

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

EPF Appeal No.- 115/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**Modern Bidi Factory,
Through: Partner,
Anwarul Quiyoom,
O/o Mission Chowk, Katni (M.P.)
Pin- 483501**

Appellant

Vs.

**Regional Provident Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhawan,
Vijay Nagar, Jabalpur (M.P.)
Pin- 482002**

Respondent

Shri Uttam Maheswari	:	Learned Counsel for Appellant.
Shri J.K. Pillai	:	Learned Counsel for Respondent.

JUDGMENT

(Passed on 14th day of August, 2025)

The present appeal is directed against the order dated 25.06.2014, passed by Respondent Authority under section 14-B & 7-Q of *The Employees Provident Fund & Miscellaneous Provisions Act, 1952* ,hereinafter referred to as the ‘Act’, by which the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted the deposit of EPFO dues of its employees within the period from March, 1992 to February, 2012 and has assessed the amount of penalty u/s 14-B of the Act at Rs. 3,17,746/- (*Rupees Three Lakh Seventeen thousand Seven hundred and Forty-six only*), and interest under section 7-Q of the Act at Rs. 2,67,644/- (*Rupees Two Lakh Sixty-*

seven thousand Six hundred and Forty-four only), has directed to pay this amount as penal damages as well the interest.

The skeletal facts connected to present appeal are mainly that, the Appellant Establishment is covered under the Act and has been allotted a separate PF number. An enquiry was made by the then Respondent Authority with respect to a complaint filed against the Appellant Establishment alleging non-compliance of the Act by way of not depositing the PF dues of its employees. The Appellant Establishment appeared in the said enquiry, an order under section 7-A of the Act was passed by the Respondent Authority holding the Appellant Establishment liable to deposit the PF dues of its employees for the period 1992-1993 to 2011-2012 and has assessed the amount at Rs. 3,75,326/- (*Rupees Three Lakh Seventy-five thousand Three hundred and Twenty-six only*).

The Appellant Establishment complied with this order under section 7-A of the Act, passed by the Respondent Authority on 01.11.2012 and remitted the amount assessed on 28.01.2013. Thereafter, as it is the case of the Appellant Establishment, that the Respondent Authority issued a notice dated 12.02.2014 under section 7-Q and 14-B of the Act requiring the Appellant Establishment to show cause as to why, the amount of interest under section 7-Q and penal damages under section 14-B of the Act be recovered from them. The Appellant Establishment appeared and filed reply to the show cause in which it is settled that they were held responsible to deposit the PF dues only on 01.11.2012 and deposited this amount under section 7-A of the Act immediately, hence there was no default on their part to attract penal damages under section 14-B of the Act or interest under section 7-Q of the Act. The Respondent Authority passed the impugned order with findings that the Appellant Establishment had committed default in deposit of PF dues for the period mentioned above and it assessed the penal damages and interest holding the Appellant Establishment liable to pay it under section 14-B and 7-Q of the Act, hence this appeal.

Grounds of Appeal, taken in the memo of appeal are mainly that the impugned order as well the findings are bad in law and fact passed by the Respondent Authority, by not appreciating the fact that, earlier also this Tribunal had held that when the amount determining under section 7-A of the Act was remitted within reasonable time, then no damages are liable to be imposed, hence committed error in law. The Respondent Authority further committed error in law in not considering the fact that the damages are required to be imposed only for the period of default, whereas in the case in

hand, damages have been imposed even for the period before settlement of the issue regarding liability to deposit PF dues. The Respondent Authority has further committed error in law in not considering the fact that infact, there was no default attracting the provision of section 14-B or 7-Q for the period and also in not appreciating the law laid down by **the Hon'ble Supreme Court in the case of Organo Chemical Industries and Another v/s Union of India and Others (1979) 4 SCC 573**, by way of overlooking the fact that there was no loss to the employees because the establishment has already paid interest assessed under section 7-Q of the Act. The Respondent Authority further committed error in law in ignoring the settled proposition of law in this respect.

In its counter to appeal, the Respondent Authority has defended his impugned finding and order, be the case that the enquiry was instituted by way of show cause notice on the basis of complaint made by employees of the Appellant Establishment alleging non-deposit of their PF dues by the Appellant Establishment. After enquiry it was held that the Appellant Establishment was liable to deposit PF dues of its employees for the period 1992-1993 to 2011-2012 and the amount was assessed vide order dated 01.11.2012, the Appellant Establishment deposited the assessed amount on 28.01.2013.

According to the Respondent Authority, it is undisputed that the Appellant Establishment was complying with the provisions of the Act with respect to some of its employees, but some of its employees were not extended benefits, the said enquiry was conducted and order dated 01.11.2012 was passed holding that these employees were entitled to the benefit of the Act from the date they first joined with the Appellant Establishment. Since there was a default in deposit of PF dues, notice under section 14-B and 7-Q of the Act was issued with respect to penal damages for the default in deposit and impugned order under section 14-B and 7-Q of the Act was passed after hearing both the parties.

It is further the case of the Respondent Authority that the impugned order has been passed on good reasons and does not warrant any interference.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for the Appellant Establishment and Mr. J. K. Pillai for Respondent Authority. Both the parties have filed written arguments also which are part of record I have gone through the written arguments and the record as well.

