

**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. 02 of 2017
[ATA 181(15) of 2017]

M/s. Hotel Binapani, Birbhum

..... Appellant.

Vs.

Assistant Provident Fund Commissioner, Durgapur

..... Respondent.

ORDER

Dated: 09.05.2024

Mr. S. K. Khanna, Adv.

Mr. C. K. Chandra, Adv.

Mr. B. Banerjee, Adv.

..... for the Appellant.

Mrs. Mousumi Ganguli, Adv.

..... for the Respondent.

1. The appellant has been preferred this appeal under Section 7-I of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter referred to as the EPF Act), challenging impugned order No. A/045/SRO/DGP/Damages/WB/29538/5787 dated 24.12.2014 passed by the Respondent authority under Section 14-B and 7-Q of the EPF Act, assessing damages of Rs. 1,22,957/- (Rupees one lakh twenty-two thousand nine hundred and fifty-seven only) and interest of Rs. 97,440/- (Rupees ninety-seven thousand four hundred and forty only) against the appellant for delayed remittance of Provident Fund dues for the period from 02/1996 to 10/2005.

2. Fact of the case in brief is that, the appellant establishment being engaged in a hotel and lodge business is covered under the EPF Act w.e.f. 01.08.1988, having Provident Fund Code No. WB/29538. The appellant's hotel business was closed in compliance with the direction of the Pollution Control Board, which led to serious financial crisis. The present management acquired the business and was not aware about the coverage of the appellant under the EPF Act. Appellant firm purchased the hotel building from the erstwhile management on 26.08.1998. It is the case of the appellant that under pressure of Employees' Provident Fund Commission the dues of the aforesaid period assessed under Section 7-A of the EPF Act was paid by them. The respondent authority thereafter issued a Show Cause Notice bearing No. WB/DGP/0029538/000/Enf 501/Damages/1312 dated 26.03.2014 for levy of damages under Section 14-B and 7-Q of the EPF Act respectively for the period from 01.04.1996 to 20.03.2014. The appellant appeared before the respondent and disputed the claim on the ground that the delay in payment is attributable to the erstwhile management of the hotel.

3. After recalculation a fresh Notice dated 12.09.2014 was issued claiming damages under Section 14-B and interest under Section 7-Q of the EPF Act for the period from 05/1996 to 10/2005. In course of the Enquiry Proceeding representative of the appellant establishment appeared and made representation that payment under Section 7-A of the EPF Act was made for the period from 05/1996 to 07/1997 and 08/1997 to 10/2005. The respondent authority arrived at a finding that the appellant establishment had delayed in payment of statutory dues without any valid reason. Furthermore, to cover the loss of interest caused to the Fund and also to deter the company from making such violation of rules penal damages and interest were levied so that in future Provident Fund dues were paid in time. It is the specific case of the appellant that after amendment of Paragraph 32A of the EPF Scheme w.e.f. 26.09.2008 the damages could not be

levied along with interest @12% in view of the judgment of the Hon'ble High Court at Kolkata in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]**. It is urged that the delay of eighteen years in levying damages has caused prejudice to the appellant as the old records and reasons for delay was in the knowledge of the earlier management and the appellant is not in a position to explain the reasons for delay. The appellant contended that the impugned order dated 24.12.2014 is a non-speaking and non-reasoned order which is liable to be set aside. the appellant further contended that the attachment of the appellant's bank account by the respondent and issued Show Cause Notice dated 25.01.2017 for arrest of the partners of the appellant for recovery of amount as damages and interest are without basis and are not tenable.

4. The grounds of appeal inter-alia are that the impugned order dated 24.12.2014 has been passed after an inordinate delay of eighteen years after payments were made and the order is liable to be set aside due to a long delay which has prevented the appellant from finding the old records or the reasons of defaults which was known to the earlier management. It is urged that the respondent passed the impugned order for levy of damages for the period from 02/1996 to 10/2005 as per old rate of damages and not in accordance with the amended provisions of Paragraph 32-A which laid down new rate of damages. Reliance has been placed upon the decision of the Hon'ble High Court at Kolkata in the case of **M/s. Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [1998 (79) FLR 372]**. According to the appellant delay in payment of dues was not intentional for which by order dated 30.07.2008 passed in Writ Petition No. 18742(C) of 2007, the Hon'ble High Court at Calcutta referred the matter back to the respondent authority to decide the issue of coverage. In the instant appeal the appellant prayed for setting aside the impugned order dated 24.12.2014 and to pass such other relief as deem fit and proper.

5. The appeal was filed on 10.03.2017 before the Employees' Provident Fund Appellate Tribunal at New Delhi on a plea that the impugned order dated 24.12.2014 was received by the appellant establishment only on 27.02.2017, as such there is no delay in filing of the appeal. It appears from the record that no formal order of admission of appeal was passed considering the period of delay. It was transferred to this Tribunal at Asansol on 27.09.2018.

6. Respondent contested the appeal by filing a reply on 09.03.2023. Contrary case of the respondent is that failure to make contribution within the stipulated period prescribed in Paragraph 38 of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the EPF Scheme) attracts the provision for levy of damages under Section 14-B of the EPF Act. Depositing the dues after lapse of a period does not absolve the employer of the establishment from paying damages. Respondent contended that non-availability of funds or running the establishment at a loss is not a valid reason for delayed remittance. The object of 14-B of the EPF Act is to deter the employer from making default in payment of Provident Fund dues and it has authorized the Regional Provident Fund Commissioner to impose exemplary damages to prevent the employer from making further default. Furthermore, default in making contribution to the fund makes the employer liable to pay interest in terms of provisions under Section 7-Q of the EPF Act.

7. Regarding the issue of delay in initiating the enquiry for assessing damages and interest against the appellant, it is urged that there is no limitation in the matter of initiating such proceeding. In support of such contention respondent relied upon the decision of the Hon'ble Supreme Court of India in **Hindustan Times Limited Vs. Union of India and Others [(1998) 2 SCC 242]** wherein it was held that:

“In spite of all these amendments, over a period of more than thirty years, the

legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. ”

The respondent asserted that the Tribunal has no jurisdiction to entertain appeals against order under 7-Q of the EPF Act and the Tribunal cannot interfere with the quantum of damages when a composite order is passed. Respondent contended that there is no merit in the appeal and the same is liable to be dismissed with cost.

8. The stage is now set to consider whether the impugned order dated 24.12.2014 is sustainable under the facts and law involved or there is any infirmity, impropriety or illegality in the impugned order, calling for interference?

9. Mr. S. K. Khanna, learned advocate for the appellant advancing his argument submitted that the proceeding under Section 14-B of the EPF Act was initiated for delayed remittance of Provident Fund dues in respect of the appellant establishment for the period from 02/1996 to 10/2005 but the damages were levied on the basis of the old rate which have been amended in 2008 and not on the basis of the prevailing rate. Mrs. Mousumi Ganguli, learned advocate for the respondent argued that Summons bearing No. WB/DGP/0029538/000/Enf 501/Damages/1312 dated 26.03.2014 was issued to the appellant establishment for delayed remittance of Provident Fund dues for the period from 01.04.1996 to 20.03.2014. Damages of Rs. 1,22,957/- and interest of Rs. 97,440/- were assessed against the appellant. It is submitted that the Calculation Sheets in respect of the assessment were also attached with the Summons fixing 27.05.2014 for appearance. Learned advocate submitted that ample opportunity was provided to the appellant and the hearing was held up on 27.05.2014, 25.07.2014 where none appeared for the appellant. The matter was adjourned to 21.08.2014 where Mr. Swarup Kumar Saha, Manager,

