

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

Appeal no. D-2/07/2020

M/s. H.K. CorporationAppellant

Through:- Sh. S.K. Gupta, Ld. Counsel for the appellant.

Vs.

RPFC, FaridabadRespondent

Through:- Sh. Chakradhar Panda, Ld. Counsel for the respondent.

Oral:

Order Dated:- 16.12.2025

The appellant, an establishment covered under the provisions of the **Employees' Provident Funds & Misc. Provisions Act, 1952 (Hereinafter referred to as 'the Act')**, has assailed the orders passed under section 14-B (dated 26.12.2019) and Section 7-Q (dated 30.12.2019) of the Act, whereby the respondent assessed the dues to the tune of Rs. 6,00,773/- and Rs. 3,00,467/- respectively, for the period from 01.04.2011 to 14.03.2014, towards damages and interest on the belated payment of Provident Fund contributions in respect of its employees.

The appellant assailed the orders on several grounds, *inter alia*, that this is the second round of litigation, the first having resulted in remand back of the matter to the respondent for conducting the enquiry afresh; after remand back, the respondent neither issued fresh show-cause notice, and no mitigating circumstances were taken on record; the appellant is an outsourced manpower supply agency, and the delay occurred due to belated payments by the principal employer, which was neither intentional nor deliberate on its part; the respondent failed to consider the contentions raised by the appellant's representative nor was the

respondent fair during the course of enquiry under section 14B and 7Q of the Act; the respondent neither applied judicial mind nor analysed the written submissions; the impugned orders are perverse and contrary to the provisions of the law. On these grounds, the appellant prayed for setting aside and recalling of the impugned orders.

The respondent filed a counter-reply to the appeal, stating that the appeal filed by the appellant deserves to be dismissed as it has been filed against well-reasoned orders. It was submitted that under provisions of the Act, the PF and other contributions have to be deposited by the 15th of the following month. The appellant has admittedly delayed the remittance and has failed to place any mitigating circumstances on record. He further submitted that the appellant's representation was duly considered. The respondent further submitted that the appellant is a habitual defaulter in making payments and the repeated defaults reflects that it had *mens rea*. Therefore, the respondent prayed for dismissal of the appeal.

I have heard the arguments presented by both parties and perused the records of the appeal. Before proceeding further, section 14B and 7Q of the Act 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%

S.No.	Period of Default	Rate of Damages (% per annum on arrears)
(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.

From the above said sections, it is made clear that damages may be levied by the respondent for belated remittance of PF dues of employees working under the supervision and control of the employer. Further, interest is also leviable, as the respondent is required to credit the same to the accounts of the subscribers. The rate of levy of damages is prescribed under Para 32A of the Employees' Provident Funds Scheme, 1952, Para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995, which empowers the CPFC or any authorized officer to recover the dues from an employer by way of penalty, damages at the rate given above.

It is also important to mention here that at the time of admission of the appeal, the appellant was directed to deposit 20% of the assessed damages as a condition for grant of stay on the impugned orders till disposal of the appeal. However, the said amount was not deposited, and consequently, the stay was vacated vide order dated 14.09.2021. Admittedly, the amount has neither been deposited, nor recovered by the respondent till date.

Whole of the arguments of the appellant is centred around the fact that as per show-cause notice, the delay in remittance was for four years, and that the respondent failed to issue monthly reminders, which is in violation of chapter 5 of the departmental guidelines (5.1.2). Another leg of arguments of the


appellant is that word 'may' is used in section 14B of the Act, and the authority failed to give reasons for imposing damages at the maximum rate. Further, it is submitted that financial difficulties of the appellant, being a manpower supply agency, and receiving delayed payments from its principal employer, were not duly considered.

On the other hand, the respondent defended the impugned orders and stated that the appellant had been afforded opportunity and their representations were duly considered, though it didn't have any relevant material.

So far so the first leg of argument of the appellant that the respondent authority had violated the accounting manual and had not informed about delay in remittance of provident fund, that is not tenable. Now the computer has shown each and everything to the appellant about the delayed remittance of provident fund. If for the sake of arguments, it is taken as true than also, it is only a technical defect which cannot upturn the whole order.

The second leg of argument of the Ld. Counsel for the appellant is based upon the fact that the authority had not used its discretion but imposed the maximum rate of damages prescribed without considering his defence. However, that argument is also not tenable in view of the fact that this Tribunal had also given a number of opportunities to counsel for the appellant to furnish the audited balance sheets. However, no audited balance-sheet was furnished. Further, the appellant failed to provide any details regarding the dates on which payments were received from its customers, where the man-power used to be supplied or dates of Provident Fund remittances. Therefore, the respondent rightly not considered the plea of financial difficulty as mitigating circumstance. So far as the interest component under section 7-Q of the Act is concerned, the same has never been challenged by the appellant, nor stayed earlier by this Tribunal.

Considering the above facts and circumstances on record, I find no merit in the appeal. Hence, the same stands dismissed. The orders passed by the respondent authority under section 14B and 7Q of the Act are hereby confirmed. The appellant is directed to deposit the assessed dues in terms of the impugned orders within three weeks from the date of receipt of this order. A copy of this order be sent to both the parties. Consign the record to the record room.



(Atul Kumar Garg)
Presiding Officer