

**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. 04 of 2023

M/s. Associated Automobiles

..... Appellant.

Vs.

Regional Provident Fund Commissioner, Durgapur

..... Respondent.

ORDER

Dated: 28.08.2025

Mr. Sourav Dubey, Adv.

..... for the Appellant.

Mrs. Mousumi Ganguli, Adv.

..... for the Respondent.

1. The 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 impugned order ENF/RO/DGP/WB/58957/7-A Order/1043 dated 30.12.2021 of Employees' Provident Fund Organisation, Regional Office, Durgapur, under Section 7-A of the EPF Act, passed by Mr. A. K. Singh, the Assistant Provident Fund Commissioner and Assessing Authority, posted at Regional Office at Trichy, for non-remittance of Provident Fund contribution of the employees of Appellant for the period from April 2017 to September 2019, where an amount of Rs. 20,25,202/- (Rupees twenty lakh twenty-five thousand two hundred and two only) was assessed against the appellant establishment.

2. Initially, the appellant filed an appeal before the Central Government Industrial Tribunal -cum- Labour Court (hereinafter referred to as the CGIT-cum-LC) at Kolkata and the appeal was registered as EPF No. 03 of 2022. The said appeal was disposed of by the Presiding Officer, CGIT-cum-LC, Kolkata by order dated 07.09.2022 for want of jurisdiction. The appellant preferred a Writ Petition before the Hon'ble High Court at Calcutta under Article 226 of the Constitution of India, which was registered as W.P.A. No. 28843 of 2022, assailing order under Section 7-A of the EPF Act, stating therein that the time to file appeal under Rule 7(2) of the Tribunal (Procedure) Rules, 1997 had expired. During pendency of the Writ Petition a supplementary affidavit was submitted by the petitioner disclosing that an appeal has already been filed before the CGIT-cum-LC, Asansol, having jurisdiction over the matter. The said writ petition was disposed of by the Hon'ble High Court with an observation :

“ Since the petitioner had been pursuing its remedy, bona fide, before a wrong forum, the petitioner shall be entitled to the benefit of Section 14 of the Limitation Act 1963. In view thereof, the Central Government Industrial Tribunal, Asansol is directed to hear out the appeal on merit, having due regard to the time spent by the petitioner pursuing its remedy before a wrong forum, including this Hon'ble Court. ”

3. In Paragraph No. (3) of the petition for condonation of delay the appellant has admitted that the petitioner appellant could not file the appeal within the statutory limit of 60 days or within 120 days with sufficient cause, which had already expired due to bona fide mistake of the lawyer and there is a delay of about 235 days. From the Scrutiny Sheet dated 22.03.2023 it appears that the present appeal has been preferred long after expiry of the period of limitation laid down in Rule 7(2) and its proviso of the Tribunal (Procedure) Rules, 1997. Since the Hon'ble High Court at Calcutta has considered this matter and has granted benefit to the appellant / petitioner under Section 14 of the Limitation Act, 1963,

the petition for condonation of delay was not pressed by the learned advocate for the appellant on 13.07.2023.

4. Brief fact of the case leading to this appeal is that the appellant establishment is covered under the purview of the EPF Act and a Provident Fund code No. WB/DGP/58957 has been allotted to the establishment for remittance of their Provident Fund dues of their employees. A proceeding under Section 7-A of the EPF Act was initiated against the appellant establishment for the period from April 2017 to September 2019 on the basis of a report of the Enforcement Officer dated 04.11.2019 for non-remittance of Provident Fund and allied dues for the period from April 2017 to September 2019. Summons was issued on 30.12.2019 to the partners of the establishment for appearance and production of relevant records before the Compliance Authority on 16.01.2020. the case was adjourned to 19.03.2020. Thereafter, due to prevalence of COVID-19 Pandemic Nationwide lockdown was announced and hearing of the cases could not be taken up. the case was then posted on 25.06.2020, the same was adjourned to 13.08.2020, 24.09.2020, 12.11.2020, 24.12.2020, 28.01.2021, 18.02.2021, 18.03.2021, 22.04.2021 and 15.07.2021. Mr. Goutam Kumar Das, Area Enforcement Officer submitted his report on 22.04.2021, computing the Provident Fund dues payable for the period of assessment. Hearing of the case was concluded on the basis of the representation submitted by the Area Enforcement Officer. The impugned order dated 30.12.2021 was thereafter passed by Mr. A. K. Singh, Assistant Provident Fund Commissioner, Regional Office, Employees' Provident Fund Organisation, Durgapur, assessing an amount of Rs. 20,25,202/- under Section 7-A of the EPF Act. In Page No. (9) of the impugned order it appears that Mr. A. K. Singh, after his transfer from the Regional Office at Durgapur vide Headquarters Order No. HRM-II/T-1(1)2020/1703 dated 14.08.2021 was posted at the Regional Office at Trichy had passed the order dated 30.12.2021 as the proceeding of the case was completed

