

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice Ananda Kumar Mukherjee (Retd.),
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 01 of 2015
[ATA 331(15) of 2015]

M/s. Sharp Ferro Alloys, Durgapur Appellant
Vs.	
Regional Provident Fund Commissioner, Durgapur Respondent

ORDER

Dated: 08th June, 2023

Mr. S. K. Khanna with	
Mr. B. Banerjee, learned advocates for the Appellant.
Mrs. Mousumi Ganguli, learned advocate for the Respondent.

1. The instant appeal has been preferred under section 7-I of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against order dated 25.02.2015 passed by the respondent under Section 14-B and 7-Q of the EPF Act levying damages of Rs.2,27,889/- and interest of Rs.97,042/- against M/s. Sharp Ferro Alloys, Durgapur, bearing EPF Code no. WB/37183, on the ground of delayed remittance of Provident Fund for the period from 10/1998 to 03/2009.

2. A Show Cause Notice dated 22.01.2014 was issued to the establishment for appearance and hearing on 27.02.2014. In their Memorandum of Appeal, it is contended that the respondent passed a non-speaking order without assigning any reason for levying of damages and interest, without application of mind and in a mechanical manner. It is urged that the respondent ignored the law laid down by the Hon'ble High Court in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]** and failed to take into consideration the financial position of the company at the time of delay in payment of Provident Fund dues. It is also the case of the appellant that the provisions of 14-B and 7-Q of the EPF Act have not been followed while imposing damages and interest and thereby violated the principle of natural justice and the impugned order is passed in arbitrary manner.

3. According to the appellant the damages could be levied according to the amended provisions of Section 14-B of the EPF Act and paragraph – 32A of the Employees' Provident Fund Scheme, 1952 (hereinafter referred to as the EPF Scheme) and various circulars which provide that maximum damages including interest would be 25% of the amount due but in the present case the respondent imposed penalty as per the rates laid down in old Paragraph – 32A of the EPF Scheme and imposed damages up to 37% which is not permissible.

4. The appeal has been preferred on the grounds inter-alia that the impugned order has been issued in pre-conceived and pre-meditated manner as the same has been passed sixteen years after the alleged period of delay in contribution. It is the case of the appellant that damages are required to be levied within a reasonable period and delayed imposition of damages should be struck down. Appellant claimed that the impugned order is passed in contravention of the law laid down by the Hon'ble High Court at Calcutta, in **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner (supra.)**.

The appellant claimed that the damages for the period from 01.11.1998 to 30.04.2009 could be levied as per amended provision in Employees' Provident Fund Amendment Act, 1988 and if at all the damages were to be levied then the same should have been as per the amended provision of Section 14-B and various circulars, particularly circular dated 29.05.1990 which provides the maximum damages including interest would be 25% of the amount due. It is further urged that under amended Paragraph – 32A of the EPF Scheme the maximum amount of damages that can be levied is 25% only and not 37% by the respondent.

5. The Respondent has not come forward to contest the appeal. A reply has been filed by the Assistant Provident Fund Commissioner placing the counter case of the commission that the Tribunal has no jurisdiction to entertain the appeal against order passed under Section 7-Q of the EPF Act as Section 7-I of the EPF Act does not permit filing of appeal against an order determining interest under Section 7-Q of the Act.

6. It is contended on behalf of the respondent that Mr. S. K. Garai, authorized representative appeared on behalf of the appellant establishment on 27.02.2014 and submitted a representation regarding deposit of interest assessed under Section 7-Q of the EPF Act. The case was thereafter adjourned to 07.04.2014, 25.06.2014, 11.07.2014, 11.08.2014, 23.09.2014, 13.11.2014, and 22.12.2014 for hearing but on all those dates none appeared on behalf of the appellant. It is the case of the respondent that finally the case was heard on 04.02.2015 and after going through details of calculation sheet and available records the respondent authority passed a speaking order on 25.02.2015 for levying a total amount of Rs.3,24,931/-, comprised of Rs.2,27,889/- as damages under Section 14-B and Rs.97,042/- as interest under Section 7-Q of the EPF Act. Since the dues were not paid within fifteen days further notice under Section 8-F of the

EPF Act was issued for recovery of the amount. It is urged that the Regional Provident Fund Commissioner has considered the law laid down on the subject, applying his mind to the rates of penal damages fixed by way of Notification of the Government of India from time to time. It is claimed that no rate other than the rate prescribed has been followed for assessing the damages. In support of the respondent's claim against the appellant for payment of penal damages, learned advocate relied upon the decision of the Hon'ble Supreme Court of India in the case of **Organo Chemicals Industries and Another vs Union of India and Others [1979 (4) SCC 573]** where the Hon'ble Supreme Court held that :

"The reason for enacting s. 14B is that employers may be deterred and thwarted from making defaults in carrying out statutory obligations to make payments to the Provident Fund. The object and purpose of the section is to authorize the Regional Provident Fund Commissioner to impose exemplary or punitive damages and thereby to prevent employers from making defaults."

