

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. 1380(14)2014

M/s. Prakash Hospital Pvt. Ltd.

Appellant

VS.

APFC, Noida

Respondent

ORDER DATED :-07/07/2022

Present:- Shri M.K Behuriya, Ld. Counsel for the appellant.
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This appeal challenges the order dated 30.06.2014 passed by the APFC u/s 7A of the EPF and MP Act assessing Rs. 28,68,295/- payable by the establishment as the deficit PF dues of its employees for the period 11/2008, 01/2009, 02/2009, 05/2009, and 01/2010 to 10/2013.

The facts stated by the appellant is that it is an establishment covered under the provisions of the EPF and MP Act and was allotted PF Code No. the coverage was done provisionally but never confirmed. However the appellant has been very diligent in deposit of the PF dues of its employees. None of its employees had ever raised any complaint against the appellant. A summon was received from the EPFO for the period 11/2008, 01/2009, 02/2009, 05/2009 and 01/2010 to 10/2013 alleging deficit in deposit. The appellant establishment through it's A/R appeared and raised objection to the EO report dated 27.05.2014 which was never supplied to the appellant for rebuttal. The enforcement officer in his report had stated that the employees engaged through contractor M/s Devendra Kumar were not getting PF benefits as evident from the balance sheet and ledger for the financial year 2011-2012 and 2012-2013. The EO had further reported that during the financial year 11-12 and 12-13 many staff were paid salary as trainee. All those were directly engaged by the establishment and thus entitled to PF benefits. The EO had further stated that some security agencies were engaged for supplying manpower and two employees having name Pradeep Sarin and Baiju Kumar Mishra were deprived of getting the benefits of Provident fund. The appellant representative had categorically disputed the report of the EO. But the commissioner without considering the objection in a mechanical manner passed the impugned order accepting the submission of the EO only and without giving opportunity to the appellant for disputing the EO report and without indentifying the beneficiaries and even without examining the employees claimed by the appellant as excluded employees. The appellant has thus stated that the impugned

order is illegal and liable to be set aside. To support his contention the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Himachal Pradesh State Forest Corporation vs. RPFC, 2008-III LLJ SC 581.**

The respondent on the contrary filed written reply to the appeal supporting the impugned order as a reasoned and well discussed order. While arguing on the legislative intention behind the Act the respondent has stated that the appellant has admittedly made deficit in deposit of the Pf dues of it's employees. It has been submitted that the appellant establishment had never challenged the coverage of its establishment by the respondent. The EO had visited the establishment on several occasions and had also verified the records maintained by the establishment. On the basis of the records provided by the appellant the EO prepared his report. The assessing authority had thus, passed the order after proper application of mind and on giving ample opportunity to the establishment of disputing the Eos report. While drawing attention to the Para 26(1) of the EPF Scheme the respondent submitted that all the persons working in the establishment except the excluded employees shall be entitled and required to become members of the fund from the date of joining to the establishment. The appellant establishment had failed to enroll the eligible employees from the date of joining and thus, the commissioner had appropriately passed the order. Thereby he argued for dismissal of the appeal.

Argument in detail was advanced by the counsel for both the parties. On behalf of the appellant the learned counsel Shri Gupta argued that the impugned order is a typical case of non application of mind by the assessing authority discharging a quasi judicial function. Neither he made effort of identifying the beneficiaries nor considered the fact that the establishment cannot be shaddled with the burden in respect of the excluded employees in respect of whom the employees' share were never deducted. He also submitted that the principles of natural justice were not followed in as much as the EO Report was not supplied to the appellant for examination and rebuttal. On the contrary the commissioner, in haste, proceeded to pass the impugned order. The learned counsel for the respondent during his argument mainly focused on the legislative intention behind the enactment and argued that the appellant being a big and established establishment should have been diligent in compliance of the statutory dues. It should have deducted and deposited the contribution of the employees employed through contractors as the principal employer subject to recovery of the amount from the bill raised. But in this case the establishment failed to discharge the obligation to the detriment of the employees.

