

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

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

**EPFA No. 01 of 2017**  
[ATA 180(15) of 2017]

**M/s. Hotel Binapani, Birbhum**

..... Appellant.

Vs.

**Assistant Provident Fund Commissioner, Durgapur**

..... Respondent.

**ORDER**

**Dated: 29.08.2024**

Mr. Bibhas Banerjee, Advocate

..... for the Appellant.

Mrs. Mousumi Ganguli, Advocate

..... for the Respondent.

1. The appellant assailed the impugned order dated 15.02.2017 passed by the respondent under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act), levying damages of Rs. 11,33,427/- (Rupees eleven lakh thirty-three thousand four hundred and twenty-seven only) and an interest of Rs. 12,82,316/- (Rupees twelve lakh eighty-two thousand three hundred and sixteen only) under Section 7-Q of the EPF Act for belated payment of Provident Fund dues for the period from 08/1997 to 05/2016.

2. In gist, the fact of the appellant's case is that the appellant establishment is covered under the EPF Act and has been allotted a Provident Fund code bearing No. WB/29538. On 22.11.2016 summons was issued to the appellant establishment under Section 14-B of the EPF Act for delayed remittance of Provident Fund dues under Section 6, 6A and 6C of the EPF Act within the period prescribed in paragraph 38 of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the EPF Scheme, 1952), assessing damages of Rs. 12,35,129/- (Rupees twelve lakh thirty-five thousand one hundred and twenty-nine only) and interest of Rs. 17,41,899/- (Rupees seventeen lakh forty-one thousand eight hundred and ninety-nine only) for delayed remittance for the period from 01.04.1996 to 22.11.2016 and M/s. Hotel Binapani was directed to appear and make their representation before the Provident Fund authority on 16.12.2016. On 15.02.2017 respondent authority passed an order in relation to the establishment for failing to pay the contribution for Employees' Provident Fund, Employees' Pension Fund, Employees' Deposit Linked Insurance Scheme, Administrative Charges and Administrative Charges on Employees' Deposit Linked Insurance Scheme, for the period from 08/1997 to 05/2016. Challenging, the impugned order in this appeal it has been contended that the respondent has arbitrarily passed a non-speaking and non-reasoned order without applying mind and in contravention to the provision of the EPF Act. It is further urged that the respondent levied damage ignoring the law laid down by the Hon'ble High Court of Delhi in the case of **M/s. Systems and Stamping & Another vs Employees' Provident Fund Appellate Tribunal & Others [2008 (2) LLJ 939]**, and the decision of the Hon'ble High Court of Delhi in the case of **Roma Henny Security Services Pvt. Ltd. vs Central Board of Trustees, E.P.F.O. [W.P. (C) 831 OF 2012]**. Appellant further relied upon the decision of the Hon'ble High Court at Calcutta in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]**. The factual contention of the appellant is that the respondent levied

damages without arriving at a finding regarding existence of mens rea on the part of the appellant in delayed payment and the damages have been levied without considering the reasons of default and the financial position of the company at the time of delayed remittance.

3. The appeal under Section 7-I of the EPF Act has been preferred on 10.03.2017 before the Employees' Provident Fund Appellate Tribunal, New Delhi, which was later transferred to the Central Government Industrial Tribunal -cum- Labour Court, Asansol on 27.09.2018. The grounds of the appeal delineated in the Memorandum of Appeal inter alia are, that the appellant was forced to close its hotel activity as directed by the Pollution Control Board and it was facing financial crisis. The present management took over the appellant hotel on 26.08.1998 and was not aware about the coverage of the appellant under the EPF Act. It is contended that the action of the respondent for recovery of Provident Fund dues was initially challenged before the Hon'ble High Court at Calcutta in Writ Petition No. 18742(W) of 2007, urging that the petitioner having purchased the building from the erstwhile management was not liable for remitting the Provident Fund dues for the erstwhile management. The Hon'ble High Court disposed the writ petition, giving liberty to the appellant / petitioner to approach the authority, the Assistant Provident Fund Commissioner, Durgapur and the Provident Fund authority was directed to take further steps for recovery of Provident Fund dues after deciding as to whether the petitioner is liable to pay dues and the recovery proceeding was also stayed by the Hon'ble High Court on 30.07.2008. It was further indicated that the petitioner establishment shall file an application explaining their position in this regard and in the event such application is filed within two weeks from 30.07.2008, the same should be considered and disposed of within four weeks from the date of application and thereafter further step would be taken on the decision of Provident Fund authority.

4. It is admitted by the appellant that it has paid the Provident Fund dues for the period from 08/1997 to 10/2005 due to pressure created by the Provident Fund authority. Thereafter, respondent issued Notice to show cause for payment of damages and interest for delayed remittance from 08/1997 to 05/2016. The appellant appeared before the respondent and took a plea that the delay was due to pendency of Writ Petition before the Hon'ble High Court at Calcutta and that delay in making payment up to 06/1998 was due to erstwhile management. It is claimed that the proceeding for recovery of damages has been initiated after eighteen years and the appellant is not in a position to trace out its old records and is unaware about the reasons of the default committed by its erstwhile management. It is contended that due to amendment of paragraph 32A of the EPF Scheme, 1952 w.e.f. 26.09.2008, the damages cannot be levied along with interest of twelve percent (12%) per annum. It is claimed that the respondent has levied damages from 08/1997 to 05/2016 as per the old rates of damages in paragraph 32A of the EPF Scheme, 1952, which has been amended by segregating interest from damages. The appellant urged that the prevailing rate of damages has not been assessed and prayed for setting aside the impugned order dated 15.02.2017.

5. Respondent did not file any reply in this appeal. A verified petition was filed by the respondent on 14.09.2023, stating therein that in the reply the respondent specifically stated that Mr. B. Paul, representative of appellant establishment appeared in the proceeding on 04.01.2017 and agreed to remit the dues from 08/1997 to 10/2005.

6. The point for consideration before this Tribunal in this appeal is whether the impugned order demanding the payment of damages under Section 14-B and interest under Section 7-Q of the EPF Act is tenable under the facts and laws involved and whether the same calls for any interference. Record reveals that on

18.05.2017 learned Employees' Provident Fund Appellate Tribunal, New Delhi recorded in the order sheet that respondent did not file counter reply and was directed to file counter reply within one month. The record was transferred to Central Government Industrial Tribunal -cum- Labour Court, Asansol on 27.09.2018 but no reply was filed by the respondent.

7. Mr. Bibhas Banerjee, learned advocate for the appellant in course of his argument raised three major issues challenging the impugned order. The first point of contention is that a proceeding under Section 14-B and 7-Q has been initiated after a period of eighteen years after the first default and it is difficult for the appellant to trace out its old records as there has been a change in management of the appellant's hotel business on 26.08.1998 and the present management is now aware about the coverage of the appellant under the Act. The second facet of the appellant's argument is that the damages assessed by the respondent for the period from 08/1997 to 05/2016 are according to the provisions of old paragraph 32-A of the EPF Scheme, 1952 and not according to the amended paragraph 32-A of the EPF Scheme, 1952. It is contended that the interest levied against the appellant is already included in the component of damages. Furthermore as damages have been levied at the old rates, learned advocate relied upon the decision of the Hon'ble High Court of Delhi in the case of **M/s. Systems and Stamping & Another vs Employees' Provident Fund Appellate Tribunal & Others [2008 (2) LLJ 939]**, and the decision of the Hon'ble Larger Bench of Hon'ble High Court of Delhi in the case of **Roma Henny Security Services Pvt. Ltd. vs Central Board of Trustees, E.P.F.O. [W.P. (C) 831 OF 2012]**. Reliance was also placed upon the decision of the Hon'ble High Court at Calcutta in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]** and has been argued that the damages and interest were required to be calculated on the basis of prevailing rates and not on the old rates. Learned advocate for the appellant

argued that no reason has been assigned by the respondent in reaching its conclusion, the impugned order is therefore liable to be set aside.

8. Learned advocate for the respondent refuting the argument advanced by the appellant submitted that the change of management of any establishment does not relieve it from its obligation of making payment of Provident Fund dues in respect of its employees. Referring to paragraph 6(A)(a) of the Memorandum of Appeal, learned advocate for the respondent submitted that the appellant was fully aware about that the hotel and lodge is covered under the EPF Act w.e.f. 01.08.1988 vide coverage allotment letter dated 14.11.1994. The appellant further admitted that it has paid the Provident Fund dues for the period from 08/1997 to 10/2005. Thereby, the appellant is liable to pay the damages and interest under Section 14-B and 7-Q of the EPF Act for not depositing the Provident Fund dues within the stipulated time under paragraph 38 of the EPF Scheme, 1952. It is argued that the Limitation Act does not apply to matter related to Provident Fund as it is a welfare legislation.

9. Regarding levy of damages for the specified period appearing in the impugned order, learned advocate submitted that the amount of damages was assessed under Section 14-B according to the prevailing rate of interest, ranging from five percent to twenty-five percent and an interest of twelve percent was calculated according to the provision under Section 7-Q, which was enforced w.e.f. 01.07.1997. In reply to the contention that the impugned order lacks reasons and is liable to be set aside, learned advocate for the respondent argued that imposition of damages under Section 14-B and levying of interest under Section 7-Q of the EPF Act are consequence of delayed remittance by the employer which are laid down in the law and whatever Act follows in accordance with law needs no special reasoning. It is submitted that the admission on the

part of the appellant establishment clearly demonstrates that the appellant establishment did not pay the Provident Fund dues from 08/1997 to 10/2005 within the stipulated time. Therefore, it is sufficient that the respondent authority after giving reasonable opportunity to the appellant establishment and in exercise of the powers conferred upon him under Section 14-B and 7-Q of the EPF Act assessed the dues payable by the appellant. It is urged that there is no merit in the appeal and the same is liable to be dismissed.

10. Having considered the rival contention and materials on record, it emerges from the undisputed fact that the appellant establishment at the relevant time was covered under the EPF Act and an EPF Code was also allotted to it initially a Notice was issued on 22.11.2016 claiming payment of damages and interest for delayed remittance for the period from 01.04.1996 to 22.11.2016. The rates of damages to be levied are indicated in the Notice which varied from seventeen percent to twenty-five percent from 26.09.2008. The calculation sheets which have been produced before this Tribunal along with the application dated 20.07.2023 and 14.09.2023 manifestly indicates that the damages under Section 14-B and penal interest under Section 7-Q were calculated in respect of M/s. Kali Chowrasta Bulap Rural Development Society. I have no hesitation to hold that the respondent authority has negligently proceeded to imposed damages and penal interest against the appellant establishment by sending calculation sheet in respect of some other establishment. There cannot be any second thought in holding that such calculation sheets cannot bind the appellant establishment nor create liability against it.

11. The Notice issued to the appellant establishment initiating the proceeding under Section 14-B, proposed to levy damages up to 25.09.2008 on the basis of unamended rate of damages appearing in the old paragraph 32A of the EPF Scheme, 1952. The argument on behalf of the appellant is that the component

of interest levied under Section 7-Q of the EPF Act was included in the damages up to 25.09.2008 and the impugned order directing the appellant establishment to pay the interest once again for the said period is not tenable under the EPF Act. This contention of the appellant finds support from the decision of the Hon'ble High Court of Delhi in the case of **Roma Henny Security Services Pvt. Ltd. vs Central Board of Trustees, E.P.F.O. [W.P. (C) 831 OF 2012]** wherein in paragraph fourteen the Hon'ble High Court held that :

*“ 14. In the present case, the period for which damages under Section 14-B of the Act are levied is from June, 1999 to October, 2008. Therefore, for almost the entire period interest stands charged by imposing damages under Section 14-B of the Act with the application of rates mentioned in the table prevailing prior to 26.9.2008. It is not the case of the Department that for one month i.e. 27.9.2008 to October, 2008 damages were charged on the rates specified in the new table. When the matter is examined from this angle also we find substance in the argument of the learned counsel for the petitioner that the clarification issued by the Department that interest is to be charged separately would be of no avail. Of course, that may be the legal position. However, the mechanism to charge interest separately was not enforced by modifying the existing table which step was taken only in issuing fresh table making effective from 26.9.2008. ”*

In the present case it would appear from the Notice that the interest for the period from 08/1997 to 25.09.2008 was charged on the basis of old rates which is inherently contrary to the provisions of law applicable since 26.09.2008.

12. In the case of **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]**, wherein the High Court at Calcutta in Paragraph – 29 laid down :

*“ 29. Let me now consider the effect of the amendment that was made in S. 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by S. 20 of Amendment Act 33 of 1988 which came into force with effect from 1*

*September 1991 as well as the insertion of Para. 32A in the Employees' Provident Fund Scheme, 1952, with effect from 1 September 1991. Both before and after the amendment it has been optional with the Regional Provident Fund Commissioner to levy and recover the damages by way of penalty. Prior to the amendment, he had the power to levy the damages at the rate, the maximum of which was fixed at 100 per cent. It did not, however, prescribe any minimum rate. He was free to impose damages at such rate as he thought fit. After the amendment his power to levy the damages upto the maximum rate of 100 per cent appears to have been curtailed. He is now to follow the sliding table incorporated in Para. 32-A of the Scheme for applying the rates for levy of damages according to the periods of default specified therein. The proceeding under S. 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 case on 16 April 1996. The defaults for which the writ-petitioner did incur the liability for such damages, did occur at the time when the amendment was yet to be made. It is true that the right to levy the damages and already accrued to the Regional Provident Fund Commissioner long before the amendment was made. But such right or the liability was not sought to be enforced till the issuance of the said notice, dated 16 April 1996, when the amendment had already been brought into force.”*

The principle of law laid down by the Hon'ble High Court is that under Section 14-B of the EPF Act the prevailing rate of damages would apply, depending upon the period of delay. In the impugned order dated 15.02.2017 the respondent appeared to have applied the rate of damages specifically mentioned in the Summons dated 22.11.2016, which is not tenable under law and it violates the principle laid down by the Hon'ble High Court at Calcutta in the case of **Atal Tea Company Limited and Another (Supra.)**.

13. It is further evident that the impugned order has been passed without assigning any reason. In a catena of decisions, it has been held that reasons must reveal a nexus between materials which are considered and the conclusion reached. It is essential that a quasi-judicial authority must record reasons in support of its conclusion, as it serves the wider principles of natural justice. In the case of **Kranti Associates Private Limited and Another vs Masood Ahmed Khan and Others [(2010) 9 SCC 496]**, the Hon'ble Supreme Court of India held that the order passed by a quasi-judicial authority or even an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons.

14. In the instant case the Assistant Provident Fund Commissioner has passed the impugned order in a most casual manner by issuing Calculation Sheets in the name of a different establishment. For the purpose of calculating damages, it has not applied the prevailing rates of damages but took into consideration the rates which are inapplicable after the amendment of paragraph 32A of the EPF Scheme, 1952 w.e.f. 26.09.2008.

15. In view of my above discussion, I hold that the impugned order is perverse and not consistent with the settled principles of law and provision of the statute. The impugned order dated 15.02.2017 is hereby set aside. The case is remanded back to the respondent with a direction to pass a fresh order within three months from the date of communication of this order, after providing opportunity to the appellant to represent their case.

Hence,

**ORDERED**

that the appeal under Section 7-I of the EPF Act is allowed on contest without cost. The impugned order dated 15.02.2017 passed against the appellant establishment is set aside. The case is remanded back to the respondent with a direction to pass a fresh order within three months from the date of communication of this order, after providing opportunity of hearing to the appellant. Let copies 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.