

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**  
**CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,**  
**JABALPUR**

**NO. CGIT/LC/EPFA-22-2018**

**PRESENT: P.K.SRIVASTAVA**  
**H.J.S.(Retd.)**

**M/s Sultania Janana Hospital**

**APPELLANT**

**Versus**

**Assistant Provident Fund Commissioner**  
**Bhopal(M.P.)**

**RESPONDENT**

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**Shri Uttam Maheshwari** : **Learned Counsel for Appellant.**

**Shri J,K,Pillai** : **Learned Counsel for Respondent.**

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**(J U D G M E N T)**

**(Passed on this 22nd day of October-2021)**

1. Under challenge in the present appeal is the order of Respondent Authority dated 18-6-2018 under Section 14-B of the Employees Provident Fund & Misc. Provisions Act 1952,( hereinafter referred to as the word Act) holding the appellant establishment guilty of the delayed payment of employees provident fund dues for the period 20-12-2017 to 17-1-2018 and has held the appellant establishment liable to pay damages of Rs.8,05,956/- under Section 14-B of the Act.
2. It is pertinent to refer that there is an order of the Respondent Authority dated 18-6-2018 passed by it under Section 7Q of the Act holding the appellant establishment liable to pay interest for late

payment of employees provident fund dues for the period mentioned. Order under Section 7Q of the Act has been passed separately, hence it is not appealable. Accordingly, this appeal is limited only with respect to Order under Section 14-B of the Act. The Appellant is at liberty to seek remedy before appropriate forum with respect to order under Section 7Q of the Act.

3. Facts connected with the appeal are mainly that according to the Appellant it is a Government Hospital run under State Government. It was covered under the Act in the year 2011 in retrospective manner. The Respondent Authority switched over to online remittance of contribution, accordingly instructions were issued by the Respondent Commissioner to the Treasury Officer in the State of Madhya Pradesh. The appellant sought guidelines from Treasury Officer regarding the modalities followed for the remittance for contribution. On receipt of the clarification from Treasury Officer, the appellant submitted a representation before the Respondent. It is in these circumstances, the respondent initially proceeded for penal interest and damages. The Appellant Establishment pointed out the delay was due to delayed release of budget by Government, salary of employees is paid directly by Treasury Office and employees contribution is required to be transmitted by the Treasury Office to the appellant and thereafter the appellant establishment deposits it to the Respondent Authority, hence the delay was on the part of the Treasury Office in remitting the employees provident fund dues to the appellant establishment, after deduction and not on the appellant establishment. According to the appellant establishment, the Respondents passed the impugned order and recorded the impugned finding under Section 14-B of the Act ignoring these facts, hence this Appeal.
  
4. The grounds of appeal taken in the Memo of appeal are mainly that the impugned order is bad in law and has been passed by the Respondent Authority without appreciating the facts that the amount

was received by the public ex-chequer, Treasury Office, wherein the salary was paid by the Treasury Office, after deducting the employees provident fund contribution by the Treasury Office and remitted it after deduction to the appellant establishment which in turn deposited it with the respondent, hence the delay was not intentional. The Respondent Authority has further failed to appreciate that the appellant establishment has entrusted various Government Schemes. The delay was due to deficiency in staff and fund and hence was not intentional. The Respondent Authority passed the impugned order ignoring the preposition of law settled in various decisions of the Hon'ble High Court and Hon,ble Supreme Court, specially mentioned in para 4 and 5 of the Memo of Appeal.

5. In its reply/Counter, the Respondent side has generally defended the impugned order with a case that the damages levied are compassionately and punitive in nature. According to the Respondent Authority, the notice dated 16-4-2018 was issued by the Appellant with a direction to deposit the employees provident fund dues mentioned in notice or appeal before the Respondent on 8-5-2018. The notice was served on the appellant but nobody appeared for appellant establishment on the date fixed. The hearing was adjourned by the Respondent to 23-5-2018 and another notice was served on the appellant directing it to appear and submit its reply on that date which was served on appellant on 17-5-2018. None appeared on that date also for the appellant establishment, hence hearing was adjourned to 1-6-2018. A fresh notice was delivered to appellant on 31-5-2018. The appellant did not appear on the date fixed i.e. 1-6-2018. No material was produced by the appellant to show his bonafide absence and for his late deposit, hence the impugned order, cannot be said to be without any basis and is liable to be confirmed. It is also the case of the Respondent that Appellant is statutorily bound to deposit the employees provident fund dues of its employees by 15 of next month and the ground like budget was not approved or delay was in receipt of the employees provident fund contribution from the Treasury Office or the shortage of staff

or switch over of the remittance mode are not valid grounds for withdrawal of damages. Accordingly, the Respondent has prayed that the Appeal be dismissed.