The impugned order on a bare perusal shows that the commissioner has not recorded any reason driving him to the finding. He only accepted the report of the EO and concluded on the liability of the establishment. The impugned order shows that the notice dated 22.10.2010 was served on the appellant establishment to defend its case and to produce the documents. After some adjournments the EO was directed to verify the records of the establishment and submit his report. On 27.05.2014, submitted his report. There is no mention in the order that the copy of EO Report was ever made available to the establishment. The appellant has raised the question about violation of his legal right for non supply of the said report.

It is further seen from the impugned order that the EO observed that that the establishment had made deposit of the PF contribution for the period of inquiry except in respect of employees engaged through a contractor named M/S Devendra Kumar and two persons named Pradip Sarin and Baiju Kumar Mishra showing them as excluded employees though they were earlier made member under the scheme. The EO also found payment of Rs 28,15,207/- and Rs 30,38,296/- as salary of the staff during the FY 2011-2012 and 2012-2013 respectively, but no PF deduction was made on the same as per the records of the establishment. The commissioner as seen from the order was inclined to accept the report of the EO to pass the order and there is no reference in the order with regard to the stand taken and explanation offered by the establishment.

The learned counsel for the appellant during argument explained that the contractor was an independent employer having separate code no. No effort was made for summoning the contractor or identifying the employees in respect of whom omission in deposit had occurred. Similarly the excluded employees namely Pradeep Sarin and Baiju Kumar were never summoned. It has also been explained by the appellant the authorized representative of the establishment had explained during the inquiry that amount mentioned in the EO Report as payment made to doctors was in fact the consultation charges paid on irregular intervals and the said amount was never the salary attracting the provisions of the scheme. None of the submissions of the AR was considered nor discussed in the order.

The assessing authority exercising power u/s 7A of the Act is an authority discharging quasi judicial functions and under the provision of sec 7A(2) of the Act has been vested with the power of summoning documents and enforcing attendance of witnesses. But the commissioner in this case never made effort of summoning the persons who, as per the report of the EO were deprived of their statutory rights. Not only that, no effort was made by the commissioner to identify the beneficiaries engaged through contractor M/S Devender Kumar. The law is now well settled that assessment of

PF dues is not like assessment of Tax. The amount assessed and paid by the employer is meant to reach the beneficiary and EPFO is a mere custodian of the money so deposited. Appellant in support of his argument has placed reliance in the case of Himachal Pradesh State Forest Corporation vs. RPFC decided by the Hon'ble SC where in it has been held that the defaulted PF dues can be assessed in respect of those employees who are identifiable only.

It is thus apparent that the workers not identifiable, the amount, even if realized cannot reach the actual beneficiary and only serve the purpose of enriching the fund of EPFO unjustifiably. In this case the commissioner has also made assessment on the amount paid to doctors during the financial years under inquiry without specifying the name and designation of the doctors solely basing on the report of the EO. There is no mention in the impugned order if deduction was made from the said amount paid towards employees' share. The commissioner again committed a wrong while passing the impugned order for not giving any finding in this regard. In the case of **Sandeep Dwellers Pvt. Ltd vs. Union Of India ,2006 III CLR 748** The Hon'ble High Court of Bombay have held "as beneficiaries are unknown and department itself has doubt , recovery from any earlier date for which no deduction has been made should not be allowed."

Moreover way back in the year 1990 the Hon'ble SC in the case of **Food Corporation Of India vs. RPFC, 1990(60)FLR15(SC)** had held that "the question , in our opinion is not whether one has failed to produce evidence. The question is whether the commissioner who is a statutory authority has exercised power vested in him to collect the evidence before determining the amount payable by the establishment". In this case the commissioner had made least effort of summoning or collecting the evidence for identify the beneficiaries and finding out id deduction was made towards employees' share. But for reasons best known to him, he jumped in to a conclusion determining the liability of the establishment solely basing upon the report of the EO being inclined to accept the same against the stand of the establishment taken during inquiry. This approach of the commissioner makes the impugned order not sustainable and liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. The amount deposited by the appellant in compliance of the provision of sec 70 shall be refunded to the appellant in due procedure. Consign the record as per Rules.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 736(4)2014

M/s. Uniforge Bearing Co. Pvt. Ltd.
Through Sh. S.K Gupta for the Appellant

Appellant

Vs.