Since the Appellant Establishment has taken a case that they have deposited the interest hence the legality with respect to findings and assessment for the purposes of 7-Q of the Act loses its significance. Thus, the appeal is being taken with respect to findings and assessment under section 14-B of the Act only.

On perusal of the record in light of rival arguments following point comes up for determination.

(1) Whether finding of the Respondent Authority that the Appellant Establishment has committed default in deposit of PF dues of its employees covered under its order dated 01.11.2012 under section 7-A of the Act for the period 1992-1993 to 2011-2012 and the assessment has been correctly recorded?

For the sake of convenience, section 14-B of the Act is being reproduced as follows:-

“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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.”

Learned Counsel for the Respondent Authority has submitted that no *mens rea* is required in breach of civil liability, hence, in case in hand also *mens rea* on the part of Appellant Establishment is not relevant, what is relevant is that the Appellant Establishment was under the civil liability to deposit PF dues of its employees within the time frame required in which they failed, hence they cannot escape from paying the penal damages as mentioned under section 14-B of the Act. He has referred to judgment of ***Hon’ble Supreme Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Organization in Civil Appeal No. 2136/2012***, with connected appeals wherein it has been laid down by a Division Bench of Hon’ble Supreme Court that ‘*mens rea* loose significance in the case of breach of civil obligation’.

Learned Counsel further refers *para 32-B of The Employees' Provident Fund (EPF) Scheme, 1952* (in short the Scheme) and *para 5 of the Employees' Pension Scheme, 1995* in this respect, which is as follows-

“32B. Terms and conditions for reduction or waiver of damages.

The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the following terms and conditions, namely,-

(a)in case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b)in cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf recommends, waiver of damages up to 100 per cent. may be allowed;

(c)in other cases, depending on merits, reduction of damages up to 50% may be allowed. Chapter-VI Declaration, Contribution Cards and Returns”

& para 5 of the Employees' Pension Scheme, 1995 in this respect.

“5. Recovery of damages for default in payment of any contributions.-

(1) Where an employer makes default in the payment of any contribution to the Employees' Pension Fund, or in the payment of any charges payable under any other provisions of the Act or the Scheme, the Central Provident Fund Commissioner or such officer as may be authorised by the Central Government by notification in the Official Gazette.

(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.”

Learned Counsel for the Appellant Establishment has submitted that the organization had conducted similar enquiry under section 7-A of the Act for the period 04/1997 to 02/2000 and had passed order under section 7-A of the Act holding the Appellant Establishment liable to deposit PF dues of its employees. The organization, through Regional Provident Fund Commissioner, Nizamabad, Andhra Pradesh, have also passed an order under section 14-B of the Act imposing penal damages, which was challenged by the Appellant Establishment before the Tribunal at Delhi. That the order of Respondent Organization passed by the Regional Provident Fund Commissioner, Nizamabad, Andhra Pradesh, was set aside by this Tribunal in ATA 548(1)/2003 vide its order dated 11.02.2004, a writ petition filed by the Organization against this order was also dismissed by Hon’ble High Court.

Learned Counsel further submits that the Respondent Authority, in the impugned order, has recorded a finding for matter related to Regional Provident Fund Commissioner, Nizamabad Andhra Pradesh and was decided by Hon’ble High Court of Andhra Pradesh i.e., not binding on the Respondent Authority in Madhya Pradesh, which is incorrect in law. As submitted by Learned Counsel, The Employees’ Provident Fund Organization was a party in

both the cases in Andhra Pradesh and Madhya Pradesh. The Organization acts through its Provident Fund Commissioners, who are its agents and servants. Thus, the order of Hon'ble High Court of Andhra Pradesh, as referred above, has binding effect on the Respondent Authority of the Organization in Madhya Pradesh also.

I am in complete agreement with this argument of Learned Counsel for Appellant Establishment, it is not possible that the same Organization follows one set of principles in one State and other set of principles in another State. Hence, it is held that the finding of the Respondent Authority that judgment of Hon'ble High Court of Andhra Pradesh in the writ petition filed against order of this Tribunal in the appeal mentioned above by which the order under section 14-B of the Act was set aside in an identical circumstances and on identical facts, is not a binding precedent on him is held incorrect in law, the said judgment of Hon'ble High Court of Andhra Pradesh is held binding on the Respondent Authority in Madhya Pradesh also because both the Commissioners are agents and servants of one and same Organization which is Employees' Provident Fund Organization.

Accordingly, the impugned findings and assessment under section 14-B of the Act are held to have been recorded incorrectly in law and fact.

Point for determination stands answered accordingly.

No other point was pressed.

In light of above discussion and finding, the appeal is liable to be allowed.

ORDER

The appeal succeeds. The impugned order dated 25.06.2014 passed under section 14-B of the Act is set aside. Any amount recovered/deposited in compliance of the said order under section 14-B, shall be reverted to the Appellant Establishment by the Organization with the rate of interest the Organization charges in cases of default under section 14-B of the Act.

No order as to cost.

Date:- 14/08/2025

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

Judgment Signed, dated and pronounced.

Date:- 14/08/2025

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