

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

Appeal no. 734(4)2016

M/s. R.K. Jain & Sons Hospitality Services Pvt. Ltd.Appellant

Through:- Sh. Mayank Jain, Ld. counsel for the appellant.

Vs.

APFC/RPFC, Delhi (North)Respondent

Through:- Sh. Satpal Singh, Ld. counsel for the respondent.

Order Dated:- 20.11.2025

The appellant, a company registered under the Companies Act, 1952, has assailed the orders passed by the respondent under sections 14B and 7Q of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred as 'the Act')** dated 27.05.2016, whereby the respondent assessed damages to the tune of Rs. 1,42,292/- and interest of Rs. 1,44,467/- respectively, for belated remittance of PF contributions.

The appellant has challenged the orders on several grounds, *inter alia*, the respondent was legally incorrect in imposing interest and damages without giving sufficient opportunity to the appellant to explain the reasons for the delay in making contribution of EPF; the respondent was under a legal obligation to use its judicial mind and discretion before imposing damages and interest as envisaged under the Act; the impugned orders are perverse and contrary to the provisions of the Act.

It is further submitted that the orders have been erroneously passed without appreciating the fact that the appellant defaulted in making timely contributions because the New Delhi Municipal Council (NDMC), which was the principal employer in this case, was unable to deposit the contributions on time, and the delay was neither deliberate nor intentional.

The appellant has placed reliance on the judgment of Hon'ble Supreme Court of India in the matter of **Hindustan Steel Ltd. vs. State of Orissa (1969 Ind law SC 131)** wherein it was held:

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed under the party obligated either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances."

The appellant has, therefore, prayed that the damages and interest imposed by the respondent be set aside and recalled.

The respondent filed a reply to the appeal. First, it narrated the objects of enacting the legislation, which is to provide social security to employees working in any scheduled industry or a class of establishments engaging 20 or more persons on any day. Thereafter, it explained the statutory procedure for levying damages and interest. The respondent placed reliance on the various judgments where it was held that *mens rea* is not an essential ingredient for the imposition of damages under section 14B of the Act. Moreover, the enhancement of the wage ceiling in the Act took place w.e.f. 01.09.2014, prior to that, the ceiling was constant at Rs. 6,500/-. The interest and damages have been levied from October 2007 onwards. Hence the appellant cannot take shelter under the enhancement of wage ceiling provisions for the period June 2001 till August 2014. The respondent submitted that the delay is admitted, hence, no case is made out for waiver or reduction of damages or interest. Therefore, the respondent prayed that the appeal is liable to be dismissed.

Before proceeding further, section 14-B and 7-Q of the Act, and Para 32A of the EPF Scheme are required to be reproduced herein:

14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund 3[, the

2[Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 4[or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5[any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 6[the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover 7[from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:] 8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]: 9 [Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985,subject to such terms and conditions as may be specified in the Scheme.]

7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

32A. Recovery of damages for default in payment of any contribution:

(1) Where an employer makes default in the payment of any contribution to the fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 of the Act or in the payment of any charges payable under any other provisions of

the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given below: —

S.No.	Period of Default	Rate of Damages (% per annum on arrears)
(a)	Less than two months	5%
(b)	Two months and above but less than four months	10%
(c)	Four months and above but less than six months	15%
(d)	Six months and above	25%

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

I have heard the arguments advanced by both parties and perused the record of the case. Whole of the arguments of the Ld. Counsel for the appellant is centred around the fact that in fact there are two employers in the present appeal- the appellant (immediate employer) and the NDMC (principal employer). According to him, both entities bear equal responsibility under the Act. He submitted that the appellant was entirely dependent upon NDMC for payments made to its employees, and if NDMC did not release funds in time, the appellant cannot be held responsible for belated remittance of PF. His further case is that in spite of his plea, the respondent failed to summon the principal employer or any record. The second aspect is that the respondent initiated the proceedings after a delay of nine years, which is attributable solely to the respondent in conducting the quasi-judicial enquiry. This delay is in clear violation of the respondent's own circular dated 28.11.1990, which prescribes a time limit of three years.

However, the respondent's case is that the circular dated 28.11.1990 is merely an administrative guideline, and there is no limitation set out in 'the Act' for initiation of proceedings, which is an internal matter and cannot bypass the law. The respondent also submitted that 'the Act' is a social welfare legislation under which the employer is duty bound to make the PF contributions on time and in case of any delay, the employer is liable to pay damages. The respondent's further contention is that appellant failed to comply with the orders and it is not duty-bound to call the NDMC for payments.

Now coming to the present appeal, a notice had been issued to the appellant establishment on 27.04.2016 asking it to pay the damages and interest for the period from 01.10.2007 to 31.03.2016. The respondent has herein failed to provide any reason as to why the department issued the demand notice after a delay of nine years.

There is no quarrel regarding the fact that a circular had been issued by the respondent on 28.11.1990. In the said circular, it had been emphasized that all the cases under section 14B of the Act have to be finalized within a period of three years. It is further stated that the cases in which the damages were yet to be levied as on 30.06.1990, the RPFC had to ensure that all such cases were disposed of within a period of three years from that date and in case of fresh defaults, damages should be levied within the close of three financial years. The advisory had been issued after considering all the aspects that limitation had not been set out in 'the Act' and division bench of Hon'ble Allahabad High Court holding that where the damages are not levied within a reasonable time, an employer is justified in presuming that he is not liable to pay any damages.

Since the entire Act is silent on the question of time limit within which the damages are required to be imposed. Therefore, either the circular should have been withdrawn, otherwise it must be presumed that the RPFC or any other officer authorized by 'the Act' is duty bound to follow the circular. Only thereafter, the Tribunal deals with the

question of limitation. The respondent cannot be given liberty to assess damages after such a long period of time.

Therefore, the notice levying damages after a delay of nine years is unreasonable and is liable to be set aside for the period from October, 2007 to March, 2013. Further, the respondent has not given any relief to the appellant despite his submission that he had already paid the dues @ Rs. 6,500/- for the period September, 2014 onwards and the delay caused had occurred due to the enhancement of wage ceiling from Rs. 6,500/- to Rs. 15,000/-. If the higher payments, including PF, had not been received from NDMC, the respondent ought to have shown leniency in levying damages for the period spanning September 2014 to March 2016.

Considering the above circumstances, this Tribunal directs the respondent to reduce the damages levied for the period from September, 2014 to March, 2016 by 50%, and the order passed in this regard is accordingly modified.

In terms of the above findings, the appeal stands partly allowed. The appellant is directed to deposit the amount of damages levied in the demand notice starting from the wages months 04/2013 to 08/2014 in full, and for the period September, 2014 to March, 2016 at 50% along with the interest amount of Rs. 1,44,467/- under section 7Q of the Act within one month from receipt of this order. The office is directed to send the copy of this order to both the parties through email. The record of this appeal is consigned to the record room.

Sd/-
Atul Kumar Garg
(Presiding Officer)