appeared on behalf of the appellant. The case was adjourned to 24.10.2014 and 25.11.2014 where none appeared for the appellant and no objection was raised against the calculation made. Learned advocate submitted that the appellant is liable to pay the damages and interest calculated against the establishment. On 20.07.2023 respondent filed a verified petition before this Tribunal stating therein that invertedly calculation sheets under Section 14-B of the EPF Act bear the name of M/s. Birbhum Vivekananda Homeopathic Medical College-Hospital in place of M/s. Hotel Binapani, Birbhum. It is further stated that the establishment never mentioned in the Memorandum of Appeal that the Calculation Sheets received by them is not the Calculation Sheets for assessment of damages under Section 14-B in respect of M/s. Hotel Binapani, Birbhum and no objection was raised before the Provident Fund authority or in the Memorandum of Appeal regarding the discrepancy in the name of the establishment reflected in the Calculation Sheets.

10. Considered the facts and circumstances involved and the arguments advanced. Admittedly, the appellant establishment is covered under the EPF Act and Provident Fund Code No. WB/29538 has been allotted to M/s. Hotel Binapani. The appellant establishment witnessed change of its management on 26.08.1998. The appellant claimed that the new management of the Hotel was not aware of the coverage of the appellant establishment under the EPF Act as such the appellant establishment is not liable for delayed remittance of Provident Fund dues by the erstwhile management. It may be gathered from the Memorandum of Appeal that the appellant has deposited the Provident Fund dues under Section 7-A of the EPF Act. The change in the management of the appellant establishment does not ipso facto absolve the appellant from its legal responsibility of depositing the Provident Fund dues according to Paragraph 38 of The EPF Scheme nor the consequential damages and interest arising out of delayed payment. The present management of the appellant hotel business being

fully conscious of the right and responsibility involved, opted to acquire the appellant establishment and it cannot obviate its responsibility in fulfilling the legal requirements under the Act.

11. In the Memorandum of Appeal, the appellant raised a dispute that since the proceeding under Section 14-B of the EPF Act was initiated on the basis of Summons for a period from 02/1996 to 10/2005, the appellant was prejudice due to delay of 18 years in levying the damages as it had no opportunity of having access to its old record. To refute the claim learned advocate for the respondent has relied upon a decision of the Hon'ble Supreme Court of India in the case of **Hindustan Times Limited Vs. Union of India and Others [(1998) 2 SCC 242]**, wherein it was held that the legislature did not think fit to make any provision prescribing a period of limitation. Therefore, it is not the legislative intention to prescribe any period of limitation for computing and recovery of the arrears and the Provident Fund Trust Fund is legally entitled to initiate the proceeding at any stage for recovery of dues as penalty. To my mind the delay in initiating the proceeding under Section 14-B and 7-Q of the EPF Act does not vitiate the proceeding against the appellant establishment. The specific contention of the appellant is that the damages assessed against the appellant establishment has not been calculated at the prevailing rate, which is applicable to the appellant establishment after incorporation of 32-A of the EPF Scheme. Learned advocate for the appellant also pointed out that the Calculation Sheets which have been produced by the respondent cannot be co-related to the appellant establishment as the Calculation Sheets were related to M/s. Birbhum Vivekananda Homeopathic Medical College-Hospital. On a perusal of copy of Summons dated 26.03.2014 it appears that the rates up to 25.09.2008 has been laid down as 17% to 37%, which is the rate applicable prior to Notification G.S.R. 689(E) dated 26.09.2008 which amended Paragraph 32-A of the EPF Scheme. In the case of **Andrew Yule and Company Limited vs Regional Provident Fund Commissioner and others [C.O. No. 15347 (W) of 1992]**, the Hon'ble High Court at Kolkata held that :

“ By the amendment provision of Section 14B of the Act read with paragraph 32-A of the Scheme with effect from September 1, 1991, the legislature has manifested its intention to divest the respondent No. 1, the concerned authority, of the power to impose penalty according to its discretion from the aforesaid day; on the other hand, it has mandated the respondent No. 1 to assess penalty in accordance with the chart shown in paragraph 32-A of the Scheme notwithstanding the fact that the delay or default occurred earlier.”

