

**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. 06 of 2015**  
[ATA 1126(15) of 2015]

**St. Michael's School, Durgapur**

..... Appellant.

Vs.

**Assistant Provident Fund Commissioner, Durgapur**

..... Respondent.

**ORDER**

**Dated: 22.12.2023**

Mr. Sushanta Kumar Das, Adv. and

Mr. Bijoy Prasad Gupta, Adv.

..... for the Appellant.

Mrs. Mousumi Ganguli, Adv.

..... for the Respondent.

1. The instant appeal has been filed under Section 7-I of the Employees' Provident Funds Miscellaneous Provisions Act, 1952 (hereinafter referred to as EFF Act) against the impugned order 15.09.2015 passed by the respondent under Section 14-B and 7-Q of the EPF Act, levying damages of Rs.52,25,362/- (Rupees fifty-two lakh twenty-five thousand three hundred and sixty-two only) under Section 14-B of the EPF Act and an interest of Rs.14,11,426/- (Rupees fourteen lakh eleven thousand four hundred and twenty-six only) under Section 7-Q of the EPF Act against the appellant, amounting to a total of Rs.66,36,788/- (Rupees sixty-six lakh thirty-six thousand seven hundred and eighty-eight only) for delayed remittance of Provident Fund dues in respect of the employees of the appellant establishment for the period from 02/1999 to 11/2009.

2. Brief fact of the case leading to this appeal is that the respondent issued Summons to the appellant on 24/29.01.2014 for appearance and hearing under Section 14-B of the EPF Act and for payment of interest under Section 7-Q of the EPF Act for belated remittance made during the period from 22.06.1999 to 16.01.2010 and an assessment of Rs.33,01,245/- (Rupees thirty-three lakh one thousand two hundred and forty-five only) was made towards damages under Section 14-B of the EPF Act and Rs.10,80,565/- (Rupees ten lakh eighty thousand five hundred and sixty-five only) towards interest under Section 7-Q of the EPF Act against the appellant establishment. The appellant appeared for the first time on 11.08.2014 and was represented by the authorized representative. After giving opportunity to the appellant establishment the appellant failed to produce F/12A® for the enquiry period. It was found that the establishment delayed in payment of statutory dues without any valid reason and in order to cover the loss of interest caused to the fund and also to deter employer from repeating violation of rules in future, levied damages of Rs.52,25,362/- under Section 14-B of the EPF Act and an interest of Rs.14,11,426/- under Section 7-Q of the EPF Act

3. Being aggrieved and dissatisfied with the order passed by the respondent an appeal under Section 7-I of the EPF Act was preferred against the order dated 15.09.2015, before the Employees' Provident Fund Appellate Tribunal, New Delhi on 28.09.2015 well within time provided under Rule 7(2) of the Tribunal (Procedure) Rules, 1997.

4. It is stated by the Appellant that St. Michael's School, Durgapur is an English medium school which is covered under the EPF Act with an Establishment ID No. WBDGP0025946000. Refuting the demand of damages assessed against the appellant establishment it has been urged that the school is a nonprofit organization and has applied for exemption of the establishment

