

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

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

(Monday the 26<sup>th</sup> day of October, 2020)

**APPEAL No.37/2019**  
(Old no.692(7)2014)

Appellant : The General Manager  
M/s.Bharat Sanchar Nigam Ltd  
D.P.O. Road  
Malappuram - 676505

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranhipalam P.O.  
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 19.10.2020 and this Tribunal-cum-Labour Court on 26.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KK/17723/ENF-3(2)/14B/2014/1631 dt.4.6.2014 assessing damages for belated remittance of contribution U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01.02.2006 to 31.01.2014. The total damages

assessed is Rs.20,32,025/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a Govt of India enterprises registered under Companies Act and completely owned by Govt of India. The appellant is covered under the provisions of the Act. The appellant received a notice from the respondent alleging delay in remittance of provident fund contribution for the period from 01.02.2006 to 31.01.2014. The appellant was also offered a personal hearing. A representative of the appellant appeared before the respondent. The respondent also filed a representation before the respondent narrating the reasons for the delay in remittance of contribution. Without considering the above representation, the respondent issued the impugned orders.

3. The appellant company was formed on 01.10.2000. As per the decisions taken by the Govt, all employees appointed after 30.09.2000 had to be covered under the provisions of the Act. In compliance with the decision of the Corporate office of the appellant issued an order dt.10.05.2007. The following category of the employees has been treated as BSNL recruited employees.

- (1) Casual labourers not having temporary status in DOT prior to 01.10.2000 who are regularised in BSNL

(2) Employees appointed on compassionate ground where appointment order have been issued after 30.09.2000 by BSNL.

A copy of the above order is produced and marked as Annexure A4. As per the above order the employees appointed after 30.09.2000 were to be transferred from GPF to EPF. Instant issue relates to 11 employees appointed after 30.09.2000 on compassionate ground. Initially they were included in GPF and contribution was being paid to GPF upto October 2010. As per the decision of the BSNL head quarters, they were transferred to EPF Scheme. The appellant remitted both employees' as well as employer's contribution along with administrative charges. The employees were given the facility of instalment to return the contribution. A copy of the circular dt.17.11.2009 is produced and marked as Annexure A6. A copy of the sanction order dt.28.02.2014 refunding the GPF amount with interest is produced and marked as Annexure A7. The appellant also filed a review application before the respondent vide Annexure A8. The appellant recovered Rs.30,18,854/- through Bank attachment. It is imperative on the respondent to issue a speaking order while imposing penalty and it has been held in various cases that the reason for delay has to be taken into account while passing an order for penal damages. The fact that the appellant was paid GPF and pension contribution to these 11 employees would show that the appellant had no

intention to take away the legal rights of the casual labours. Further these employees migrated to EPF Scheme on the basis of a policy decision taken by Govt of India vide order dt. 20.10.2006. The GPF contribution made by the employees were returned with interest. The delay in remittance of contribution was due to delay in taking a policy decision by Govt. The Hon'ble High Court of Delhi in **Hi-tech Vocational Training Center Vs APFC**, W.P.(C) no. 10387/2006 held that proceedings for imposition of penalty can be initiated only if there are arrears. The Hon'ble Supreme Court in **Hindustan Times Vs UOI**, AIR 1998 SCC 688 held that the existence of mensrea or actus reus to contravene a statutory provision must also be held to be necessary ingredient for levying damages.

4. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act and hence they are liable to remit the contribution in time. Since there was delay in remittance of contribution, a notice was issued to the appellant U/s 14B of the Act read with Para 32A of EPF Scheme to show cause why damages U/s 14B shall not be levied for belated remittance of contribution. A delay statement was also sent to the appellant along with the notice. Appellant was also given a personal hearing on 24.04.2014. A representative of the appellant attended the hearing. On verification of the return filed by the appellant, it is seen that

there is delay in remittance of contribution and accordingly the impugned orders were issued. The delay in taking the policy decision cannot be an acceptable ground for waiving or reducing the damages U/s 14B. The appellant ought to have transferred the GPF contribution to EPF instead of refunding the same to the employees. Various reasons cited by the appellant for delay in remittance of contribution cannot be legally accepted for reducing or waiving damages. In **Organo Chemical Industries Vs UOI**, the Hon'ble Supreme Court held that the delay in remittance of contribution will affect the fund and thereby the existence of the fund itself. If the employer neglects to remit or diverts the money for alien purposes, the fund gets dry and the retirees are denied the legal support when they most need it. In **RPFC Vs S.D. College, Hoshiarpur**, 1997 1 LLL 520 the Hon'ble Supreme Court held that Regional Provident Fund Commissioner has no power to waive penalty altogether.

5. According to the learned Counsel for the appellant, the present case relates to 11 employees appointed on compassionate ground after 30.09.2000. Originally they were included in GPF Scheme and contribution was being paid to EPF upto October 2010. In view of Annexure A4 order, dt.10.05.2007, the compassionate appointments made after 30.09.2000 by BSNL are to be treated as BSNL recruited employees and their contribution is

required to be paid to EPFO. This decision was taken as per the order of Govt of India, Department of Telecommunications O.M.no.27-2/2006-SNG dt.20.10.2006. However the payments are made vide Annexure A5 challan dt.31.03.2011. The learned Counsel for the appellant also argued that the contribution made by these 11 employees to GPF was returned to them with interest. It can be seen that the policy decision by Govt of India was taken in 2006 and the Head Quarters of the appellant has communicated the decision on 10.05.2007 vide Annexure A4. It is not clear why the appellant continued contributing to GPF till 2010 when a decision has already been taken by the Head Quarters of the appellant in 2007 itself to transfer these employees to EPF. Even after taking the policy decision by the Government there was a huge delay of more than 5 years in remittance of contribution by the appellant which is done only on 31.03.2011. The appellant therefore cannot attribute the delay in remittance of contribution to the delay in taking a policy decision by Govt or by Head Quarters of the appellant.

6. However considering the facts that the appellant is a public sector undertaking and was under the bonafide belief that the 11 employees against whom the damages and interest are claimed will come within GPF Scheme and contributed to GPF and also Pension, no mensrea can be alleged against the appellant. However there is undue delay which is required to be

compensated by the appellant. The interest U/s 7Q will not be adequate to compensate the loss of interest paid to the employees.

7. Considering the facts and circumstances of this case I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of damages assessed U/s 14B.

8. The learned Counsel for the respondent pointed out that the appeal against 7Q order is not maintainable. On perusal of Sec 7(I), it is seen that there is no provision U/s 7(I) to challenge an order U/s 7Q of the Act. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against a 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also took a view that no appeal can be maintainable against an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act. The appeal against 7Q order is dismissed as not maintainable.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer