

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

EPF Appeal No.- 248/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**NRI Institute of Information,
Science & Technology,
Through, Chairman,
Mr. D. Subodh Singh,
O/o 1-Sajjan Singh Nagar,
Opp. Patel Nagar,
Raisen Road, Bhopal (M.P.)**

Appellant

Vs.

**Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
59, Arera Hills,
Bhopal (M.P.) - 462011**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri Jubin Prasad : Learned Counsel for Respondent.

JUDGMENT

(Passed on 04th day of February, 2026)

The present appeal is directed against two separate orders dated 06.11.2017, passed by Respondent Authority under section 7-Q & 14-B 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 01.12.2001 to 31.03.2017 and has assessed the amount of interest under section 7-Q of the Act at Rs. 4,22,114/- as well damages u/s 14-B of the Act at Rs. 8,35,652/- respectively, has directed to pay this amount as penal damages as well the interest.

The case of the Appellant Establishment, as taken by them in memo of Appeal, is mainly that they are an Educational Institution and are covered under the Act. They have been allotted separate PF Code. The Respondent Authority instituted proceedings under section 7-A of the Act and assessed the contributions without identification of the beneficiaries, this amount was deposited by the Appellant Establishment to avoid litigation. Thereafter, the Respondent Authority issued notice under section 7-Q of the Act for interest and under section 14-B for penal damages with respect to delay deposit of PF dues of its employees. The Appellant Establishment appeared and filed its objections in response to the notice stating that delay was not intentional but Respondent Authority, without considering mitigating circumstances recorded the impugned finding and assessment directing the Appellant Establishment to deposit the assessed amounts, hence this Appeal.

Grounds of Appeal, taken in the memo of Appeal are mainly that the Respondent Authority committed error in law, in not appreciating the facts that the amounts assessed under section 7-A of the Act was immediately deposited, he further committed error in law in not appreciating the fact that the delay was not intentional and there were mitigating circumstances shown by the Appellant Establishment before him. The Respondent Authority further committed error in law, in acting as a blood-hound just to target collection of provident fund by not appreciating the proposition of law laid down by the **Hon'ble Supreme Court in the case of *Organo Chemicals and Hindustan Times Limited v/s Union of India (1998) 2 SCC 242***, the Respondent Authority further assessed the amount arbitrarily and illegally by applying the maximum damages in the scale provided in para 32 of the EPF Scheme, 1952.

In its counter to the Appeal, the Respondent Authority has taken a case that **firstly**, the Appeal against order under section 7-Q of the Act is not maintainable because there is no such provision in the Act, and this order is a consequential order when liability under section 7-A of the Act is settled, the Appellant Establishment is bound under law to pay interest under section 7-Q of the Act. **Secondly**, the Appellant Establishment is undisputedly covered under the Act, it is required to deposit PF dues within stipulated period as provided in para 38(1) of the EPF Scheme, 1952. The Appellant Establishment failed to substantiate its case before the Respondent Authority during the enquiry that the delay was not intentional, the period of delay which is about 7 years shows that the

delay is recurring which itself shows the required *mens rea* hence, findings and assessments have been correctly recorded.

The Appellant Establishment has further filed a rejoinder wherein they have mainly reiterated their case.

I have heard argument of Learned Counsel, Mr. Uttam Maheswari for the Appellant Establishment and Mr. Jubin Prasad, Learned Counsel for Respondent Authority. I have gone through the record as well.

As regards, the Appeal against under section 14-B of the Act, following point arise for determination on perusal of the record, in light of rival arguments.

Whether finding of the Respondent Authority with respect to default in deposit of PF dues of its employees by the Appellant Establishment for the period from December, 2001 to March, 2017 and the assessment has been recorded correctly in law and fact?

As regards, section 14-B of the Act, is being reproduced as under:-

“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.”

Similarly, para 32-A and Para 38 (1) of The Employees' Provident Fund (EPF) Scheme, 1952 (in short the **Scheme**) are also being reproduced as follows-

“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. (1)	Period of default (2)	Rates of Damages (percentage of arrears per annum) (3)
(a)	Less than two 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

(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.

38 Mode of payment of contributions

(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages

which together with his own contribution as well as an administrative charge of 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 excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund electronic through internet banking of the State Bank of India or any other Nationalized Bank or through PayGov platform or through scheduled banks in India including private sector banks authorized for collection on account of contributions and administrative charge.”

It has been submitted on behalf of the Appellant Establishment that they appeared during the enquiry and took a case that the remittance of the proposed amount under section 7-A of the Act was ignored by the Respondent Authority. Further they ignore this fact that Appellant Establishment is a Self-Finance Institution which imparts education and training to students and does not received any Grant-in-aid. It could not succeed in fulfilling the vacant seats in the Institution due to competitive market and was not sometimes in a position to pay wages to its employees. Learned Counsel for the Appellant Establishment has further submitted that the opening words of section 14-B, show that imposition of damages is not mandatory rather it is discretionary and inspite of the principles of law laid down by ***Hon’ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, 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 liability, the mitigating and aggravating circumstances with respect to late deposit were required to consider by the Respondent Authority by not considering these factors, the Respondent Authority has committed error in law in recording the finding and assessment.

