

\$~7 to 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 398/2015**

**APEX SECURITY AND DETECTIVE
FORCE PVT LTD**

..... Appellant

Represented by: Mr.S.P.Arora, Advocate with
Mr.Rajiv Arora, Advocate

versus

CENTRAL BOARD OF TRUSTEES

..... Respondent

Represented by: Mr.Keshav Mohan, Advocate with
Mr.Piyush Choudhary, Advocate

LPA 399/2015

APEX PUBLIC SCHOOL

..... Appellant

Represented by: Mr.S.P.Arora, Advocate with
Mr.Rajiv Arora, Advocate

versus

CENTRAL BOARD OF TRUSTEES

..... Respondent

Represented by: Mr.Keshav Mohan, Advocate with
Mr.Piyush Choudhary, Advocate

LPA 400/2015

M/S ROAD TRANSPORT CORPORATION

..... Appellant

Represented by: Mr.S.P.Arora, Advocate with
Mr.Rajiv Arora, Advocate

versus

CENTRAL BOARD OF TRUSTEES E P F

ORGANIZATION

..... Respondent

Represented by: Mr.R.C.Chawla, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

15.09.2015

1. Issue turned on an OM dated May 29, 1990 and its interpretation placed by a Division Bench of this Court in the judgment reported as (2008) 2 LLJ 939 Systems and Stamping & Anr. Vs. Employees Provident Fund Appellate Tribunal & Ors.
2. Before the introduction of Section 7Q in the Employees Provident Fund Miscellaneous Provisions Act, 1952, for late deposit of provident fund dues proceedings used to be initiated under Section 14B of the Act for levy of damages, which was interpreted by the Supreme Court as a compensatory amount to be paid by the employer for the benefit of the employees who used to lose benefit of interest if the amount was credited in time; also having the element of a penalty upon the employer.
3. To lay down guidelines as to how amount under Section 14B should be computed the department had framed a policy as per which maximum amount leviable under Section 14B was restricted to 25% of the amount in default.
4. OM dated May 29, 1990 was issued noting that with the introduction of Section 7Q, 12% simple interest per annum became statutorily payable for late deposit of the amount and therefore the desirability of revising the policy fixing percentage of the amount to be charged under Section 14B. The tabular form of the revised policy would thus translate as under:-

8

	Period of delay	Revised rates of damages	Interest chargeable under Section &Q	Total	Existing rate of damages
	(Percentage Per Annum)				
(i)	2 months or less	5	12	17	25
(ii)	Over 2 months but less than 4 months	10	12	22	25
(iii)	Over 4 months but less than 6 months	15	12	27	25
(iv)	Over 6 months	25	12	37	25

5. In System and Stamping's case the circular, the dispute relating thereto and the decision of the Court was in paragraphs 6 to 8, which read as under:-

"6. The circular dated May 29, 1990 provides that all defaulters thereafter shall be liable to pay interest at the rate specified in column 1, that is, from 5 to 25 per cent depending upon the period of default as damages under Section 14-B of the Act. The defaulters in addition are liable to pay interest chargeable under Section 7-Q of the Act at the rate of 12 per cent per annum as mentioned in the 2nd column. The rates mentioned in column 3 of the circular is the sum total of column Nos. 1 and 2. The total amount varies between 17 to 37 per cent per annum depending upon the period of default. Thus, for default of less than two months, the defaulter becomes liable to pay damages at the rate of 5 per cent per annum under Section 14-B and also interest under Section 7-Q of the Act at the rate of 12 per cent per annum. Therefore, the defaulter becomes liable to pay damages under Section 14-B and interest under

Section 7-Q at the rate of 17 per cent per annum. This is less than the original rate of damages of 25 per cent per annum as it existed before the circular dated May 29, 1990 was issued. Similarly, for defaults between two months and less than four months the defaulter becomes liable to pay damages at the rate of 10 per cent per annum under Section 14-B and interest at the rate of 12 per cent per annum; under Section 7-Q after July 1, 1997 or 22 per cent in all. For defaults of more than four months but less than six months each defaulter becomes liable to pay interest and damages at the rate of 27 per cent per annum and in defaults of over six months interest and damages at the rate of 37 per cent per annum. Thus for defaults beyond 4 months the amount payable increased from the flat rate of 25% per annum.