RPFC, Delhi
Through Sh. A.K Verma ,Ld. Counsel for the Respondent no. 1, & Sh. Madhukar
Verma, Ld. Counsel for the Respondent No. 2

Respondent

ORDER DATED :- 07/07/2022

Final order in this matter could not be pronounced. Accordingly, List the matter on 17.08.2022 for pronouncement of order. The Ld. Counsel for the Appellant prayed for allowing him to file written notes of arguments. The Ld. Counsel for the Appellant shall have the liberty to file the written notes of arguments within 3 days of passing of this order.

Presiding Officer

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/04/2022

M/s. Late Alok Kumar (since deceased)

Through his mother kundani Devi

Appellant

VS.

RPF, Delhi West

Respondent

ORDER DATED :-07/07/2022

Present:- None for the appellant.

Shri Sandeep Vishnu, Ld. Counsel for the Respondent.

This order deals with the argument advanced by the counsel for both the parties with regard to the maintainability of the appeal.

Bereft of unnecessary details the facts relevant for deciding the matter is that one Alok Kumar (deceased) was working with respondent no.1 i.e. M/s VIMAP Services Pvt. Ltd. and died on 01.10.2018 on account of an accident met on 28.01.2016 while in the employment of respondent no.2. After his death his mother raised a claim for the EPF and EPS of the deceased. When the claim was pending a dispute arose with regard to the date of leaving of the employment by the deceased since he met with the accident on 28.01.2016 and died of the injuries on 01.10.2018. On the complaint made by his mother through the union a proceeding under Para 26B of the EPF Scheme was conducted by respondent NO.3. But the respondent No.3 without going into the merits of the case and instead of appreciating the record filed by the appellant passed the order on 19.03.2021 wherein it was held that the date of exit of the deceased from the employment is 20.01.2016 and he was not in service on the date of his death i.e on 01.10.2018. Accordingly it was ordered that the successors/family members of late Alok Kumar may be considered for the benefits of Employees deposit link Insurance Scheme and Employees pension scheme taking 20.01.2016 as the correct date of his exit. Being aggrieved by the said order the present appeal has been filed.

When notice was served the respondent appeared through its counsel and vehemently opposed the maintainability of the appeal. Section 7-I deals with the provisions of appeal to the tribunal. This section clearly states:-

“Any person aggrieved by a notification issued by the Central Government, or an order passed by the

Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B (except an order rejecting an application for review referred to in sub-section (5) thereof), or section 7C, or section 14B, may prefer an appeal to a tribunal against such notification or order.”

A plain reading of the provision clearly bars an appeal challenging the order passed under Para 26B of the EPF Scheme. The Ld. Counsel for the respondent has placed reliance in the case of **Malviya Shiksha Sadan vs. RPFC-II and others reported in 221(I)CLR424** decided by the Hon’ble High Court of Punjab and Haryana wherein the Hon’ble Court while interpreting the provisions of section 7I of the Act and Rule 7(2) of the EPFAT Procedure Rule 1997 have held that any dispute relating to entitlement of an employee to become or continue as a member or as regards the date from which he is so entitled shall be decided by the Regional Provident Fund Commissioner and the same cannot be challenged in appeal and any appeal pending challenging the said order becomes infructuous. Thus, on a careful reading of the provisions of the Act and Rule referred above it is held that the appeal challenging the order passed under Para 26B of the scheme is not maintainable and accordingly it is held that the appeal as has been framed is not maintainable and dismissed.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/13/2022

M/s. BSL Scaffolding Ltd.
Through Sh. Sumit Kalra Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi (S)
Through None for the Respondent

Respondent

ORDER DATED :- 07/07/2022

List the matter for admission hearing on 25/07/2022 as none is present on behalf of the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/04/2020

M/s.Vij Contracts Pvt. Ltd.
Through None for the Appellant

Appellant

Vs.

APFC-Delhi (W)
Through Sh. Manu Parashar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 07/07/2022

The Ld. Counsel for the Respondent filed the reply. Taken on record. List the matter on 24.08.2022 for filing rejoinder by the Ld. Counsel for the Appellant.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/01/2018

M/s. Indian Oil Corporation Ltd. Appellant
Through Sh. Rajiv Shukla & Sh. Sanjay Kumar, Ld. Counsels for the Appellant

Vs.

