

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

**EPF Appeal No.- 10/2017**

**Present – P.K. Srivastava**

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

**Army Public School,  
Through: Principal,  
C/o Grenadiers Regimental Centre,  
Rampur Chowk, Jabalpur (M.P.)**

**Appellant**

**Vs.**

**Assistant Provident Fund Commissioner,  
Employees Provident Fund Organization,  
Bhavishya Nidhi Bhawan,  
Vijay Nagar, Jabalpur (M.P.)**

**Respondent**

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

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

**JUDGMENT**

(Passed on 17<sup>th</sup> day of July, 2025)

The present appeal is directed against the order dated 26.09.2017, passed by Respondent Authority whereby 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 March, 2005 to March, 2014 and has assessed the amount of penalty at Rs. 14,69,181/- directing the Appellant Establishment to deposit it.

The facts connected in brief are mainly that, the Appellant Establishment is an educational institution which is covered under the provisions of **Employees Provident Fund & Miscellaneous Provisions Act, 1952** (hereinafter referred to as the '**Act**'). A direction was issued by the Army Public School having its Headquarter at Ministry of Defense in Delhi to comply the statutory provisions under the Act stipulating for the wage limit shall be followed for the purpose of included and excluded employees. It was also directed that for the existing employees, compliance shall be made with respect to all the employees and for the fresh appointments, the employees whose gross salary more than the prescribed cutoff, they will be required to be excluded from the operation of the Act. This circular is

Annexure-A/1 to the appeal issued on 09.05.2009. The Respondent Authority initiated proceedings under Section 7-A of the Act and issued a notice. The Appellant Establishment appeared submitted relevant Registers mainly Salary Register, Attendance Register, photocopy of the Challan already remitted and amount of the Challan as well a list of eligible employees. The Enforcement Officer submitted a report on October 16, 2015 in which he assessed the amount on contribution without examining the documents produced by the Appellant Establishment during the enquiry. The Respondent Authority relied on the report of the Enforcement Officer in recording the impugned finding and assessment also that the Appellant Establishment took a specific case that it had engaged employees who were drawing salary more than Rs. 6,500/- per month but merely because Form No. 11 was not produced, they were also included for the purpose of assessment of the contribution. The Appellant Establishment submitted the list of excluded employees in Form No. 11 before the Respondent Authority with an application dated 30 November, 2015 alongwith Form No. 11, copy of which is filed as Annexure-A/3 to the memo of appeal but, as it is the case of the Appellant Establishment the Respondent Authority passed the impugned order in mechanical manner without considering the Form No. 11 filed by the Appellant Establishment before it. Thereafter the Respondent Authority further issued a show cause notice u/s 7-Q and 14-B of the Act to show cause as to why the interest u/s 7-Q and penalty u/s 14-B not be imposed upon the Appellant Establishment for default in deposit of Employee Provident Fund dues for the period. The Appellant Establishment appeared in enquiry and took a case that they are Welfare Organization which works for children of army personnel and the assessed amount u/s 7-Q as well 14-B includes the excluded employees also whereas there is not default in not depositing the contribution of excluded employees but the Respondent Authority passed the impugned order and assessment mechanically without complying its mind and without considering the mitigating circumstances, hence this appeal.

**Grounds of Appeal, taken in the memo of appeal are mainly** that the Respondent Authority has failed to consider the fact that with respect to excluded employees, the amount became due for the first time when order u/s 7-A of the Act was passed, hence there could be no default in deposit of the P.F. dues of such employees, hence committed error in law, the Respondent Authority acted on the premise in recording impugned finding that Appellant Establishment did not challenge the order u/s 7-A of the Act, hence, it committed default in deposit which is against law, the Appellant Establishment did not consider the mitigating circumstances in imposing the penalty u/s 14-B of the Act.

The respondent authority has defended the impugned order and assessment in its counter to the appeal with a case that the Act is a beneficial legislation hence any provision of the Act which is capable of two interpretations, the interpretation which promotes the interest of its beneficiaries shall be accepted, also, it has been stated that interest and amount of penalty collected from the depositor is invested

by the organization in interest bearing schemes and the income earned is distributed to the beneficiaries as interest on their deposits as well penalty amount hence the organization has been empowered in law to collect interest on the contributions and also penalty for delayed deposits of PF dues. According to the Respondent Authority, the findings are correct in law and fact and do not warrant any interference. Also that, there is nothing on record to show that the excluded employees have also been included for the benefit of the Act and also that *mens rea* has no role to play in case of breach of civil obligations as it is the case in hand. Also it has been stated that no appeal lies against order u/s 7-Q of the Act.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for the Appellant Establishment and Mr. J. K. Pillai for Respondent Authority. Both the sides have filed written arguments which are part of record I have gone through the written arguments and the record as well.

On perusal of the record in light of rival arguments following point comes up for determination.

- (1) Whether finding of the Respondent Authority with respect to default in deposit of PF dues of its employees by the Appellant Establishment has been recorded accordingly in law and fact?***
- (2) Whether the amount assessed by the Respondent Authority in the impugned order has interest u/s 7-Q as well penalty u/s 14-B of the Act has been done accordingly in law and fact?***

**Point for determination No.1.**

As regards the submission from the side of the Respondent Authority against maintainability of the present appeal with regards to assessment and liability u/s 7-Q of the Act which is interest on the delay deposits, decision of Hon'ble Supreme Court in the case of **Organo Chemical Industries and Another v/s Union of India and Others (1979) 4 SCC 573** has been referred from the side of Appellant Establishment in the referred case, it has been laid down by Hon'ble Supreme Court that when the Respondent Authority passed a composite order u/s 7-Q and 14-B of the Act, the appeal is maintainable against both the assessment and findings in this respect.

In light of this preposition of law, and keeping in view the fact that the order under appeal is a composite order u/s 7-Q and 14-B of the Act. The appeal is held maintainable with regards to assessment and findings relating to interest u/s 7-Q of the Act.

**Point for determination is answered accordingly.**

**Point for determination No. 2.**

The term 'excluded employee' has been defined in the ***Employees Provident Fund Scheme Section 2(f)*** of the scheme is being reproduced as follows:-

***"excluded employee" means—***

***(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;***

***(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [fifteen thousand rupees] per month;***

***Explanation : --'Pay' includes basic wages with dearness allowance retaining allowance if any and cash value of food concessions admissible thereon;***

***(iii) [omitted];***

***(iv) an apprentice.***

***Explanation :-- An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government;***

Learned Counsel for the Respondent Authority has referred to the judgment of Hon'ble Supreme Court in the case of **Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Organization in Civil Appeal No. 2136/2012** and connected appeal wherein it has been held by the Hon'ble Supreme Court that the *mens rea* loses its significance and is not applicable in case relating to breach of civil liability.

**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.

**14-B. 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, subject to such terms and conditions as may be specified in the Scheme.

**On perusal of Section 14-B reveals that,** it does not use the word 'shall' rather it use the word 'may' which means 'may' or 'may not', hence the statute itself provides discretionary power to the authorities of the organization with respect to assessment of amount of penalty no doubt for this they have to take into account the aggravating and mitigating circumstances leading to default in deposit and in doing so they will be within their rights. My this view is supported by following precedents:-

Hon'ble Calcutta High Court in **Murarka Paint & Varnish Works Ltd. Vs. Union of India 1976 Lab IC 1453** has held as under:

***"Though the liability of the employer to the provident fund of employees is statutory, it does not follow that belated payment would always attract imposition of damages. The authority is obliged to find out how the beneficiaries have been affected by the non-payment of contribution to their fund."***

Hon'ble Supreme Court in **ESIC vs. HMT 2008 (1) SCALE 341** has observed that:

***"21. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of***

*an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavor should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.*

*25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary there under.*

*26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof."*

Hon'ble Apex Court in McLeod Russel India Ltd. Vs. Regional Provident Fund Commissioner (2014) 15 SCC 263 has held as under:

*"11. .... the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100% of the arrears have been imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B it will be only logical that mens rea and/or actus reus was prevailing at the relevant time."*

