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

EPF Appeal No.- 116/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

Madhya Pradesh State Forest Research Institute,
Through, Deputy Director,
K.V. Diwakar,
Gwarighat Road, Jabalpur (M.P.) - 482008

Appellant

Vs.

Assistant Provident Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhawan,
Vijay Nagar,
Jabalpur (M.P.) - 482002

Respondent

Shri Uttam Maheswari	**:**	**Learned Counsel for Appellant.**
Shri J.K. Pillai	**:**	**Learned Counsel for Respondent.**

JUDGMENT

(Passed on 27th June, 2025)

The present appeal is directed against the order 30.05.2014 passed by the Respondent Authority under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, hereinafter referred to by the word 'Act'. The Respondent Authority has recorded a finding of default in deposit of EPF dues of the employees of the Appellant Establishment within the period 5.2010 to 11.2011 and has assessed the amount under Section 14B as penalty to be paid by the Appellant Establishment to the tune of Rs. 5,55,909/-.

The Skeletal facts connected to the present appeal are mainly that, the Appellant Establishment is covered under the Act, it failed to deposit the EPF dues of its employees covered under the Act for the period 05/2010 to 11/2011 within time, hence a notice was issued by the Respondent Authority asking the Appellant Establishment to show cause on the penalty under Section 14B of the Act not be recovered. The Appellant Establishment did appear before the Respondent Authority through its representatives and filed reply to the show cause notice stating that in fact, its employees have been engaged in various other duty relating to election and other activities, also the grants were not received in time, hence there was delay in deposit of EPF dues of its employees and asked the Respondent Authority to discharge the notice. The Respondent Authority after hearing both the parties recorded a finding that the Appellant Establishment has committed default in deposit of EPF dues of its employees for the period 05.2010 to 11.2011 and has held the Appellant Establishment liable to pay penalty of Rs. 5,55,909/- under Section 14B of the Act, hence this Appeal.

Grounds of appeal, taken by the Appellant Establishment in the memo of appeal are mainly that the impugned order and assessment is bad in law because the Respondent Authority committed error in law in not looking into the fact that, the contributions were remitted by the Appellant Establishment through State Bank of India and the delay was caused only due to delay clearance of Cheques by the Bank. The Respondent Authority also failed to consider the fact that the employees and officers of the Accounts Department of the Appellant Establishment were regularly required to discharge other works like elections related duties, Samarg Shuraksha Abhiyan etc. duties cannot be remitted in time, thus the late remittance were not intentionally also that required funds were allotted late to the Appellant Establishment which resulted in late deposit of PF Dues. Further, that the Appellant Establishment has worked mechanically and arbitrarily in assessing the damages inclining the settled preposition of law on this point.

In its counter to the Appeal, the Respondent Authority has defended the impugned order and assessment with the case that the Act is a social welfare legislation and the money deposited is invested by the Organization in various schemes, which earn interest from which pension and interest on deposit are paid by the Respondent Department. Also, that default is recurring which shows lack of bona fide by the Appellant Establishment. It is further the case of the Respondent Authority that, the impugned findings have been recorded after an enquiry which the Appellant establishment was given full opportunity of hearing and which passed on record. Hence, required no warrant.

In its rejoinder, the Appellant Establishment has mainly retreated his case taken earlier.

I have heard argument of Learned Counsel for Appellant Establishment Mr. Uttam Maheswari and Mr. J.K. Pillai Learned Counsel for the Respondent

Authority. Parties have filed written submissions also. I have gone through the written submissions and the record.

From perusal of record in the light of rival arguments following issues comes up for determination.

"***Whether the finding of the Respondent Authority with respect to default in deposit of PF dues by its employees by the Appellant Establishment for the period 05.2010 to 11.2010 and assessment has been recorded correctly in law and fact?"***

Before entering into any discussion, Section 14B of the Act which deals with respect to power to recover damages is being reproduced as follows.

14B. 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 authorized 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 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 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

Rule 32A of the Provident Fund Scheme, 1952 is also bring reproduced as follows:

32A. Recovery of damages for default in payment of any contribution.

- (1) Where a employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (15) of section 17 of the Act or in the payment of any charges payable under any other provisions of the Act or the Scheme or under any of the conditions specified under section 17 of the Act, the Central Provident Fund Commissioner or such 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, damages at the rates given in the table below:-

TABLE

SI. No.	Period of default	Rate of damages(percentage of arrears per annum)
(1)	(2)	(3)
(a)	Less than 2 months	Five
(b)	Two months and above but less than four months	Ten
(c)	Four months and above but less than six months	Fifteen
(d)	Six months and above	Twenty Five.]

(2) The damages shall be calculated to the nearest rupees, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored.

Main argument from the side of Appellant Establishment is that, the Respondent Authority did not consider the established fact that, delay in deposit of dues was mainly due to clearance of cheques by the Bank and delayed release of grants by the Government, which showed that there was no required *mens rea* for committing default in payment. As submitted by Learned Counsel, the Respondent Authority has imposed maximum penalty which shows that he is acted mechanically without applying his judicial mind and discretion. Hence has committed error in law in passing the impugned order.

Learned Counsel for Respondent Authority has submitted that the Act is welfare legislation hence it should be interpreted in way which promotes the interest of its beneficiaries. Also that, since default was recurrent, it has shows that it was not bona fide and also that it was on the part of Appellant Establishment to ensure that cheques are presented before the Bank in time and are cleared by the Bank in time. Thus, as submitted by Learned Counsel there is no error in law or fact in the impugned finding recorded by the Respondent Authority. Learned Counsel has further referred to judgment of Hon'ble Apex Court in the case of **In the Case of Horticulture Experiment Station Coorg V.s. R.P.F.O. Civil Appeal No. 2136/2012 and other connected appeals reported in Indian Kanoon.org.doc 162685560** wherein it has been laid down by Hon'ble Supreme Court that in cases of Civil Liability *mens rea has no role.*

From perusal of provisions as extracted 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. Inspite 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.

Now coming to the facts in the case in hand, no doubt the default is recurrent which itself goes against the Appellant Establishment . There was gross negligence on the part of Appellant Establishment, in deposit the cheques for remittance and getting it cleared.

Furthermore, though the record show that, during the enquiry before Respondent Authority the Appellant Establishment had produced some duty charts to show that its employees were engaged in various duties relating to election and other activities but it does not show that all its employees and whole of the Office was engaged in this and also it does not show that they were engaged during the whole period of default connected with case in hand.

Thus in the light of these facts, since the Appellant Establishment failed to show any mitigating circumstances before the Respondent Authority or even before this Tribunal to be considered as an excuse of delayed deposits, the findings of Respondent Authority with respect to default and assessment cannot be held to be perverse or against law or fact. The finding is held to have been recorded correctly in law and fact. Point for determination is answered accordingly.

No other point was pressed.

On the basis of above discussion and findings, the appeal is held *sans merits* and is liable to be dismissed.

ORDER

Appeal Dismissed.

No order as to cost.

Date:- 27/06/2025

P.K. Srivastava
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 27/06/2025

P.K. Srivastava
(Presiding Officer)