APFC-Delhi (N) Respondent
Through Sh. Manu Parashar, Ld. Counsel for the Respondent

ORDER DATED :- 07/07/2022

List the matter on 26.07.2022 for filing reply to this miscellaneous application by the Ld. Counsel for the Respondent and consideration of the same.

Presiding Officer

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/31/2021

M/s. G. S Promoters Pvt. Ltd.

Appellant

VS.

APFC, Delhi (E)

Respondent

ORDER DATED :-07/07/2022

Present:- Shri B.K Chhabra, Ld. Counsel for the appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

The matter stands posted today for compliance of the direction given in the order dated 09.05.2022 wherein the appellant was directed to deposit 25% of the damage assessed within 4 weeks from the date of the order as a pre condition for stay of the impugned order pending disposal of the appeal. Today the Ld. Counsel for the appellant submitted that the respondent has in the meantime attached and recovered the entire assessed amount from the bank account of the appellant. For the said action taken the appeal has become infructuous and the appellant wants to withdraw the appeal as not pressed. No evidence has been placed on record in proof of the attachment and recovery of the assessed amount from the account of the appellant. However, taking into consideration the oral submission of the Ld. Counsel for the appellant the later is allowed to withdraw the appeal as not pressed. Consign the record as per rule.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/33/2021

M/s. Green Island Security Network
Through Sh. B.K Chhabra, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi(E)
Through None for the Respondent

Respondent

ORDER DATED :- 07/07/2022

The Ld. Counsel for the Appellant filed the compliance report. Taken on record. Appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 24.08.2022 for filing reply by the Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-1/20/2022

M/s. Bandana Electricals Appellant
Through Sh. Rajiv Shukla & Sh. Sanjay Kumar, Ld. Counsels for the Appellant

Vs.

CBT & APFC, Delhi (E) Respondent
Through None for the Respondent

ORDER DATED :- 07/07/2022

The Ld. Counsel for the Appellant filed the compliance report. Taken on record. Appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 24.08.2022 for filing reply by the Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 184(4)2014

M/s. Butterflies
Through Sh. S.K Gupta, Ld. Counsel for the Appellant

Appellant

Vs.

APFC, Delhi
Through Sh. Manu Parshar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 07/07/2022

Final arguments in the matter heard at length and concluded. List the matter on 07.09.2022 for pronouncement of order on the same.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 892(4)2016

M/s. Ansal Buildwell Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora Ld. Counsels for the Appellant

Vs.

APFC, Delhi (N) Respondent
Through Sh.. Satpal Singh, Ld. Counsel for the Respondent

ORDER DATED :- 07/07/2022

List the matter on 31.08.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 544(16)2016

M/s. Cosmique Pvt. Ltd. Appellant
Through Sh. S.P Arora & Sh. Rajiv Arora, Ld. Counsel for the Appellant

Vs.

APFC, Gurgaon Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 07/07/2022

Order in this matter could not be pronounced. List the matter on
17.08.2022 for pronouncement of order.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/04/2021

M/s. R.R. Enterprises
Through Sh. R.P. Dhawan for the Appellant

Appellant

Vs.

APFC , Gurgaon
Through Sh. Charkradhar Panda, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 07/07/2022

The Ld. Counsel for the Appellant wants some more time to file rejoinder as reply to this appeal has already been filed by the respondent and copy of the same has been served upon the Appellant on their e-mail. List the matter on 08.08.2022 for filing rejoinder.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/07/2021

M/s. International Hospital Ltd.
Through Sh. K.K Pandey, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Noida
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 07/07/2022

List the matter again on 29.08.2022 for filing rejoinder.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/04/2020

M/s. BHP Infrastructure Pvt. Ltd. Appellant
Through Sh. Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. Chakradhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 07/07/2022

Reply to the appeal filed by the Ld. Counsel for the Respondent.
Taken on record. Copy of the same stands supplied to the Ld. Counsel
for the Respondent. List the matter on 29.08.2022 for filing rejoinder.

Presiding Officer