and order was reserved before being relieved from the Regional Office at Durgapur. The Regional Office at Durgapur referred the case to Mr. A. K. Singh for disposal, invoking original jurisdiction.

5. The grounds of appeal laid down by the appellant, inter-alia are that the impugned order has been passed by the respondent authority on erroneous findings that the appellant is liable to make Provident Fund contribution on allowance paid to its employees except House Rent Allowance. It is contended that the respondent has failed to consider that the allowances paid to the employees do not come under the definition of wages under Section 2(b) of the EPF Act. It is further contended that the assessing officer has passed the impugned order without having any authority and the same suffers from non-application of mind. The appellant further contended that he impugned order is a non-speaking order and the same having been passed in a mechanical manner is unsustainable under the law. The appellant accordingly prayed for setting aside the impugned order.

6. The appeal was admitted after the appellant made a pre-deposit of Rs. 6,07,561/- (Rupees six lakh seven thousand five hundred sixty-one only) which is thirty percent (30%) of the assessed amount in favour of Employees' Provident Fund Organisation.

7. Respondent contested the appeal by filing their reply on 21.09.2023. According to the respondent assessment of dues against the appellant has been computed in proper manner on the basis of Basic Pay, Conveyance Allowance, Sale Promotion Allowance, City Compensatory Allowance and Special Pay Allowance except House Rent Allowance, in the light of judgement of the Hon'ble Supreme Court of India in the case of **Bridge Roofs case (Manipal Academy of Higher Education Vs. Provident Fund Commissioner) [(2008) 5 SCC 428]**. It

is their case that the proceeding under Section 7-A of the EPF Act was initiated on 30.12.2019 and concluded after two years, having provided reasonable opportunity to the appellant to submit their case. It has been stated in the reply that Mr. A. K. Singh, Assistant Provident Fund Commissioner, Durgapur, in exercise of power conferred upon him under Section 7-A of the EPF Act has passed the impugned order. The respondent on the basis of such assertion in the reply prayed for dismissal of the appeal with cost.

8. Heard argument advanced by the learned advocates for the appellant and respondent. Perused the Memorandum of Appeal, impugned order and reply submitted by the respondent. Learned advocate for the appellant primarily argued that Mr. A. K. Singh, Assistant Provident Fund Commissioner, Durgapur who passed the impugned order was already transferred from the Regional Office at Durgapur and at the relevant time posted at Trichy. It is contended that he was functus officio and had no jurisdiction nor empowered to pass the impugned order in the instant case pending before the Office at Durgapur. Learned advocate further argued that the respondent authority has included allowance paid to the employee as Basic Wage for the purpose of computing the Provident Fund dues, though such allowance could not have been included in the definition of 'Basic wages' under Section 2(b) of the EPF Act. It is furthermore argued that the hearing was not conduct in proper manner as the case was adjourned several times during COVID-19 pandemic and the proceeding under Section 7-A(2) regarding enquiry or receiving of evidence was not followed for arriving at its conclusion.

9. Mrs. Mousumi Ganguli, learned advocate for the respondent in reply argued that the proceeding in this case continued for more than two years and several opportunities were granted to the appellant establishment to raise their objection against the report date 22.04.2021 submitted by the Area Enforcement

Officer but the establishment failed to point out any discrepancy regarding the allowance which were considered for computing Pay under Section 2(b) of the EPF Act for the purpose of assessing the Provident Fund dues under Section 7-A of the EPF Act.