under Section 17(1)(a) of the EPF Act but the department did not respond and thereafter an application was filed before the Regional Provident Fund Commissioner for exemption but there was no response. The school therefore could not deposit the amount before the Provident Fund authority in time. In the summons for proceeding the period of delayed remittance in respect of Provident Fund dues was from 22.06.1999 to 16.01.2010. The appellant was granted opportunity to explain the reason for delayed payment but the damages and interest were levied for the period from 02/1999 to 11/2009. Therefore, the respondent travelled beyond the period of enquiry without giving opportunity to the appellant for the period from 02/1999 to 21.06.1999. It is the case of the appellant that the respondent passed a non-speaking and non-reasoned order in a mechanical and pre-conceived manner. The respondent further failed to consider that the appellant had no mens rea in delayed remittance and that the respondent failed to exercise the power vested under Section 7A(2) of the EPF Act. It is the case of the appellant that on receipt of the coverage notice dated 20.12.1988 the appellant submitted an application for grant of exemption under Section 17(1)(a) of the EPF Act and the Regional Provident Fund Commissioner, West Bengal in letter dated 09.02.1990/20.02.1990 requested the appellant to furnish an undertaking to abide by the conditions of exemption and amend the rules if found deficient. Pending grant of exemption by the Provident Fund authority the respondent issued Notice for levy of damages. The appellant urged that the head office of the respondent prescribed a period of three (3) years for levy of damages but the proceeding has been initiated after fifteen (15) years in respect of the delayed remittance. Due to such delay on the part of the respondent the appellant is unable to find out the record and the concerned persons who are aware about the facts are no longer available with the appellant establishment. It is pointed out that on amendment of paragraph - 32 of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as EPFS) w.e.f. 26.09.2008 the damages could not be levied along with interest at the rate

of 12%. Referring to the judgement 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]**, it is submitted that the damages has to be levied only in the prescribed manner under paragraph - 32 of EPFS and the respondent authority has to use its discretion at the time of levy of damages. Referring to the decision of the Hon'ble Supreme Court of India in the case of **Hindustan Times Limited vs Union of India [AIR 1998 SC 688]**, it is urged that the provision relating to the damages does not envisage mandatory imposition of penalty. It is the further case of the appellant that since the rate of leviable damages has been amended in paragraph – 32A of EPFS, the interest under Section 7-Q is included under Section 14-B of the EPF Act. Appellant further urged that once damages under Section 14-B are recovered there cannot be any payment of interest under Section 7-Q as the interest component is already included in the damages imposed under Section 14-B of the EPF Act. The appellant therefore prayed for setting aside the impugned order dated 15.09.2015 passed by the respondent.

5. Respondent contested the appeal by filing reply wherein it is asserted that the appellant establishment is liable to pay damages for belated remittance of Provident Fund dues, for the period from 02/1999 to 11/2009. The establishment failed to satisfy the condition for exemption under Section 17 of the EPF Act. In the proceeding before the respondent authority representative of the establishment appeared and submitted that the school authority likes to deposit EPF money but due to legal complexity they could not deposit the amount in time. After granting proper opportunity for hearing, the respondent did not cite any valid reason on the part of the school for belated remittance and also failed to produce documents. In course of hearing revised statement of calculation were handed over to the authorized representative of the establishment and no dispute was raised regarding calculation.

6. The respondent asserted that the law of limitation is not applicable in social security legislation as the object of the law is beneficial for the working people. Referring to the case of **M/s. K. Streetlite Electric Corporation vs Regional Provident Fund Commissioner, Haryana [2001(4) SCC 449]**, it is submitted that delay in initiating the enquiry under Section 14-B cannot be any ground for setting aside the order as no period of limitation has been laid down for initiating a proceeding for recovery of damages. This contention of the respondent also draws support from the ratio of 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]**.

7. According to the respondent the object of 14-B of the EPF Act is to deter the employer from making default in carrying out the statutory obligation to make payment of Provident Fund and the Regional Provident Fund Commissioner can impose exemplary and punitive damages and thereby to prevent employers from making defaults. Referring to the case of **Maharashtra State Cooperative Bank Limited vs Assistant Provident Fund Commissioner and others [(2009) 10 SCC 123]**, it is submitted that if interest payable by the employer under Section 7-Q and damages leviable under Section 14 (sic Section 14-B) are excluded from the ambit of expression 'any amount due from an employer', every employer will conveniently refrain from paying his contribution to the Fund and other dues and resist the efforts of the authorities concerned to recover the dues as arrears of land revenue. Respondent relied upon the decision in the case of **Organo Chemicals Industries and Another vs Union of India and Others [1979 (4) SCC 573]**, wherein the Hon'ble Supreme Court of India held that the reason for enacting s. 14-B is that employers may be deterred and thwarted from making defaults in carrying out statutory obligations to make payments to the Provident Fund. It is their case that 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. It is urged that the appeal filed by the appellant establishment is devoid of merit and the same is liable to be dismissed with cost.

8. The point for consideration before this Tribunal is whether there is any illegality or impropriety in the impugned order, calling for any interference. Mr. Sushanta Kumar Das, learned advocate for the appellant argued that the provisions of the EPF Act is not applicable to the establishment as it is a non-profit organization and engaged with education of children and it is further urged that at the time of passing the impugned order the respondent authority travelled beyond the notice period without providing any opportunity to the appellant to meet such claim. Learned advocate argued that in the Notice for proceeding under Section 14-B and 7-Q of the EPF Act dated 24/29.01.2014 the authority had proposed to levy damages at the rate of 17% to 37% for the period up to 25.09.2008 and at the rate of 5% to 25% for the period from 26.09.2008. It is argued that the prevailing rate of damages at the time of issuance of Notice in the year 2014 was 5% to 25%, which has been laid down in paragraph 32A of EPFS, therefore the respondent has assessed damages at a higher rate which did not subsist at the time of passing of the order. It is claimed that the damages imposed under Section 14-B of the EPF Act includes interest amount therefore the respondent authority could not levy separate interest under Section 7-Q of the EPF Act. According to learned advocate for the appellant the impugned order has been passed without rhymes and reasons and the Provident Fund authority did not take into consideration that there is no mens rea on the part of the establishment as they have already applied for exemption from application of the EPF Act under Section 17(1) of the EPF Act. Since the matter was pending at the time the Notice of enquiry was served, the impugned order is bad in law and is liable to be set aside.

9. Learned advocate for the respondent argued that there is no period of

limitation for initiating a proceeding for recovery of damages and interest of Provident Fund dues. Therefore, the contention of the appellant that proceeding is liable to be defeated due to delay in initiation of proceeding does not hold good. Relying upon the decision in the case of **Horticulture Experiment Station Gonikoppal, Coorg vs. the Regional Provident Fund Organization [(2022) 4 SCC 516]**, it is submitted that the Hon'ble Supreme Court of India in the case above observed that it is the delinquency of the defaulter itself which establishes his blameworthy conduct without further proof of existence of mens rea. Learned advocate argued that opportunity was granted to the appellant establishment before passing the impugned order levying damages and interest against the establishment. No objection was raised against the calculation made towards the damages and interest which are the statutory rates laid down in the scheme. It is contended that the amount assessed as interest under Section 7-Q of the EPF Act is not appealable and the appellant could not assign any satisfactory reason why the prescribed rate of damages would be reduced. Learned advocate submitted that the appeal filed by the appellant school is without any force and the same is liable to be dismissed.

10. I have considered the facts and circumstances of the case leading to the appeal, Memorandum of Appeal, Reply and arguments advanced by the respective parties. It is undisputed that St. Michael's School, Durgapur was allotted a Provident Fund Code WBDGP0025946000 for its establishment under the EPF Act. The establishment is covered under the EPF Act and it has not been able to establish that the appropriate government has exempted the school from prospective or retrospective operation of the provisions of the scheme. Therefore, the appellant is duty bound to contribute the amount laid down in Section 6 of the EPF Act read with Paragraph – 38 of EPFS within the stipulated period of fifteen days from the closure of the month. In a letter issued by D. K. Bhattacharya for the Regional Provident Fund Commissioner, West Bengal

addressed to Mr. P. C. Thomas, Principal dated 09.02.1990 / 20.02.1990 (Annexure-5) the addressee was requested to furnish some information / documents for considering the proposal for exemption. The Provident Fund authority, if satisfied can exempt an establishment prospectively or retrospectively from application of the EPF Act. However, in the instant case no such exemption has been granted till date. The appellant establishment therefore is liable to deposit damages under Section 14-B and interest under Section 7-Q of the EPF Act, if such assessment is made according to the rates laid down.

11. It has been argued that the Notice for levy of damages and interest has been issued for the period from 22.06.1999 to 16.01.2010, after lapse of more than ten years and due to delay the appellant has been deprived of the opportunity to defend the case as the relevant documents could not be traced out and the persons acquainted with the matter have left the establishment. In support of their case appellant relied upon a decision of the Hon'ble Supreme Court of India in the case of **M/s. K. Streetlite Electric Corporation vs Regional Provident Fund Commissioner, Haryana [2001(4) SCC 449]**, wherein in paragraph 4 it was observed that :

*“.....the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B he has altered his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an irretrievable nature, and such prejudice can also be established by stating reason of non-availability of records of the personnel by which evidence it could be established that there was some basis for delay in making the payments.....”*

12. In the instant case the school authority did not adduce any evidence disclosing that they are unable to provide documents in support of their remittance of Provident Fund amount of employees due to delayed initiation of



the proceeding. It appears from the averments made in the Memorandum of Appeal and Annexure A-5 that the appellant was seeking exemption from application of the EPF Act to their School employees. Therefore, the appellant was conscious about its representation even before initiation of the 14-B proceeding and they could not have misplaced their records. It needs to be mentioned that the legislation did not prescribe any period of limitation for computing and recovery of damages under the EPF Act as it is a beneficial legislation, safeguarding the interest of the employees. The employer is duty bound to make provision for payment of Provident Fund dues for its employees either under the Act or on approval of appropriate government under alternative and recognized provisions. In view of such facts and circumstances, I am inclined to hold that the cited decision in **M/s. K. Streetlite Electric Corporation (supra)** does not come in aid of the appellant.

13. For the purpose of considering the rival contentions it is worthwhile to refer to the provisions under Section 14-B of the EPF Act which provides as follows :

*“ Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.”*

Nowhere in the provision there is any pre-requisite of ‘mens rea’ for levy of damages. In this context it would be pertinent to refer to the decision of the

Hon'ble Apex Court in the case of **Horticulture Experiment Station Gonikoppal, Coorg vs. the Regional Provident Fund Organization [(2022) 4 SCC 516]**, where the Hon'ble court noted that it is the delinquency of the defaulter itself which establishes his blameworthy conduct without further proof of existence of mens rea. The law laid down in the above judgement is the guiding principle and holds good in the instant case. Therefore, I have no hesitation to hold that presence of intention or existence of 'mens rea' on the part of the appellant establishment is not essential for the purpose of assessing damages against it. Levy of damages is a sine qua non, once the employer has failed to deposit the contribution of EPF or committed default as mandated in the provisions of the EPF Act. The contention raised on behalf of the appellant establishment that in absence of any proof of mens rea on its part the respondent authority could not levy any damages against it, does not hold good under the settled position of law.

14. On a perusal of the Notice / Summons for proceeding dated 24/29.01.2014, it appears that the period for delayed remittance taken into consideration was from 22.06.1999 to 16.01.2010. In the impugned order the assessment has been made for the period from 02/1999 to 11/2009. Therefore, it is clear that appellant establishment was not granted reasonable notice or opportunity to meet the demand for delayed remittance from 02/1999 to 21.06.1999 and thereby the respondent acted in an arbitrary manner and in violation of natural justice.

15. Another important question raised by the appellant is that the damages has been assessed at a higher rate than the rate prevalent at the time of initiation of the proceeding. In order to appreciate the argument, it is necessary to consider the contents of Notification G.S.R. 690(E) dated 26.09.2008 which has amended paragraph 32A of EPFS as laid down below :

- “ 1. (1) This Scheme may be called the Employees' Provident Funds (Second Amendment) Scheme, 2008.
- (2) It shall come into force on the date of its publication in the Official Gazette.
2. In the Employees' Provident Funds Scheme, 1952, for sub-paragraph (1) of paragraph 32A, the following sub-paragraph shall be substituted, namely:-
- “(1) Where an employer makes default in the payment of any contribution to the fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, may recover from the employer by way of penalty, damages at the rates given in the table below:-

**TABLE**

S. No.	Period of default	Rates of damages (percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than 2 months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d))	Six months and above	Twenty Five.” ”

16. 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 Calcutta 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.”*

It was held that the respondent assessed penalty which was in excess of Paragraph 32A. The same principle applies to the present case where the respondent has acted in excess of its authority by demanding damages in excess of the prevailing rate, which should have been between 5% to 25% and not 17% to 37%.

17. In the case of **Atal Tea Company Limited and Another vs Regional Provident Fund Commissioner [C.O. No. 17462 (W) of 1996]**, 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.”*

In course of proceeding under Section 14-B the prevailing rate of damages applicable were between 5% to 25% depending upon the period of delay. However, in the impugned order the respondent has assessed damages on the basis of previous rates i.e. 17% to 37% for the period from 02/1999 to 25.09.2008, which is not tenable under the law as it is violative of the settled position in the case of **M/s. Atal Tea Company Limited and Another (supra.)** and the Provident Fund Commissioner ought to have followed the prevailing rates in the ‘Sliding Table’ for assessment of damages instead of applying the previous rates which were higher than the present rate.

18. The appellant has strongly contended that interest assessed under Section 7-Q of the EPF Act includes in the damages under Section 14-B of the EPF Act and by claiming separate interest under Section 7-Q of the EPF Act, the appellant has been doubly burdened.

19. It is argued by Mr. Das that 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]**, the Hon’ble High Court of Delhi found that, the period for which damages under Section 14-B of the Act are levied was from 06/1999 to 10/2008. Therefore, for

almost the entire period interest stood charged by imposing damages under Section 14-B of the Act with the application of rates mentioned in the table prevailing prior to 26.09.2008. It was not the case of the Department that for one month i.e. 27.09.2008 to 10/ 2008 damages were charged on the rates specified in the new table. When the matter was examined from that angle, court found 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 previous table which step was taken only in issuing fresh table making effective from 26.09.2008. The Hon'ble High Court of Delhi further held that :

*“ We are therefore of the opinion that in M/s System and Stamping (supra) the Division Bench took the correct view that damages under Section 14-B of the Act were inclusive of interest chargeable under Section 7-Q of the Act as the present case covers that very period, the respondent had no right to charge the interest under Section 7-Q of the Act additionally when it already stood payable in the order passed under Section 14-B of the Act. As the petition succeeds on this ground itself, it may not be necessary to go into the other issues raised by the petitioner.”*

20. Learned advocate for the respondent in her argument submitted that Central Board of Trustees preferred an appeal before the Hon'ble Supreme Court of India against the judgement passed by the Hon'ble High Court of Delhi in the case of **Roma Henny Security Services Pvt. Ltd. in Civil Appeal No. 6592/2014**. The Hon'ble Supreme Court of India held that :

*“.....The Full Bench of the High Court has not considered the effect of the aforesaid Clause 32-A of the Scheme. It does not provide that the interest is included in the penalty specified in the provisions under Clause 32-A of the Employees Provident Funds Scheme, 1952 at the rate of 17%, 22%, 27% and 37%*

*respectively, on the basis of period of default. It has also not gone into question whether the Circular of 1990 issued by the Central Provident Fund Commissioner would hold the field in view of the statutory provisions of Clause 32-A of the Scheme introduced in 1991. The High Court has also not taken into consideration whether Clause 32-A of the Scheme can be taken to include interest when provision for interest 7-Q was not in force. It has also not gone into the question whether the Circular of 1990 can prevail upon the statutory provisions contained in Clause 32-A of the Scheme which prescribes the rate of damages. Question is whether damages so specified include the component of interest. May be that 1990 Circular included the component of interest in rate of damages but that was not so provided under the statutory provisions of Clause 32-A of Scheme. The effect of provisions of Section 7-Q as inserted in 1997 is also required to be considered. We have no hesitation to set aside the judgment and order of the High Court and remit the case to the High Court to consider the effect of Clause 32-A and also consider various questions afresh and decide the case in accordance with law. Circular dated 29.5.1990 has also been brought to our notice which provides that interest component has to be separate than the damages.....”*