Learned advocate for the respondent argued that the appeal has been preferred without any foundation and is liable to be dismissed.

7. The appeal came up for hearing on 22.12.2022, 12.01.2023, 23.03.2023, and 04.05.2023. Learned advocates for the appellant establishment based their argument mainly on three grounds. It is urged that the respondent authority has issued a notice to the establishment informing that there has been delay in remittance of Provident Fund dues for the period from 01.11.1998 to 30.04.2009 but at the time of passing the impugned order, without assigning any reason, it has traversed beyond the period of notice and assessed damages for the period from 10/1998 to 03/2009 giving no opportunity to the appellant to justify their position thereby committed violation of natural justice. Learned advocate further argued that after amendment of section 14-B of the Act and after issuance of Notification G.S.R. 689(E) dated 26.09.2008, whereby rates of damages applicable to Paragraph – 32A of the EPF Scheme were reduced, the respondent

authority was not justified in levying damages at a higher rate than the prevailing rate of damages ranging from 5% to 25% on the arrears per annum. Referring to the summons dated 22.01.2014 it is pointed out that two different rates have been applied by the respondent authority for assessing the damages on the arrears. It is argued that for the period from 11/1998 to 25.09.2008 damages at the rate of 17% to 37% was applied for assessment of damages on the arrears and from 26.09.2008 to 04/2009 the calculation of damages were made at the rate of 5% to 25%. Relying upon to the decision in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner (supra.)** it is argued that the Hon'ble Calcutta High Court while considering the rate of damages to be levied, held that :

“After the amendment his power to levy the damages up to maximum rate of 100% appears to have been curtailed. He is now to follow the sliding table incorporated in paragraph 32-A of the Scheme for applying rates for levy of damages according to the periods of default specified therein. The proceeding under Sec. 14-B was not at all pending at the time when the relevant amendment was made and para 32-A of the Scheme was introduced. Admittedly, such proceeding was initiated for the first time only in the year 1996 when the petitioner was served with a notice to show cause on April 16, 1996. The defaults for which writ petitioner did incur the liability for such damages, did occur at a time when the amendment was yet to be made. It is true that the right to levy the damages had already accrued to the Regional Provident Fund Commissioner long before amendment was made. But such right or the liability was not sought to be enforced till issuance of the said Notice dated April 16, 1996 when amendment had already been brought into force. Now, the amended and the unamended provisions of Sec. 14 B are really incompatible and inconsistent with one another, so far as the rates for levy of damages are concerned. By this amendment, the provisions of Sec. 14-B so far as it conferred the discretionary power to determine rates at which damages would have to be levied can be said to have been repealed by implication. The

amendment has not provided any saving clause expressly. But one thing is clear that discretionary power of the authority which was to levy the damages stands curtailed by virtue of the amendment. The Regional Provident Fund Commissioner cannot now levy the damages @ 100% if he thinks fit and is now required to follow the Scheme for the purpose of determining the rates at which damages would have to be levied, even though the liability, or the right to enforce the liability, for such damages had already accrued long before the amendment was effected. The intention of the legislature in amending Sec. 14-B and introducing the relevant Schemes in my view, was to curtail the discretionary power of the levying authority. The amendment thus affects both substantive right as well as procedural law and when the authority enforcing the right or liability which had already accrued prior to the amendment has been divested to a great extent of the discretionary power which he earlier had. As such, I have no hesitation to hold that in the instant case the levy of damages is to be governed by the amended provisions of Sec. 14-B read with para 32-A of the Scheme referred to above.”

8. It is finally argued that the respondent authority did not pass a reasoned order in arriving at such a conclusion. On behalf of the appellant, it is argued that in Section 14-B of the EPF Act the words “*such damages, not exceeding the amount of arrears*” and “*default in the payment of any contribution to the Fund....*” suggest that power under Section 14-B can be exercised, if on the date of levy of damages, at least on the date of invocation of Section 14-B there must be default coupled with outstanding arrears. It is contended that there can be no arrears if contribution to the fund has been paid, even belatedly. Therefore, what has been paid cannot be considered as arrears, therefore section 14-B is not attracted. In support of his argument, Learned advocate for the appellant also relied upon the decision in the case of **Kranti Associates Private Limited and Another vs Masood Ahmed Khan and Others [(2010) 9 SCC 496]** and submitted that the Hon’ble Supreme Court in the aforesaid judgment held that :

“Reasons must reveal the rational nexus between the materials which are considered and the conclusion reached - Quasi-judicial authority must record reason in support of its conclusion as it not only serve the wider principle of justice - National Consumer Disputes Redressal Commission ought to give reasons.”

It is vehemently argued that the impugned order having being passed in arbitrary manner without following the law laid down the Kranti Associates case is liable to be set aside.

