

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

EPF Appeal No.- 08/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**Compact Security Services,
312, IIIrd. Floor, Krishna Plaza,
Main Road, Bhopal MP**

Appellant

Vs.

**Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
59, Arera Hills, Bhopal - 462011**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

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

JUDGMENT

The present appeal is directed against the order of the Respondent Authority dated 28.09.2017 passed under Section 7Q and 14B of the Employees Provident Fund and Miscellaneous Provisions Act, (in short the 'Act') wherein the authority has recorded a finding that the Appellant Establishment has defaulted deposit of EPF dues of its employees for the period from 15.01.2014 to 31.03.2017 and has assessed interest under Section 7Q for the period at Rs. 3,95,813/- also damage under Section 14B of the Act, at Rs. 5,46,871/- and has directed the Appellant Establishment to pay these amounts holding the Appellant Establishment liable to pay.

The grounds of appeal are mainly that, the impugned order and finding as well assessment has been passed without considering the settled preposition of law, as well objections raised by the Appellant Establishment before the Respondent Authority, the Respondent Authority failed to apply its judicial mind to consider and analyze the mitigating circumstances in default hence, the impugned order is illegal, arbitrary, and perverse. The findings have

been incorrectly recorded without considering the required mens rea and without giving a reasonable opportunity to the Appellant Establishment. The impugned order is not a speaking order and hence suffers with illegality.

In its counter to the reply, the Respondent Authority has taken a case that, the act is the beneficial legislation, the impugned order has been passed after an enquiry conducted by Respondent Authority giving full opportunity to the Appellant Establishment to present its case and the findings have been recorded correctly in law and fact. Also it has been stated that the appeal against order under Section 7Q of the Act is not maintainable before this Tribunal.

The Appellant Establishment has filed rejoinder also which is on record.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for 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.

Following points arises for determination in the case in hand.

- 1. Whether the appeal against order under Section 7Q of the Act is maintainable before this Tribunal ?***
- 2. Whether the finding of the Respondent Authority with respect to default in deposit of PF dues by the Appellant Establishment has been recorded correctly in law and fact?***

Point for determination No. 1

Section 7Q of the Act is being reproduced as follows:

7-Q. 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.

And Section 7I is reproduced as follows:

7-I. Appeals to Tribunal.-

- (1) 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 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7-C, or section 14-B, may prefer an appeal to a Tribunal against such notification or order.

- (2) *Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.*

A perusal of these provisions makes it amply clear that no appeal is maintainable before this Tribunal against order under Section 7Q hence holding the appeal not maintainable against order under Section 7Q of the Act, this point is answered accordingly.

Point for determination No. 2

It has been submitted from the side of the establishment that they are engaged in supplying man power to different organizations on outsourcing basis, for which they are paid by the principal employer after getting payment from principal Employer, they become in position to deposit PF dues and their grievances. Since they have received payments from principal employer not in time, hence there was delay in deposit of PF dues which was not intentional and without mens rea. The Respondent Authority passed impugned finding and order ignoring this fact, hence has committed error in law. Learned Counsel has referred to following judgment in this Respect.

- 1. *Shanti Garments V.s. RPFC MANU/TN/3100/2002 (Para 9)***
- 2. *RPFC V.s. Bilaspur Spinning Mills MANU/CG/0583/2022 (Para 17 to 19)***
- 3. *RPFC V.s. HMT Ltd. MANU/KA/2458/2023 (Para 26 to 29)***
- 4. *Central Board of Trustees, EPFO V.s. Bake 'N' & others MANU/KE/0462/2024 (Para 4).***

In these cases it has been laid down that before imposing penalty under Section 14B, the Respondent Authority is under obligation to consider the mitigating and aggravating circumstances.

On the other hand, Learned Counsel for Respondent has submitted that, the act is beneficial legislation. The impugned order and finding have been recorded after an enquiry conducted by Respondent Authority after giving full opportunity to the Appellant Establishment and based on facts and evidences they have been correctly recorded, hence, do not warrant interference.

Learned Counsel has mainly referred to judgment of Hon'ble Supreme Court of India in the Horticulture Experiment Station V.s. The RPFO reported in Indian Kanoon.org/doc/162685560, wherein it has been held that in cases of civil liability mens rea losses its significance.

The perusal of the impugned order reveals that, the case was finally heard by Respondent Authority on 25/09/2017. This date was fixed on the request of the representatives of the Appellant Establishment. He had already made his representations. The Respondent Authority further recorded a finding that, the default is recurrent, hence it cannot be said that there was no required *mens rea* and there is nothing on record to indicate that the Appellant Establishment took a plea of late receipt of payment from principal employer before the Respondent Authority. They have filed some documents which are summary of bills and date of payments by principal employer obtained under RTI, which goes to show that there has been delay in payment from the principal employer. Hence, the fact that the dues were not deposited in time because of late receipt of wages by the principal employers to the Appellant Establishment. This is a mitigating circumstance which requires to be considered while assessing the amount under Section 14B. This Tribunal, being as Court of Appeal on facts as well law, is within its powers to take into account this factor while deciding the correctness of the assessments. Keeping in view the fact that Appellant Establishment received the wages of its outsourced employees not in time as there was delay in processing payment by the Principal Employer, it will be in the interest of justice to remand the matter to the Respondent Authority to re-assess the amount under Section 14B in the light of documents filed by the Appellant Establishment before this Tribunal and after giving opportunity of hearing to the Appellant Establishment. The Respondent Authority will be within its powers to recover any amount or part of amount assessed from the principal employer also if it is established before them that the delay in deposit was due to late payment of wages by the principal employer.

Point for determination No. 2 stands answered accordingly.

No other point was pressed.

In the light of above discussion and findings the appeal deserves to be disposed and is being disposed as follows.

ORDER

Appeal is allowed in part. Order under Section 7Q of the Act is held not cognizable by this Tribunal and Appellant Establishment is at liberty to approach proper forum in this respect.

Appeal so far as it relates to liability to pay the assessed amount under Section 14B of the Act is set-aside and the matter is remanded to the Respondent Authority to hear and decide it afresh on the point of liability of the Appellant Establishment and the Principal Employer, preferably within six months.

No order as to cost.

Date:- 12/06/2025

P.K. Srivastava
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 12/06/2025

P.K. Srivastava
(Presiding Officer)

