

**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. 02 of 2015**  
[ATA 332(15) of 2015]

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

**ORDER**

**Dated: 08<sup>th</sup> June, 2023**

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

**1.** Feeling aggrieved with impugned order dated 25.02.2015 passed by the Respondent authority under Section 14-B and 7-Q of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the EPF Act), levying damages of Rs.1,65,376/- and interest of Rs.1,07,446/- against the Appellant establishment for the period from 08/2010 to 10/2012. The present appeal is preferred under Section 7-I of the EPF Act.

**Contd. Page – 2**

**2.** In gist, the fact of the case leading to this appeal is that a Show Cause Notice No. WB/DGP/0037183/000/Enf 500/Damages/775 dated 22.01.2014 was issued by the Assistant Provident Fund Commissioner for appearance and hearing on 27.02.2014 for delayed remittance of Provident Fund dues for its employees made by the establishment during the period from 01.09.2010 to 30.11.2012, and as to why damages of Rs.1,17,928/- and interest of Rs.84,802/- would not be realized from the establishment.

**3.** The Appellant contended the Respondent has passed a non-speaking and non-reasoned order and levied damages and interest in a mechanical manner without applying his mind and in contravention to the provisions of the EPF Act. According to the Appellant damages have been imposed without considering the financial position of the company at the time of payment of Provident Fund dues and that it has violated the principle of natural justice and acted in an arbitrary manner by exceeding its jurisdiction and scope of enquiry. It is contended that the Respondent has imposed higher amount of damages and interest than the amount mentioned in the Show Cause Notice. It is urged that there was no intentional delay on the part of the Appellant in depositing the Provident Fund dues and though the interest is included in the damages the Respondent has imposed additional damages and interest assessed under Section 14-B and 7-Q of the EPF Act. Further case of the Appellant is that the impugned order has been passed after a period of five years which is unreasonable and caused prejudice to the Appellant. It is urged that without deciding the question as to whether the Appellant is liable to pay penal damages, the Respondent has levied the damages at the maximum rate provided under Paragraph – 32A of Employees' Provident Fund Scheme, 1952 (hereinafter referred to as EPF Scheme). It has been prayed that the impugned order dated 25.02.2015 be set aside and such other relief be granted as the Appellant may be entitled to.

**4.** Though the appeal has been preferred against order of the Regional Provident Fund Commissioner, S.R.O. Durgapur, the reply has been filed by the Assistant Provident Fund Commissioner, Durgapur without impleading himself as Respondent. The rival contention is that summon dated 22.01.2014 was duly served upon the Appellant establishment and the Appellant's representative appeared before the Respondent authority but failed to file any objection against the Notice. In course of the proceeding the Regional Provident Fund Commissioner has considered the law laid down on the subject and after applying his mind decided the penal damages under Section 14-B according to the rate of damages fixed by the Government of India by issuing Notification from time to time. It is urged that no other rate can be applied for assessment of damages except what is prescribed. The Respondent urged that the Tribunal has no jurisdiction to consider any appeal against the order passed under Section 7-Q of the Act. Furthermore, Tribunal can interfere with the quantum of damages determined in an enquiry but cannot determine the amount under Section 7-Q of the Act.

**5.** According to the Respondent authority the damages assessed under Section 14-B of the EPF Act serves two-fold purpose that is to impose penalty and also serve as a deterrent to the defaulter so that such default is not committed in future and prayed for dismissal of the appeal.

**6.** The appeal came up for hearing on 22.12.2022, 12.01.2023, 23.03.2023, and 04.05.2023. Mr. Khanna, learned advocate for the Appellant argued that the damages assessed against the Appellant is of a higher amount than the amount mentioned in the summons to appear. Furthermore, the rate of damages applied for computing the penalty imposed is different from the rate specified in Paragraph – 32A of the EPF Scheme. It is argued that the impugned order is bad in law and is liable to be set aside.

7. Mrs. Mousumi Ganguli, learned advocate for the Assistant Provident Fund Commissioner vehemently argued that no dispute has been raised by the Appellant regarding the period for which delay has been caused in depositing the Provident Fund dues. According to the Respondent the law prescribes imposition of damages for any delayed remittance of dues so that the Fund could be compensated for the delayed payment and further object of such imposition of damages is to deter the establishment from committing such delay in future.

8. I have considered the facts and circumstances of this case, the impugned order, Memorandum of Appeal, the reply filed by the Assistant Provident Fund Commissioner, Durgapur Show Cause Notice and argument advanced by the learned advocates for the respective parties. The facts culled out from the record is that the Appellant is covered under the EPF Act under Code No. WB/37183 and admittedly defaulted in payment of Provident Fund contribution in time, envisaging a consequential liability under Section 14-B of the EPF Act. Admittedly a prior and reasonable notice was given to the Appellant establishment on 22.01.2014 in respect of delayed remittance of Provident Fund dues for the period from 01.09.2010 to 30.11.2012 asking them to appear on 27.02.2014. The total dues including damages and interest was Rs.2,02,730/-. In course of hearing the damages was calculated as Rs.1,65,376/-. The rate of damages which applied for the delayed remittance was from 5% to 25%. It is manifestly clear that the rate applicable for assessment of damages was that which was notified on 26.09.2008. In course of proceeding under Section 14-B it was revealed that the delayed deposit was in respect of the period from 08/2010 to 10/2012 which is practically for the same length of time and no contrary fact was placed. It also appears from the impugned order that reasonable opportunity of hearing was given to the Appellant. The EPF Act has been legislated for providing Social Security to the employees in the establishment, which casts a duty upon the employer to make compulsory

deduction for Provident Fund and to deposit the same in the workers' account in the Employees' Provident Fund Office. Any failure or delay in remittance of EPF contribution attracts the provision of Section 14-B of the Act for payment of damages. In my considered view there is no error on the part of the Respondent in imposing penalty in the form of damages and interest against the Appellant. I further hold that the order passed under Section 7-Q of the EPF Act is not appealable under Section 7-I of the EPF Act and needs no interference.

9. Having considered the facts and circumstances I do not find any merit in the appeal and the argument advanced by the learned advocate of the Appellant. This appeal is in respect of assessment of damages made under Section 14-B of the EPF Act. The rate of interest applied for assessment of damages is the prevalent rate of damages applicable under Paragraph – 32A of the EPF Scheme. Therefore, I do not find any illegality or impropriety in the impugned order and it does not call for any interference. The appeal is therefore dismissed and the impugned order is affirmed. The Appellant is directed to deposit the entire amount specified in the impugned order within fifteen days from the date of communication of this order, if not realized earlier.

Hence,

**O R D E R E D**

that the appeal under Section 7-I of the EPF Act is dismissed on contest. The impugned order dated 25.02.2015 passed by the Regional Provident Fund Commissioner is affirmed. The Appellant is directed to deposit the entire amount specified in the impugned order within fifteen days from the date of communication of this order, if not recovered earlier.

Sd/-

**(ANANDA KUMAR MUKHERJEE)**

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