

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

**No. EPF Appeal No.- 90/2017**

**Present – P.K. Srivastava**

**H.J.S. (Retd.)**

**Abdul Haleem  
S/o. Shri Naimuddin  
O/o. 138-A, Hazrat Nizamuddin Colony  
Piplani, Bhopal (M.P.) - 462021**

**Appellant**

**Vs.**

**Assistant Provident Fund Commissioner  
Sub-Regional Office  
Bhavishya Nidhi Bhawan  
59, Arera Hills, Bhopal (M.P.) - 462011**

**Respondent**

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<b>Shri Uttam Maheshwari</b>	<b>:</b>	<b>Learned Counsel for Appellant.</b>
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<b>Shri J.K. Pillai</b>	<b>:</b>	<b>Learned Counsel for Respondent.</b>
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**JUDGMENT**

*I.* Under challenge in this appeal is composite order dated 27.06.2013 passed by the Respondent Authority under Section 7Q and 14B of the Employees Provident Fund and Misc. Provisions Act, 1952, hereinafter referred to the word “Act”, whereby the Respondent Authority has held the Appellant Establishment liable for payment of damages in the form of penalty for the period 03/2001 to 11/2012 and interest under Section 7Q of the Act for the said period amounting to Rs. 1,88,136/- as damages under Section 14B and Rs. 94,065/- as interest under Section 7Q of the Act for defaulting payment of employees provident fund dues of its employees within the stipulated period.

2. **Facts connected**, in brief, are that the Respondent Authority passed an order under Section 7-A of the Act holding the Appellant Establishment liable to deposit EPF dues of its employees for the period 07/2007 to 05/2011. The amount was deposited by the Appellant Establishment on 12.07.2012, thereafter the Respondent Authority served a notice to show cause while damages under Section 14-B and interest U/S. 7-Q of the Act not be recovered for default in timely deposit of EPF dues of its employees by the Appellant Establishment for the period March 2001 to November 2012. The Appellant Establishment appeared before the Authority and request for waiver of damages U/S. 14-B and deposited the interest portion U/S. 7-Q proposed by Respondent Authority in the said notice. The Respondent Authority passed the impugned order with respect to damages and interest without considering the grounds taken by Appellant Establishment before it which was arbitrary on the part of Respondent Authority. Hence this appeal.
3. **The grounds of the appeal** taken in the Memo of Appeal are mainly that the impugned order is bad in law and facts and as such is illegal, that it is a non speaking order without considering the submissions of Appellant Establishment and settled proposition of law laid down by Hon'ble the Apex Court in various cases.
4. In its **counter/reply**, the Respondent Authority has defended the impugned order on the ground that the applicability of the Act could be decided in the light of the provisions of the Act. The liability of the Appellant Establishment to pay the employees provident fund dues of its employees has been adjudicated in separate proceedings under Section 7A of the Act and is final between the parties. Payment of damages and interest are consequential to the main order, thus according to the Respondent Authority, there is no error of law and fact in t he impugned order.
5. I have heard arguments of Mr. Uttam Maheshwari, learned Counsel for the Appellant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. Both the sides have filed written arguments. I have gone through the record and the written arguments as well.

6. After perusal of the record in the light of rival arguments, the following point arises for determination :-

**“Whether the finding of the Respondent Authority that the Appellant Establishment is liable to pay damages under Section 14B and interest under Section 7Q of the Act for delayed deposits of EPF dues of its employees between the period 03/2001 to 11/2012 and the assessment can be faulted in law or fact or not ?”**

7. Both the learned Counsel have attacked and defended the impugned finding in their arguments. The main contention of learned Counsel for the Respondent Authority is that imposition of interest under Section 7Q of the Act is only consequential when the liability to pay employees provident fund dues by the Appellant Establishment for the period in question has been settled and has become final. The Appellant Establishment cannot escape from paying interest on damages under Section 7Q of the Act. This is also because the Respondent Authority has to pay interest to the contributions on their deposits. The arguments of learned Counsel for Appellant Establishment on this point is mainly that the Appellant Establishment cannot be held liable to pay interest for pre assessment period.