Learned advocate for the respondent relying upon the decision of the Hon'ble Supreme Court of India in the case of Roma Henny Security Services Pvt. Ltd., regarding inclusion of interest in damages argued that the damages and interest on delayed payment are separate components and it cannot be considered that the amount assessed as damages include the interest.

21. I have considered the arguments advanced by learned advocates for both parties and the principle of law laid down by the Hon'ble Supreme Court of India in the case of **Central Board of Trustees, E.P.F.O. vs Roma Henny Security Services Pvt. Ltd. [Civil Appeal No. 6592/2014]**. In view of the observation made therein it is crystal clear that 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]** is no more a good law. The entity of damages for default in payment of contribution has to be separately assessed under the provisions of paragraph 32A of EPFS which was inserted by G.S.R. 521 dated 16.08.1991 w.e.f. 01.09.1991. It is also to be borne in mind that the interest for delayed remittance is assessed according to the provisions of 7-Q of the EPF Act at the rate of 12% or at such higher rate it may be specified in the scheme on any amount due from him under the EPF act from the date on which the amount has become so due till the date of its actual payment, provided that higher rate of interest specified in the scheme shall not exceed the lending rate of interest chargeable by any scheduled bank.

22. In the present appeal the facts and circumstances are distinguishable from the case relied on by the learned advocate for the appellant. The component of interest and damages cannot be amalgamated under the extant statutory provisions of the EPF Act and EPFS. The Provident Fund authority therefore exercised its jurisdiction consistent with the law by segregating the damages under 14-B of the EPF Act and interest under 7-Q of the EPF Act. The pertinent question which has been raised in course of argument is that the respondent did not apply the prevailing rate of interest in course of assessing damages for the period from 02/1999 to 25.09.2008 and as per the Summons for proceeding the proposed rate of damages was shown calculated on the basis of the previous rates, prevailing prior to substitution of the new rate in paragraph – 32A(1) of EPFS by GSR No. 689(E) dated 26.09.2008. Separate interest under Section 7-Q has also been assessed for the same period. Learned advocate for the respondent urged that the prevailing rate of interest have been applied for assessing the damages for the entire period from 02/1999 to 11/2009. However, I find that no reason has been assigned in the impugned order as to what rate of damages was actually applied for assessment under Section 14-B of the Act and why the earlier rate of interest was proposed in the Summons for proceeding.



23. On considering the gamut of facts and the legal provisions involved, I hold that the respondent in the impugned order has travelled beyond the notice period for assessing damages and interest against the appellant without granting any opportunity to the appellant establishment to meet their claim. It is also explicit that the interest applied for the period from 02/1999 to 25.09.2008 is not in accordance with the 'Sliding Table' under paragraph 32A(1) of EPFS applicable w.e.f. 26.09.2008. Therefore, the impugned order is not sustainable under the law and is liable to be set aside. Since the quantum of damages is required to be re-assessed it is appropriate to remand back the case to the respondent with a direction that the matter may be heard afresh after providing opportunity to the appellant to submit their necessary documents and pass a fresh order preferably within a period of three (3) months from the date of communication of this Order to the parties.

Hence,

**ORDERED**

that the appeal under Section 7-I of the EPF Act is allowed in part on contest against the respondent. The impugned order dated 15.09.2015 is set aside. The proceeding under Section 14-B of the EPF Act is remanded back to the respondent authority with a direction to re-hear the matter preferably within a period of three (3) months from the date of communication of the Order after giving opportunity to the appellant and pass a fresh order in light of the above observations. The appellant herein shall participate in the proceeding before the Provident Fund Authority on all dates fixed without fail. 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.