As regards, impugned finding and assessment with respect to order under section 14-B of the Act, Learned Counsel for the Appellant Establishment has referred to judgment of ***Hon’ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees’ Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., (2022), SCC Online CHH 635***, in this case, the Single Bench of Hon’ble High Court of Chhattishgarh has after considering the legal effect

of *Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516*, and Judgment of *Hon'ble High Court of Kerala in the case of Regional Provident Fund Commissioner v/s Bake 'N' Joy Hot Bakery & Anr., (2024) SCC online Ker 11*, in this respect, in these two cases the order of this Tribunal reduced the amount of damages was upheld.

In another judgment *Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221*, following principles of law have been laid down with respect to 14-B after considering the judgment of *Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516*, relevant paragraphs are being reproduced as under:-

19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."

In other judgment of *Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3* are being reproduced as under:-

"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station,

Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-

"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :

(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer

has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of sizeable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39. Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court hold that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-

(i) Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii) The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv) When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the

employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the

Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi) Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum.

Thus, in light of judgments, it is established that this Tribunal as well the Authority will be within their powers to look into the mitigating and aggravating circumstances while considering the penal damages under section 14-B of the Act.

Now, considering the case in hand, the ground of delay taken is that the establishment is a Self-Finance Institution, all seats could not be fulfilled and it deposited the assessed amount under section 7-A of the Act arbitrarily. The period of default is almost 16 years and is recurring. Hence, keeping in view, this recurring default in 16 years when PF dues are required to be deposited during the fifteenth day of the next month when the wage becomes due, the said mitigating circumstances are held not sufficient to reduce the damages rather it is a fit case for levy of maximum damages as it has been done by the Respondent Authority in the case in hand.

Learned Counsel has referred to Judgment of ***Hon'ble High Court of Delhi in the case of Gaurav Enterprise v/s Union of India & Ors., MANU/DE/1843/2021***, and has submitted that since two separate orders under section 7-Q of the Act for interest and under section 14-B for penal damages of the Act were passed on the basis of one enquiry initiated on one show cause notice containing both the stipulations/defaults. Hence, the Appeal under section 7-Q of the Act will also be maintainable and only because of the fact that after Joint-

Enquiry, two separate orders were passed which was one under section 7-A of the Act and another under section 14-B of the Act does not make order under section 7-Q of the Act, not appealable before this Tribunal.

Learned Counsel for the Respondent Authority has rebutted this argument with his submissions. As laid down in the referred case, Single Bench of Hon'ble High Court of Delhi has held that Appeal against order under section 7-Q of the Act is maintainable. Though, it was a separate order but was passed on the basis of enquiry initiated on one joint show cause notice under section 14-B and 7-Q of the Act.

section 7-Q reads as under:-

“7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this 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 charged by any scheduled bank.”

The Act provides no Appeal against order u/s 7-Q of the Act, this provision is a consequential provision, the main liability is when it is final, a consequential liability cannot be relooked into.

Learned Counsel for Respondent Authority has further submitted that simply because the order u/s 7-Q of the Act also has been passed on the basis of a composite notice and enquiry, it does not make this order appealable.

Learned Counsel for Respondent Authority has referred to ***Judgment of Hon'ble M.P. High Court, in Sumedha Vehicles Pvt. Ltd. v/s C.G.I.T., Jabalpur***, where an order of this Tribunal though passed separately on the basis of composite notice and enquiry imposing interest u/s 7-Q of the Act was held not appealable, this was affirmed by Single Bench of Hon'ble High Court of M.P. since, this Tribunal is under superintendence of Hon'ble High Court M.P. hence, the law laid down by Hon'ble High Court of M.P. as mentioned above will be binding hence, Judgment of Hon'ble High Court of Delhi does not help the Appellant Establishment in the case in hand. Accordingly, the Appeal u/s 7-Q of the Act, held not

maintainable, the Appellant Establishment is at liberty to seek remedy before proper forum.

Learned Counsel for Respondent Authority has further relied on judgment passed in the case of ***Hon'ble Supreme Court in, Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner and Others (2013) 16 SCC 1***, in this case, it has been laid down that there is no provision of Appeal with respect to order u/s 7-Q of the Act but the appellant may still raise objection with respect to method of computation of interest and Respondent Authority is under obligation to consider and decide it. In the case in hand, there is apparently no calculation mistake with respect to interest hence, the findings and assessments with respect to interest cannot be faulted in law and fact, they are correctly affirmed.

Appeal against this order under section 7-Q of the Act is held not maintainable, the Appellant Establishment is at liberty to pursue remedy before proper forum.

Keeping in view the fact that order under section 7-Q of the Act is consequential order. Order under section 7-A of the Act is the main order, when the main order under section 7-A of the Act is not challenged and is in existence, the consequential order cannot be followed with.

In light of above discussion, the finding and assessment of Respondent Authority in the impugned orders is held recorded correctly in law and fact.

No other point was pressed.

In light of above discussion, the Appeal is held without merit and is liable to be dismissed.

ORDER

Appeal Dismissed.

No order as to cost.

Date:- 04/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**

Judgment Signed, dated and pronounced.

Date:- 04/02/2026

**P.K. SRIVASTAVA
(PRESIDING OFFICER)**