



सत्यमेव जयते

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

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

(Wednesday the 21<sup>st</sup> day of October, 2020)

**APPEAL No.43/2017**

Appellant : M/s.Bharat Sanchar Nigam Ltd  
O/O Chief General Manager  
BSNL Bhavan  
Kerala Telecom  
Thiruvananthapuram - 695033

By Adv.Saji Varghese

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Trivandrum - 695004

This case coming up for final hearing on 12.03.2020 and this Tribunal-cum-Labour Court on 21.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/TVM/16720/DAMAGES CELL/2017-18/4316 dt.28.08.2017 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution between 02.04.2014 to 31.03.2017. The total damages assessed is Rs.7,41,486/-.

2. The appellant is a company incorporated under the Companies Act and is fully owned by Govt of India. After formation of the company, the employees of Department of Telecom were given an option to join the company. The employees who opted to join the company were absorbed in the appellant company with continuity of service. Those employees were covered under General Provident Fund. All those employees who were absorbed in the appellant company had to undergo training and during the period of training they were only paid stipend and no contribution was paid to GPF. The employees recruited after formation of the appellant company are covered under the provisions of the Act. Such employees were also put under training and they were also paid stipend during the training period. No contribution was collected from the newly recruited employees during their training period throughout the country. Some of the employees of Tamil Nadu Telecom Circle approached the EPF authorities alleging that the training period was not counted for the purpose of provident fund contribution. The provident fund authorities in a proceedings U/s 7A directed BSNL to remit contribution in respect of trainees. The said order was challenged before the Hon'ble High Court of Chennai in W.P. nos.21520, 21782 and 21783/2010. The Hon'ble High Court of Chennai upheld the decision of the 7A authority. The Writ Appeal nos.463-465/2013 were also dismissed by a common order

dt.13.03.2015. The appellant company therefore decided to implement the decision. The corporate office of the BSNL issued Annexure A circular dt.05.08.2015 directing the appellant to enroll all trainees under the provisions of the Act. The appellant assessed the provident fund dues in respect of 1425 employees of Kerala Circle and paid the same on 25.05.2016 and 02.06.2016. On 01.06.2017, the respondent issued a summons to show cause why damages U/s 14B cannot be levied on the appellant. The interest and damages were demanded under 3 different heads. The 1<sup>st</sup> head is in respect of the delay in payment of contribution of the trainees, the 2<sup>nd</sup> head relates to the delay in payment of contribution for some employees who came on transfer from other States and 3<sup>rd</sup> head relates to the delay in payment of contribution in respect of employees of contractors who had separate provident fund registration. The appellant disputed the liability to pay damages through Annexure C representation filed before the respondent. However without properly considering the objection raised by the appellant the respondent passed the impugned order. There was no deliberate delay or contumacious conduct on the part of the appellant in remitting the contribution.

3. The facts of the case are not disputed by the respondent. It is seen that the impugned order is passed on 3 grounds. The 1<sup>st</sup> ground was that of arrear payment to the trainees during the pre-appointment training. For

the period from 1999-2000 and 2012-2016 the total dues paid was Rs.16,98,782/- and the amount was paid on 02.06.2016. As already pointed out, this was due to a decision by the Hon'ble High Court of Chennai wherein it was held that the employees are eligible to be enrolled to provident fund during their pre-appointment training. The second category of case involves EPF recovered from salary paid in arrears. The amount of provident fund due was Rs.2,98,381/-. The 3<sup>rd</sup> category considered by the respondent authority was in respect to provident fund dues paid in case of infrastructure maintenance contract workers. The total deposit of provident fund dues was Rs.14,86,154/-. Out of this, Rs.8,50,212/- was remitted by the appellant company though the contract employees were not directly employed by the appellant company. The contribution was paid by the appellant in view of the directions of the Hon'ble High Court of Kerala in W.P.(C) no.9586/2014. Out of the above 3 grounds the respondent found that the appellant is liable to pay damages in respect of the 1<sup>st</sup> two payments of provident fund contribution and is not liable to pay damages with regard to the 3<sup>rd</sup> category of payment.

4. From the undisputed facts discussed above, it is clear that the appellant was not enrolling the trainees undergoing pre-appointment training in various circles throughout the country. In view of the decisions of the

Division Bench of the Hon'ble High Court of Chennai the corporate office of the appellant decided to enroll all the trainees under provident fund from their due date of eligibility. The Corporate Account Section vide Annexure A circular dt.05.08.2015 directed all the Chief General Managers to enroll all the trainees to provident fund membership. It took almost one year for the appellant to implement the decision of the corporate head quarters and it was finally implemented when the appellant remitted the contribution on 02.06.2016. According to the learned Counsel for the appellant the delay was due to the fact that the appellant had to work out the arrears of contribution in respect of 1425 employees of Kerala Circle. From Annexure B delay statement, it can be seen that the delay in remittance of contribution varies from 4 days to 6220 days. It can be seen from the above facts that no intentional delay or mensrea can be attributed to the appellant for the delay in remittance of contribution. However delay of more than 4 years in remitting the contribution and the related loss of interest cannot be covered by the interest paid by the appellant U/s 7Q of the Act. All these employees are enrolled from the due date of eligibility and the respondent is liable to credit interest on a cumulative basis on monthly closing balance. Further there is no justification for a delay of almost one year in remitting the contribution after the decision is taken on 05.08.2015.

5. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed U/s 14B.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer