

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II,  
ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

M/s. Anand Kumar Pandey Security Agency

Appellant

Vs.

APFC, Noida

Respondent

**Appeal No. 351(14)2016**

**ORDER DATED:- 20 November, 2020**

Present:- Shri Anand Kumar Pandey, Ld. Counsel for the Appellant.  
Shri Narendra Kumar, Ld. Counsel for the Respondent.

This appeal challenges the composite order dated 29.02.2016 passed by the APFC Noida assessing Rs. 95367/- and 80928/- as damage and interest respectively for delayed remittance of EPF dues for the period 07/2013 to 03/2015.

The facts asserted by the appellant in short is that the appellant establishment is a Pvt. Ltd. Company doing business of providing manpower to different establishment under the Contract Labour (Rand A) Act 1970 and a covered establishment under the EPF and MP Act. The appellant Anand Kumar Pandey is the sole proprietor and an ex-army personnel. Though he was very regular in remittance of EPF dues of its employees, on some occasions delay had occurred due to delay in receipt of the payment from the Principal Employer. Notice dated 12.08.2014 was issued to him to showcause as to why damage and interest shall not be levied and recovered from him for the delayed remittance for the period 07/013 to 03/2015. The appellant appeared before the authority and filed his objection in writing explaining the reasons for the delay in remittance. But the commissioner without taking into consideration the said submission and without serving the copy of the calculation sheet and giving proper opportunity of hearing passed the composite order on 29.02.2016 without assigning any reason for levy of damage.

Being aggrieved he has filed the present appeal challenging the impugned order on the ground that the commissioner has passed the order in a mechanical fashion and without good reason. Not only that the commissioner has passed the order without giving any finding about the mensrea of the appellant for delayed remittance. As such the

impugned order is illegal and not sustainable. He has thus prayed for setting aside the impugned order.

On behalf of the respondent a written reply was filed supporting the impugned order. It has been stated that the appellant on factual aspect has admitted about the delay in remittance of the PF dues. Though, in the appeal he has taken the plea of delayed disbursement of the dues by the Principal Employer, no such plea was advanced during the hearing. Not only that no document was filed during the inquiry to explain the cause of delay. Hence the commissioner is justified in assessing the amount of damage and interest. The appellant being the manpower supply agency is the Principal Employer and cannot escape the liability in view of the clear provision laid under the Para 30(3) of the EPF Scheme.

Perusal of the impugned order shows that the notice for the inquiry was sent to the appellant on 12.08.2014 and the appellant was called upon to appear on 12.08.2014. Thereafter the matter was adjourned to several dates and on 20.01.2016 the hearing was concluded and the impugned order was passed. The commissioner who has passed the order has stated that section 14B of the Act provides that where an employer makes default in payment of any contribution to different funds under the Act, the authority acting u/s 14B of the Act may recover from the employer by way of penalty such damage not exceeding the amount of arrear as may be specified in the scheme. The order of the commissioner nowhere reveals that alongwith the notice dated 12.08.2014 a calculation of the arrear for which damage is leviable was supplied to the appellant. Furthermore, the commissioner while discharging a quasi judicial function though authorized to compel production of document no such steps were taken by him.

A bare perusal of section 14B shows that the provision doesn't envisages mandatory levy of damage. Not only that it doesn't contemplate computation of the quantum of damage in a manner prescribed under Para 32A of the scheme of 1952. The use of the word "may recover" in section 14-B shows the discretion vested with the commissioner or the officer authorized to impose and recover the damage from the employer. The power to impose the damage u/s 14b being a quasi judicial power, the authority exercising the same is required to act in a prudent and reasoned manner while exercising the discretion and full damage is normally to be awarded in extreme cases where it is apparent on the face of the record that the default was will full and intentional.

In the case of *Organo Chemical Industries vs. Union of India* the Hon'ble Supreme Court while considering the ambit and scope of the expression damage as used in section 14B of the act have held:

“The damage u/s 14B of the Act is a penalty for default or failure in performance of the duty imposed under the EPF Act as well as compensation for the loss sustained by the employees. The provision is meant to provide respite to the employee for the loss suffered.”

It is thus clear from the aforesaid decision that the authority exercising power u/s 14B has to apply his mind to the facts of each case alongwith the reply to the showcause notice and proceed to pass a reasoned/speaking order following the Principles of Natural Justice. Not only that the commissioner has to take into consideration the number of default the period of delay the frequency of default and the amount involved etc. If upon consideration of all the relevant aspects he comes to an conclusion that the default was beyond control or due to grave hardship he has the power to reduce the percentage of damage and vice-versa.

It is found that the APFC without assigning any reason came to an conclusion that the amount calculated by the EO is payable by the establishment as damage.

In the case of **Employees State Insurance Corporation vs. HMT Ltd. (2008-I-LLJ-814.SC)** while dealing with the pari-materia provision of the ESI Act the Hon'ble SC have held that levy of maximum damage as per the scheme is not the rule and the PF commissioner is empowered to reduce the amount of damage. A similar view was also taken by the Hon'ble S.C in the case of **Organo Chemicals Industries and Another vs. Union of India (1979) 4 SCC 573** and followed by the Hon'ble High Court of Delhi in the case of Shalom Restaurant referred supra.

Thus on a careful consideration of all these judicial pronouncements, the conclusion is that the APFC in exercise of his quasi judicial power can impose full damages only in extreme circumstances when the default is willful and intention.

It would be appropriate to observe that the impugned order also suffers from want of justification by the APFC with regard to mensrea of the appellant. In the case of RSL Textiles referred supra, and a catena of earlier judgments, the Hon'ble S.C have held that when the order is silent about the evil intention or mensrea on the part of the establishment, the establishment can't be saddled with the penal damage.

Even if it is assumed for the sake of argument that the employer establishment had not put forth any reason for the delayed payment, that would not absolved the respondent authority from dealing with

the question of mensrea as required under law before fastening the liability on the establishment. In this regard reliance can be placed in the case of **DCW Employees Cooperative Canteen limited vs. The Presiding Officer EPFAT decided by the Hon'ble High Court of Madras and reported in 2018LLR 672** wherein it has been held that the competent authority is required to give a finding on the mensrea before imposing damage u/s 14B of the act.

Keeping in view the legal position discussed above this tribunal comes to a conclusion that impugned order is not legally sustainable for being a non speaking order and for not giving any finding with regard to the mensrea. On these grounds the impugned order is liable to be set aside. Hence, ordered.

### ORDER

The appeal be and the same is allowed. The impugned order is hereby set aside. Copy of the order be sent to the parties under Rule 20(1) of EPFAT (Procedure) Rules 1997. File be consigned to the record room after due compliance.

Sd/-  
Presiding Officer