8. Section 1(3) of the Act requires to be reproduced here, which is as follows :-

**3) Subject to the provisions contained in Section 16, it applies-**

**(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and**

**(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.**

9. A simple reading of this provision makes it clear that an establishment is under obligation to pay employees provident fund dues of its employees and is covered under the Scheme automatically as and when conditions mentioned as above are satisfied. Thus the arguments of learned Counsel for respondent that the Appellant Establishment is covered under the Act for Provident Fund deposits when the conditions under Section 3a and 3b as mentioned above are satisfied and letter of coverage or assessment order does not make any difference in this liability, is liable to be accepted accordingly.
10. This is also to be mentioned here that liability to pay interest under Section 7Q is a consequential one. In the case in hand, when the liability to pay Employees Provident Fund dues for the period in question has become final between the parties, the Appellant Establishment is under obligation to pay interest for late deposits under Section 7Q of the Act, hence the finding of the Respondent Authority with regard to liability under Section 7Q of the Act and assessment cannot be faulted in law or fact and is affirmed accordingly.
11. As regards the liability of the Appellant Establishment to pay damages under Section 14B of the Act for the late deposits and assessment, the learned Counsel for the Appellant has submitted that the Respondent Authority did not consider the fact that the amount U/S. 7A was assessed only in 2012, hence liability to pay damages could arise only after 29.05.2012 i.e. the date on which the assessment order was passed. Learned Counsel has referred to judgment of Hon'ble High Court of Chhattisgarh at Bilaspur in **Regional Provident Fund Commissioner Vs. Bilaspur Spinning Mills & Industries Ltd., reported in 2022 SCC online Chh. 635** where order of this Tribunal restricting the damages upto 15% was up held by the Single Bench. In the other reported judgment **2023 SCC Online Chh. 1737** which is passed by Division Bench in a Writ Appeal filed by the Provident Fund Organization against the aforesaid Single Bench judgment, the judgment of the Single Bench was confirmed.

**Section 14-B** of the Act reads as under:

**Power to recover damages.** - Where an employer makes default in the payment of any contribution to the Fund (The Family 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 to impose.

3. From perusal of provisions as extract herein above, though it is clear that the department has power to impose damages in case of non-deposit/delayed deposit of the provident fund, it is only discretionary to impose damages as is clear from the word "may" used in the Provision.

As held in the case of Horticulture experiment (Supra), referred to from the side of Respondent, the civil liability to pay has nothing to do with Mens Rea and it is to be seen only with respect to criminal liability. In spite of this proposition. I am of considered view that though the civil liability is absolute and is independent of Mens Rea, still the Respondent Authority has to consider the attendant circumstances, mitigating and aggravating, while assessing the amount because of use of the word 'May' and not 'Shall' in Section 14B. As regards to argument of learned Counsel for Respondent Authority that the Circular fixing the rate of damages U/S. 14B is binding, it cannot be accepted because the statute is an 'act' of Parliament whereas the Circular is part of executive order and the statute makes the fixation of amount discretionary by using the word 'May' in Section 14B. This circular may be a guide for Respondent Authority to be followed generally but not binding atleast on this Tribunal. I am therefore, not impressed by the submission that full damages are compulsory under [Section 14-B](#) of the Act.

- 12.* As regards the **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.

Learned Counsel for Respondent Authority has submitted that admittedly, the EPF dues for the period were deposited belatedly, thus the Appellant Establishment itself invited imposition of damages and interest. He further submits that the default was not occasional rather it was recurrent. These arguments are supported from record, hence, are liable to be accepted.

**13.** There is nothing on record before this Tribunal to show that any mitigating circumstance justifying delayed deposit was shown by Appellant Establishment before Respondent Authority or before this Tribunal. Hence, the assessment which has been made with regards to amount of damages cannot be faulted in law or fact.

**14.** No other point was pressed.

**15.** In the light of the above discussion, the appeal fails.

### **ORDER**

**Appeal dismissed. The liability and the assessment of amount under Section 7Q & 14B of the Act in the impugned order is affirmed.**

**No order as to costs.**

**Date:- 03/07/2024**

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

**Judgment Signed, dated and pronounced.**

**Date:- 03/07/2024**

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