7. The stand of the respondent however, is that even after July 1, 1997 the defaulter is liable to pay "Total" mentioned in column 3 as well as interest at the rate of 12 per cent per annum under Section 7Q of the Act or 29%, 34%, 39% & 49% for the respective periods of default. This stand of the respondents cannot be accepted as it is contrary to their own circular dated May 29, 1990. As per the respondent defaulter will be made to pay interest under Section 7-Q at the rate of 12 percent even when he has paid damages as per the rate mentioned in column 3 which includes interest under Section 7-Q. Thus he will pay interest under Section 7-Q twice. It is clear from the circular that once interest is chargeable under Section 7-Q of the Act, the defaulter should be asked to pay damages as per the percentage specified in column 1, that is, between 5 to 25 per annum depending upon the period of default. The third column mentions the total of the revised rate of damages and interest chargeable under Section 7-Q. Column 3 cannot be regarded as rate of damages after July 1, 1997, when interest became payable under Section 7-Q of the Act.

8. Accordingly, we partly allow the present appeals with the direction to the Regional Provident Funds Commissioner to calculate the amount payable by the appellants for various periods of default in terms of the office memorandum dated

May 29, 1990 as has been explained above. The appeal is accordingly disposed of. No order as to the costs."

6. The appellants filed three writ petitions which have been disposed of by the learned Single Judge vide three identically worded, but separate orders, two dated May 08, 2015 and the third dated May 11, 2015; and as we proceeded to hear arguments in the appeal it dawned that the learned Single Judge has decided the three writ petitions without noting the facts on which the decision(s) had to be pronounced. As we proceeded to cull out the relevant facts, learned counsel for the respondent pointed out that there are none. Learned counsel for the appellant concedes that the three writ petitions filed were totally ill-drafted.

7. With reference to the assessment orders passed and challenged in the writ petitions we find no pleadings to show that apart from the statutory interest @ 12% per annum chargeable under Section 7Q, while computing amount payable under Section 14B, interest was being charged twice over, as was the case found by the Division Bench in Systems and Stamping's case. Learned counsel for the appellant concedes to said fact.

8. Faced with the situation aforesaid, prayer made by learned counsel for the appellant is that the three impugned orders dated May 08, 2015, May 08, 2015 and May 11, 2015 dismissing W.P.(C) No.2022/2011, W.P.(C) No.2313/2011 and W.P.(C) No.5068/2014 respectively may be set aside and the three writ petitions may be dismissed as withdrawn with liberty granted to the appellant to challenge the orders which were in challenge in the three writ petitions; but after making necessary pleadings.

9. Though learned counsel for the respondent opposes the prayer but since he accepts the fact that actionable averments have not been made in

the writ petition and the impugned judgment is theoretical in nature without dealing with the backdrop facts; and indeed there were none to be noted, we are inclined to accept the prayer made by the appellant and recompense the respondent the trouble of being litigated twice.

10. The appeals are disposed of setting aside the three impugned orders dated May 08, 2015 dismissing W.P.(C) No.2313/2011, May 08, 2015 dismissing W.P.(C) No.2022/2011 and May 11, 2015 dismissing W.P.(C) No.5068/2014. The three writ petitions are dismissed as withdrawn with liberty granted to the appellants to challenge the three orders which were challenged in the three writ petitions but upon payment of cost in sum of ₹20,000/- each to the respondent.



PRADEEP NANDRAJOG, J.



MUKTA GUPTA, J.

SEPTEMBER 15, 2015

mamta

→ fresh
→ C.M.No. 24807/2015 — for modification of above order