Further, the Hon'ble Supreme Court in Assistant Provident Fund Commissioner, EPFO & Anr vs. Management of RSL Textile India Private Limited (2017) 3 SCC 110 has observed as under:

*"following McLeod Russel India Ltd., (2015) 15 SCC 263, since presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under S. 14-B, High Court or appellate authority or original authority having found no mens rea and/or actus reus, respondent(s) could not be held liable under S. 14-B"*

Hon'ble Punjab & Haryana High Court in Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal & Anr. (2016) 148 FLR 311, dismissing the appeal has held as under:

*"5. The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it*

*may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstance or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal"*

Hon'ble High Court of Chhattisgarh in **M/s Mohanti English Medium School vs. Employee Provident Fund & anr. 2019 (161) FLR 289 (Chhti)** has held as under:

*"9. Very recently, the Supreme Court in the matter of Assistant Provident Fund Commissioner, EPFO and another vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director, relying upon the earlier judgment rendered in the matter of McLeod Russell India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable.*

*10. Applying the principle of law laid down by the Supreme Court in the above stated judgements to the facts of the present case, it is quite vivid that there is no finding recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the employer and as such, in absence of finding with regard to mens rea/actus reus on the part of the employer/petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained."*

Hon'ble Calcutta High Court in **W.P. No. 8527 (W) of 2015 Tirrihannah Company Ltd. Vs Regional Provident Fund Commissioner** decided on 31.07.2018 has held as under:

*"In HMT Ltd. (supra) Supreme Court declared, conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative. Existence of mens rea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum thereof.*

*In view of law declared in HMT (supra), which come after Dalgaon (supra) this Court finds no application of the view that liability under section 14B accrues immediately on default for there to be subsequent or late quantification. Impugned order having omitted to provide illumination regarding why it was thought fit to exercise discretion to impose penal damages, corresponding to omission to record opportunity given regarding a defence against imposition of penal damages or mitigation, makes it an order which violates of principles of natural justice. As such impugned order is set aside. The Authority will give opportunity to the establishment, hear out its contention regarding imposition of penal damages or mitigation and make appropriate order.”*

Thus, ongoing through the principle laid down by the Hon’ble High Courts and Hon’ble Supreme Court in the case laws, cited hereinabove, it is very much clear that for conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative;

**I have gone through the order passed by the Respondent Authority** u/s 7-A of the Act, a copy of which is on record this order discloses that the report of Enforcement Officer was relied for recording findings with respect to liability of the Appellant Establishment to deposit EPF dues of its eligible employees. The report of the Enforcement Officer has been reproduced in the said order which caused to disclose that the PF has been deducted and deposited with respect to the eligible employees for the period from 2005 to 2009 that were earning Rs. 6500/- per month as basic pay. It also states that thereafter some employees were included in the revised list by the Appellant Establishment filed by them before the Enforcement Officer and also that PF due of the eligible employees have not been deposited for the period from June, 2012 to March, 2014. This report nowhere indicates that the employees who are in the category of excluded employees under the scheme have also been included under the Act. Hence, the argument of the learned counsel for the Appellant Establishment that interest and penalty has been assessed with respect to excluded employees also fails. The Appellant Establishment could not successfully show in other mitigating circumstances for deposit of PF dues. In the light of above facts the finding of the Respondent Authority with respect to default of the Appellant Establishment in depositing PF dues cannot be faulted in law or fact and is affirmed.

**Point for determination No. 1 answered accordingly.**

**Point for determination No. 2:-**

**In light of finding recorded on point for determination No. 1** and keeping in view that no error in assessment could be established from the side of Appellant Establishment as well the fact that there is no error in assessment holding that the



finding of the Respondent Authority with respect to assessment has been recorded accordingly.

**Point for determination No. 2 is answered accordingly.**

**No other point was present.**

**In light of above discussion and finding, the appeal held *sans* merit and is liable to be dismissed.**

**ORDER**

**The appeal stands disposed off accordingly.**

**No order as to cost.**

**Date:- 17/07/2025**

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

**Judgment Signed, dated and pronounced.**

**Date:- 17/07/2025**

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