6. NO rejoinder has been filed by the appellant.
7. I have heard arguments of Shri Uttam Maheshwari, learned Counsel for the Appellant Establishment and Shri J.K.Pillai, learned Counsel for the Respondent. I have also gone through the record.
8. On perusal of the record in the light of rival arguments, following points come for determination"-

**1."Whether the findings of Respondent Authority that the Appellant Establishment is liable to pay damages under Section 14-B of the Act is correct in law and fact?"**

**2."Whether the appellant is entitled to any relief."**

**9. DETERMIANTION OF POINT NO.1:-**

The Respondent Authority has recorded a finding in the impugned order that the Appellant Establishment has made delayed payments of employees provident fund dues between the period 20-12-2017 to 17-1-2018. As has been mentioned earlier, the Employees Provident Fund Rules provides for payment of employees provident fund dues up to 15 of the next month. The employees provident fund dues are to be deposited on monthly basis, hence the defaults made by the appellant establishment during the aforesaid period has been committed on monthly basis. IN its counter the Respondent Authority has stated that in fact the Appellant Establishment did not care to be present and put its side of

story/defence before the Respondent Authority inspite of three notices for different dates served on them. The impugned order mentions this fact. The Appellant has not countered this case of Respondent Authority put in its counter. Hence, since this is establishment that the appellant establishment did not appear before the Respondent Authority inspite of service of notice to Respondent Authority did not have information regarding the grounds or facts and circumstances resulting into delay of deposits and since the default/delay was on month to month basis, continuously, hence it cannot be said that the Respondent Authority erred in recording the findings that the delay was with required mensrea and it was without any lawful excuses.

10. The appellant establishment has mentioned some grounds of delay in deposits mentioned earlier in this Judgment. Since this Tribunal is the first appellate forum, hence it can go into questions of facts also. One way could be to remand the case to Respondent with a direction to decide the case afresh in the light of grounds taken, regarding delayed deposits in the Memo of Appeal. This is not feasible firstly because the Appeal is itself pending since years and secondly remanding the case will result into further delay. Hence this Tribunal proposes to examine the correctness of the grounds taken by appellant in its memo of appeal for delayed deposits.

11. Delayed deposits are mainly due to following reasons as submitted by appellant:-

**No.1 Delayed remittance of employees provident fund dues by Treasury to appellant establishment.**

**No.2 Shortage in staff.**

**No.3 Switching over of mode of remittance by the Respondent Authority.**

12. The Appellant Establishment has filed some documents regarding communication between the Treasury Office and Respondent, appellant and Respondent, Treasury office and

Appellant which are Annexure 128 to the Appeal. All these documents are of the period before the period in question in the appeal. The Appellant was under obligation to produce evidence in the form of documents to show that in each month during the period when the amount was remitted by the Treasury Office and when it was deposited by the appellant to the respondent, to show and establish that in fact the appellant did not for a required mensrea for the late deposits. Since the appellant has failed in doing so, from the evidence on record produced before this Tribunal to show lack of required mensrea it cannot be held that the appellant in fact did not have the required mens rea for late deposits. Consequently the impugned order and finding of the Respondent Authority in this respect cannot be held to be bad in law or fact. Hence answer to point for determination No.1 is in favour of Respondent. The finding of the Respondent Authority is affirmed.

**13. POINT FOR DETERMINATION NO.2:-**

In the light of the finding recorded in point for determination no.1, the Appellant Establishment is held entitled to no relief

14. On the basis of the above discussion, the appeal is found without merits and is liable to be dismissed with costs.

**ORDER**

**The Appeal stands dismissed with costs.**

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**Date:22-10-2021**