10. Having considered the argument advanced by learned advocates for both parties in the light of the impugned order, it appears to me that hearing of the case started on the basis of Summons dated 30.12.2019. The proceeding under Section 7-A of the EPF Act was scheduled for hearing on 16.01.2020 but none appeared for the appellant establishment and the case was adjourned to 19.03.2020. Public notice can be taken of the fact that due to COVI-19 pandemic a nationwide lockdown was announced and hearing of the case could not be taken up. The case was thereafter fixed on 25.06.2020, 13.08.2020, 24.09.2020, 12.11.2020, 24.12.2020, 28.01.2021. It appears from the impugned order that due to administrative reason hearing of the case could not be taken up on 28.01.2021 and the partners of the establishment submitted some documents through email. Some Audit reports and bank statements submitted by the establishment were handed over to Mr. Gautam Kumar Das, Area Enforcement Officer to verify the same and file deposition on behalf of the department on the next date i.e., 18.02.2021. It appears from the order that hearing of the case could not be taken up on 18.02.2021 due to administrative exigencies and the Area Enforcement Officer was directed to visit the establishment after verifying all records and to submit his deposition in the case. The hearing was thereafter adjourned from time to time and fixed on 18.03.2021, 22.04.2021 and 15.07.2021 on account of non-submission of deposition by Mr. Gautam Kumar Das, Area Enforcement Officer. This observation is contradicted in the following order dated 15.07.2021, wherein is stated that hearing of the case could not be taken up on 15.07.2021 as the Assessing Officer was on leave and the deposition of Mr. Gautam Kumar Das, Area Enforcement Officer dated 22.04.2021 was

shared with the establishment for their counter submission but the establishment did not submit their counter submission, either accepting or rejecting the contents deposition. This order dated 15.07.2021 clearly indicates that Mr. Gautam Kumar Das, Area Enforcement Officer did not submit or share his report on 22.04.2021. Had he submitted or shared deposition with the employer establishment on 22.04.2021, it would have been reflected in the order dated 22.04.2021 but it appears that the hearing of the case was adjourned on 22.04.2021 and thereafter on 15.07.2021 on account of non-submission of deposition by Mr. Gautam Kumar Das, Area Enforcement Officer. At such stage hearing of the case was concluded amidst COVID-19 pandemic. It cannot be ascertained from the impugned order as to when the Area Enforcement Officer submitted his deposition dated 22.04.2021 before the Assistant Provident Fund Commissioner, conducting the enquiry. There is no material to suggest that the report of the Area Enforcement Officer dated 22.04.2021 was handed over to the employer establishment, inviting their views. From the above circumstances, it transpires that while holding the proceeding under Section 7-A of the EPF Act, the respondent authority through Mr. A. K. Singh, did not comply the procedure laid down under Section 7-A (2) and (3A) of the EPF Act.

11. In the case of **West Bengal Power Development Corporation Limited Vs. Union of India and Others. [W.P. No. 3032 (W) of 2008]**, the Hon'ble High Court at Calcutta held that :

“ Discharge of the APFC's obligation to disclose the report, give inspection thereof and supply an authenticated copy thereof was not dependent on specific requests for all these by the petitioner. In the absence of a procedure statutorily prescribed for adjudication of the proceedings, he was required to follow the procedure that would have provided the petitioner a fair and reasonable opportunity of defending itself.

The APFC was under an obligation to ask the departmental representative

presenting the case of the organisation to examine witness to prove the report and the contents of the report. The petitioner was entitled to cross-examine such witness and give evidence in proof of its case and also to disprove the case of the organisation.”

In the instant case it is amply clear that the respondent authority did not follow the statutory procedure and in a hasty manner concluded the proceeding. The findings of the Provident Fund authority in the impugned order, therefore is not tenable under law and the same is liable to be set aside.

12. In the present case the impugned order has been passed by an Officer who at the relevant time had already delivered charge and was transferred and posted at the Regional Office of Employees' Provident Fund Organisation at Trichy. There is no material on record to indicate that the concerned officer was holding additional charge of the Office at Durgapur region for the purpose of being vested with the jurisdiction to pass the impugned order. It therefore appears to me that the Officer passing the impugned order was functus officio, lacking jurisdiction to decide the case. The impugned order therefore is vitiated due to illegality, impropriety and is liable to be set aside. The case needs to be sent back on remand for re-hearing and passing a fresh order after giving reasonable opportunity to the employer establishment to participate in the proceeding.

Hence,

O R D E R E D

that the appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is allowed on contest without cost. The impugned order dated 30.12.2021 passed by the respondent authority is set

aside. The case is remanded to the Office of the Regional Provident Fund Commissioner, Durgapur for hearing afresh in the light of my above findings and passing a fresh order after giving reasonable opportunity to the appellant establishment to present their case. 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.