In the said case it was held that the respondent assessed penalty which was in excess of Paragraph 32A. In the instant case it appears that the respondent acted in excess of its authority by demanding damages in excess of the prevailing rate.

12. The argument on behalf of appellant also finds support from the decision in the case of **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996]**, wherein the High Court at Calcutta in Paragraph – 29 held that :

“ The effect of amendment that was made in Section 14-B of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, by Section 20 of Amendment Act 33 of 1988 which came into force with effect from 01.09.1991 as well as the insertion of Paragraph – 32A of Employees' Provident Fund Scheme, 1952 w.e.f. 01.09.1991. Both before and after the amendment it has been optional with the Regional Provident Fund Commissioner to levy and recover the damages by the 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%. 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% appears to have been curtailed. He is now to follow the sliding table incorporated in paragraph 32-A of the scheme for applying the rates for levy of damages according to the periods of default specified therein. The proceeding under Section 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 16.04.1996. The defaults for which the 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 the amendment was made. But such right or the liability was not sought to be enforced till the issuance of said notice dated 16.04.1996 when the amendment had already been brought into force.”

It therefore appears that in proceeding under Section 14-B of the EPF Act the prevailing rate of damages applied depending upon the period of delay. In the impugned order dated 24.12.2014 the respondent appeared to have applied rate of damages specifically mentioned in its Summons dated 26.03.2014, which is not tenable under the law and which violates the settled principle laid down by the Hon'ble High Court in the case of **Atal Tea Company Limited and Another (supra.)**. In the impugned order there is no whisper that prevailing rate of damages have been applied and not the rate mentioned in the Notice. The respondent authority ought to have followed the prevailing rate in the 'Sliding Table' for assessing the damages instead of applying the previous rate which were higher than the present rate.

13. The Respondent raised a dispute that no appeal can be entertaining against order under Section 7-Q of the EPF Act and cannot interfere with a composite order. To address this issue, the settled principle of law laid down in the case of **Arcot Textile Mills Limited Vs. RPFC and Others [(2013) 16 SCC 1]**, may be referred to which held that an order under Section 7-Q of the EPF Act, when passed along with an order under Section 7-A of the EPF Act or any other applicable order under Section 7-I of the EPF Act and that as there could be errors in computation under Section 7-Q of the EPF Act, the petitioner ought to be heard before levying of interest. In view of such legal position this Tribunal has the jurisdiction to entertain this appeal in respect of a composite order

involving assessment of damages as well as interest.

14. I cannot lose sight of another important aspect pointed out by learned advocate for the appellant, that the Calculation Sheets have been prepared in the name of M/s. Birbhum Vivekananda Homeopathic Medical College-Hospital which have no binding upon the appellant as the basis of assessment of damages and cannot be rectified on verbal submission. Under no circumstances the appellant establishment can be bound by such Calculation Sheets which do not reflect the name of its establishment.

15. It would emerge from the above discussion that the impugned order dated 24.12.2014 passed by the respondent authority against the appellant establishment suffers from gross illegality and the same is not tenable under the facts and circumstances as well as the law involved. I therefore hold that the impugned order dated 24.12.2014 is liable to be set aside. This is a fit case to be remanded back to the respondent to pass a fresh order after giving opportunity of fresh hearing to the appellant.

Hence,

ORDERED

that the appeal under Section 7-I of the EPF Act is allowed on contest against the respondent. The impugned order dated 24.12.2014 passed by the respondent is set aside. The appeal is remanded back to the respondent with a direction to issue fresh Notice to the appellant along with appropriate calculation sheets and after providing opportunity of hearing to the appellant pass a reasoned order within two months from the date of communication of this order. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-
(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.