9. Learned advocate for the respondent in reply argued that in the present case the appellant has already deposited the interest amount under Section 7-Q and that the appellant also admitted that they had made delayed remittance of the Provident Fund dues for its employees. Controverting the argument that unless there is any arrear on the date of invocation of Section 14-B of the EPF Act, no damages could be levied as there was no arrear, learned advocate for the respondent submitted that for involving Section 14-B of the EPF Act outstanding arrear is not necessary on that date. Relying upon a decision of the Hon’ble High Court of Delhi at New Delhi passed in the case of **Apex Public School vs Central Board of Trustees, EPF Organisation [W.P. (C) 2313/2011]**, it is argued that the Hon’ble Court has laid down the principle of law as follows :

“It is thus not mandatory on the date of computation of damages under Section 14B of the EPF Act that the provident fund dues must still be in "arrears". The expression used under section 14B of the EPF Act is, "When an employer makes default in the payment of any contribution to the Fund" and the requirement of arrears on the date of computation is not provided under the said section. In such a case, the court cannot include something which is not provided by law. Otherwise also, if the contention of the petitioner is permitted then in all cases the defaulter would make provident fund contributions after a delay and would claim that since on the day of notice under Section 14B of the EPF Act no arrears were pending hence, he is not liable to damages. This would clearly have an effect of

making the provisions of this section nugatory which cannot be permitted.”

It is argued on behalf of the respondent that the appellant is duty bound to pay the damages assessed against him under Section 14-B of the Act and that the appeal is liable to be dismissed.

10. Having considered the facts and circumstances of this case and the impugned order, Memorandum of Appeal, the reply filed thereto on behalf of the Provident Fund Commissioner and arguments advanced by the learned advocates for the respective parties, I find that the appellant establishment attended the hearing only on two dates and remained unrepresented on six dates. The appellant appears to be nonchalant in taking part in the proceeding. However, it appears to me that the respondent during assessment of damages exceeded the notice period and transcended beyond the notice period from 01.11.1998 to 30.04.2009 and made assessment from 10/1998 to 03/2009, preponing the assessment period. There is no reflection in the impugned order as to why there was inconsistency between the period mentioned in the Notice and the period taken into consideration for assessment of damages and interest.

11. The two reasons ascribed in the impugned order for arriving at the conclusion are :

- (i) The establishment has delayed in payment of statutory dues without any valid reason and
- (ii) Not only to cover the loss of interest caused to the fund was required to be taken into account, but to deter the employer from repeating such violation of Rules, required to be levied so that in future dues are paid in time.

12. I find that the above reasons assigned in the impugned order are generic in nature and do not touch upon the facts and circumstances of this case relating

to the extent of delay, amount of accumulation and if the appellant establishment had any extenuating circumstances in their favour for any waiver of concession. It is also taken note that the provisions of Section 14-B has been invoked against the appellant establishment in the year 2014 in respect of the delayed remittance for the period from 1998 to 2009. This delay in issuing notice has not been explained in the impugned order. On considering the time period it appears to me that there is no embargo upon the authority in issuing such Notice however the respondent has to justify their delay. The law has been laid down on the point that on the days of Notice under Section 14-B of the EPF Act no pendency of arrears was necessary.

13. The third issue in this appeal is that the assessment of damages for delayed remittance was made on the basis of different rates which were not prevalent at the time of invocation of Section 14-B of the EPF Act. It is disclosed in the Show Cause Notice that damages were assessed applying the rates from 17% to 37% up to 25.09.2008. On the basis of Notification dated 26.09.2008 the rates applicable in Paragraph – 32A of the EPF Scheme were amended and new rates for assessing damages were laid down between 5% to 25%. It appears to me that the respondent authority exceeded its jurisdiction by not following such notification and applying old and higher rates on delayed remittance up to 25.09.2008. I therefore hold that the impugned order no. A/045/SRO/DGP/Damages/WB/37183/6185 dated 25.02.2015 under Section 14-B of the EPF Act is not tenable due to exceeding the period of assessment mentioned in the notice, application of different rates of damages not prevailing at the time of assessment of damages and due to passing of impugned order without assigning proper reason. The impugned order is accordingly found not tenable and is set aside. The appeal is allowed on contest. The Employees' Provident Fund case is remanded to the respondent for passing a fresh order after giving opportunity of hearing to the appellant. The case be heard and

disposed preferably within three (3) months from the date of communication of this order. The appellant shall participate in the hearing without fail and place all their material before the concerned authority.

Hence,

O R D E R E D

that the appeal under Section 7-I of the EPF Act is allowed on contest. The impugned order dated 25.02.2015 is set aside. The Employees' Provident Fund proceeding under Section 14-B of the EPF Act is remanded to the respondent authority with a direction to hear the matter afresh after giving opportunity to the appellant and pass a fresh order preferably within three (3) months from the date of communication of this order. The appellant shall participate on all dates of hearing without fail. Let copy of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.