

**CENTRAL GOVERNMENT INDUSTRIAL**  
**TRIBUNAL/EMPLOYEES PROVIDENT FUND**  
**APPELLATE TRIBUNAL, JABALPUR**

Present - P.K. Srivastava

H.J.S. (Retd.)

EPF Appeal No.-15/2018

Office of the Joint Director & Superintendent  
Hamidiya Hospital, Bhopal

Appellant

Vs.

Regional PF Commissioner,  
Employees Provident Fund Organization  
Sub-Regional Office, 59, Arera Hills,  
Bhopal (M.P.)

Respondent

**JUDGMENT**

Under challenge in the present appeal is order dated 07.06.2018 passed by the Respondent authority U/S. 14-B of the Employees Provident Fund & Misc. Provisions Act 1952 (in short the Act) by which the Respondent authority has held the Appellant establishment defaulting deposit of EPF dues of its employees in time for the period 16.12.2015 to 16.02.2018 and has held the Appellant establishment liable to pay Rs. 2,43,13,663/- U/S. 14-B of the Act.

**The skeletal facts**, necessary for the determination of this appeal, are mainly that the Appellant establishment is covered under the Act and is under obligation to deposit the EPF dues of its employees. A notice dated 25.04.2018 was issued to the Appellant establishment by the Respondent authority wherein the Appellant establishment was required to show cause as to why damages/penalty U/S. 14-B of the Act not be recovered from them for defaulting timely deposit of EPF dues for the period 16.12.2015

to 16.02.2018 mentioned in the notice. A calculation sheet was also attached with the notice. The Appellant establishment did not appear before them in response to the notice which was served on them on 04.05.2018 because, according to them, the clerk concerned who received the notice in office, did not inform the senior officers about the notice. Dates 14.05.2018, 29.05.2018 were fixed for hearing and assuming that the Appellant establishment had nothing to say, the impugned order was passed by Respondent authority.

**The grounds of Appeal**, taken by the Appellant establishment in their memo of appeal, are mainly -

**that** the Appellant establishment was not given reasonable opportunity to represent itself before the Respondent authority in response of the notice, hence the impugned findings or order is bad in law being unconstitutional,

**that** the Respondent authority acted as Prosecutor and Judge which is against principles of natural justice, hence the impugned order is bad in law,

**that** the Respondent authority acted against due process of law ignoring the fact that the coverage letter was issued by the Respondent authority only in the month of February 2015, hence, damages could not be levied for the period 03/2007 to 03/2015 i.e. pre discovery period,

**that** the impugned order has been passed without applying judicial mind by the Respondent authority is bad in law, the Respondent authority recorded the impugned finding and order without considering the fact that there was no mens rea on the part of appellant Establishment in late depositing the EPF dues, hence, erred in law.

**In the counter to the appeal**, the Respondent authority has taken a case that the present appeal has been filed against order U/S. 14-B and 7-Q of the Act, passed by it. Appeal against order U/S. 7-Q is not maintainable before this Tribunal, U/S. 7-1 of the Act. It was further stated that the Appellant establishment is covered under the Act and has been allotted PF Code, it failed to remit the EPF dues of its employees for the period 16.12.2015 to 16.02.2018 within stipulated time as provided under Clause-38(1) of

EPF Scheme 1952. A notice was issued to the Appellant establishment U/S. 14-B & 7-Q of the Act for levy of damages and interest on belated payments which was admittedly served on them but they did not participate in the enquiry in spite of sufficient opportunity being given to them nor did they file any reply or representation against the notices, hence the Respondent authority proceeded against them and passed the impugned orders U/S. 14-B & 7-Q of the Act. Hence, according to the Respondent authority, sufficient opportunity was given to Appellant establishment before passing the impugned order. When the Appellant establishment failed to deposit the amount, coercive orders for attachment of its account were issued. According to the Respondent authority, the impugned order is not against any law, has been filed following due procedure as well observing principles of natural justice in the light of facts and circumstances of the case and cannot be faulted in law or fact.

I have **heard argument** of learned Counsel Mr. Siddharth Sharma for appellant Establishment and Mr. J.K. Pillai for respondent. Appellant side has filed written argument also which is part of record, I have gone through the written arguments and the record as well.

After having gone through the record in the light of rival arguments, following **points come up for determination** in the case in hand :-

- 1. Whether the finding of Respondent authority that the Appellant establishment defaulted in timely deposit of EPF dues for its employees within the period 16.12.2015 to 16.02.2018 is correct in law and fact ?*
- 2. Whether, the finding of Respondent authority that the Appellant establishment was liable to pay damages U/S. 14-B of the Act for belated deposit of EPF dues for the period mentioned above is correct in law and fact ?*

**Point for Determination No.-1 :-**

Learned Counsel for Appellant establishment has attacked the finding of Respondent authority on **three grounds** viz; absence of PF Code, impugned order passed without considering the defense of the Appellant establishment and there were lapses in issuing the

attachment order for recovery of amount under appeal. As regards the **first ground** learned Counsel has submitted that though the contractual and casual employees were working since 2007, a letter was issued by the Appellant establishment after the Principal Secretary, Medical Education Department directed on 15.10.2014 to deduct the EPF dues of contractual and casual employees till implementation of Contributory Pension Scheme framed by the Government and it was in the light of this direction request was made to the Respondent authority for allotting PF code vide letter dated 20.10.2014. Another communication dated 07.01.2014 was sent to the Respondent Authority in response to their communication providing PAN of the Appellant establishment. Another letter was sent on 13.11.2014 to Director Medical Education informing him about requirement of PAN. Ultimately PF code was allotted vide letter dated 19.03.21015 covering the Appellant establishment retrospectively from 03/2007 and after allotment of PF code, the Appellant establishment has been regularly depositing the PF dues. Section 1 (3) (b), Section 2(e) & 2(f), Section 7(1), Section 14-B of the Act and para 26, para 30 as well para 32(a) of the Employees Provident Fund Scheme 1952 (in short the 'Scheme') are being reproduced as follows :-

*1 (3) Subject to the provisions contained in section 16, it applies –*

*(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.*

**2(e) "employer" means –**

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs

are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, 7 and includes any person –

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

**7A. Determination of moneys due from employers. –**

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order, –

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary;

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely: –

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the

applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

**14B. Power to recover damages.**—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 Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.

**26. Classes of employees entitled and required to join the fund**

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund

from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer: Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, [www.epfindia.gov.in](http://www.epfindia.gov.in) 33 every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees fifteen thousand rupees of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

### **30. Payment of contributions**

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges. Explanation: For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

### **32. Recovery of a member's share of contribution**

(1) The amount of a member's contribution paid by the employer or a contractor shall, notwithstanding the provisions in this scheme or any law for the time being in force or any contract to the contrary, be recoverable by means of deduction from the wages of the member and not otherwise: Provided that no such deduction may be made from any wages other than that which is paid in respect of the period or part of the period in respect of which the contribution is payable: Provided further that the employer or a contractor shall be entitled to recover the employee's share from a wage other than that which is paid in respect of the period for which the contribution has been paid or is payable where the employee has in writing given a false declaration at the time of joining service with the said employer or a contractor that he was not already a member of the Fund: Provided further that where no such deduction has been made on account of an accidental mistake or a clerical error, such deduction may, with the consent in writing of the Inspector, be made from the subsequent wages.

(2) Deduction made from the wages of a member paid on daily, weekly or fortnightly basis should be totalled up to indicate the monthly deductions.

(3) Any sum deducted by an employer or the contractor from the wages of an employee under this Scheme shall be deemed to have been entrusted to him for the purpose of paying the contribution in respect of which it was deducted.

### **32A. Recovery of damages for default in payment of any contribution**

(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 below: – TABLE S.No.

<u>Period of Default</u>	<u>Rate of Damages</u>
Less than two months	5%
Two months and above but less than four months	10%
Four months and above but less than six months	15%
Six months and above	25%

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

Perusal of Section 1 (3)(b) read with Section 2(e) & 2(f) of the Act make it clear that the contractual and casual employees of the Appellant establishment, in the light of undisputed fact that these employees were not covered in any other Provident Fund Scheme equally beneficial to them, the provisions of the Act will apply in the case in hand on the Appellant establishment.

It is also established that the coverage under this Act will be automatic and is not dependant on allotment of PF code or issuance of any notice from PF Authorities requiring the establishment to deposit the EPF dues. Thus, the argument that liability of the Appellant establishment to deposit EPF dues of its employees covered under the Act will arise only after PF Code was allotted to it cannot be accepted. Accordingly, it is held that the Appellant establishment is under obligation to deposit EPF dues of its employees covered under the Act from the date of coverage and not from the date of allotment of PF Code.

From the above referred provisions, this is also established that the EPF dues are to be deposited within 15 days i.e. on the 15<sup>th</sup> day of next month when they become due. Any deposit after 15<sup>th</sup> day of next month when they become due will be a late deposit.

As regards the **second argument** that the impugned order was passed without considering the case of the Appellant establishment, this also cannot be accepted because service of notice regarding show cause on Appellant establishment is not disputed. Hence, it is established that the Respondent authority followed the principle of natural justice while proceeding with the enquiry with regard to the show cause notice. More relevant is the fact that the Appellant establishment has not filed any evidence even before this Tribunal to show that they have been regularly depositing the EPF dues in question within time. Needless to say, this Tribunal is an Appellate Forum on law and facts both.

As regards, the **third argument** by learned Counsel for Appellant that the attachment order was issued within the period of limitation provided for appeal, this may be an irregularity but it does not affect the merit of the impugned order.

**In the light of above discussion the finding of Respondent authority in holding the Appellant establishment having defaulted by delayed deposit of EPF dues of its employees covered under the Act for the period 16.12.2015 to 16.02.2018 is held to have been recorded correctly and is confirmed. Point for Determination no.-1 is answered accordingly.**

**Point for Determination No.-2 :-**

It has been submitted by learned Counsel for Appellant establishment that there was no mens rea behind the late deposit of EPF dues. He further submits that being a Department of Government, the salaries were disbursed when the budget was available and hence, there was delay in depositing the EPF dues also. The Respondent authority did not consider this fact and hence the finding on this point is bad in law.

On the other hand, learned Counsel for Respondent has submitted in his written argument that this Act is beneficial legislation. The Department invests the money, earns interest and then it is passed to the beneficiary. He further submits that the delay was recurring, hence, it cannot be said that there was no mens rea on the part of Appellant establishment in late deposit of EPF dues. He has referred to a judgment of Hon'ble Supreme Court in the case of **Horticulture Experiment Station Gonicoppal Coorg vs. the**

**Regional Provident Fund Organization, Civil Appeal No.-2136/2012 decided on 23.02.2022 wherein Hon'ble the Apex Court has held that Payment of Penalty/Penal Damages under Section 14-B of the Act is a civil liability for which mens rea is not relevant. This judgment is binding on this Tribunal. Hence, the argument of learned Counsel for Appellant establishment that the impugned order is bad in law because there was no mens rea established on its part in delayed deposits cannot be accepted.**

There is nothing on record to show that the assessment was incorrect.

Since no appeal shall lie before this Tribunal against order u/s. 7Q of the Act, the appellant establishment may pursue remedy in proper forum.

**In the light of above discussion, the finding of the Respondent authority that the Appellant establishment was liable to pay Rs. 2,43,13,663/- as penal damages U/S. 14-B of the Act for delayed deposit of EPF dues for the period mentioned above is held correct in law and fact. Point for Determination No.-2 is answered accordingly.**

No other point was pressed.

In the light of above discussion and findings, the Appeal is held devoid of merit and is liable to be dismissed with cost.

### **ORDER**

**Appeal dismissed with cost.**

**Date:- 03/06/2024**

**P.K. Srivastava  
(Presiding Officer)**

Judgment Signed, dated and pronounced.

**Date:- 03/06/2024**

**P.K. Srivastava  
(Presiding Officer)**