



NO: 500-85/CA II/BSNL/EPF/2013/Vol VII

Dated 10.06.2016

To,
The CGMs
All BSNL Circles

Sub.: Payment of Interest and Damages under EPF Act.

This office has been intimated by various circles about receipt of notice by EPF authorities for payment of interest and damages under the Employees Provident Fund Act on account of any non-payment/ late payment of EPF dues. It has been requested by the circles that since the applicability of any policy in respect of payment of EPF is uniformly applicable in all circles of BSNL and liability to this effect is huge, the case should be pursued with senior level officers at EPF by CO, BSNL.

In this connection, please find enclosed the copy of Establishment Cell, CO, BSNL wherein it has been mentioned that the case was pursued at senior level and it was concluded that there is no other option than to pay the EPF due and penalty/damages as per the provisions of the Act.

Hence, in order to avoid any escalation in the amount of interest and damages on this account, circles are hereby advised to deal with the matter of payment of these dues as per the provisions of the Act and in consultation with an EPF consultant.

Encl: As above


(V M Gupta)

Dy. General Manager (CA III)

Copy for information and taking necessary action to:

1. IFAs of all circles for information and taking necessary action please.
2. DGM(R&P), CO, BSNL for information and taking necessary action please.



Subject: Notice for payment of interest and Damages for EPF payment made in 2008 with retrospective effect in case of Casual Labours, TSMs and Compassionate appointees.

Kindly refer to CA Branch U.O. Note No. 500-85/CA-II/BSNL/EPF/2013/Vol.VI dated 18.05.2016 on the subject mentioned above. In this connection, attention of CA Branch is invited to the relevant provisions of EPF & Miscellaneous Provisions Act, 1952:-

Section 7A: Determination of moneys due from employers: - (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order

- (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute and
- (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under sub-section 1 shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matter, namely:-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code 45 of 1960.

(3) No order shall be made under sub-section 1, unless the employer concerned is given a reasonable opportunity of representing his case.

(4) Where an order under sub-section 1 is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date of proceeding with the inquiry.

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

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Explanation: where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex-parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section 4 unless notice thereof has been served on the opposite party.

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Section 7Q: The employer shall be liable to pay simple interest at the rate of twelve percent 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 charged by any scheduled bank.

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

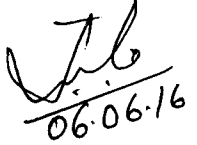
2. It is worth mentioning that the BSNL Board, in its 159th meeting held on 9th December, 2014 approved to extend the benefit of the EPF Act (including interest @ 12%) to the casual labourers (including TSMs) engaged by the field units from the date of their engagement or 01.10.2000 whichever is later. It was also decided that the CMD, BSNL will take up the issue of waiver/reduction of damages payable under Section 14B of the Act with Central Provident Fund Commissioner. Accordingly, the issue was taken up with Shri K. K. Jalan, the then Central Provident Fund Commissioner. In fact, the issue of waiver/reduction of penalty/damages was also taken up by Shri Virendra Kumar, Hon'ble MP(Lok Sabha) & Chairman, Standing Committee on Labour (Lok Sabha) with Shri Bandaru Dattatreya, Hon'ble Minister of State (I/C) for Labour and Employment. Hon'ble Minister vide his letter dated 21.07.2015 addressed to the Chairman,

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Standing Committee on Labour re-iterated the aforementioned provisions of the EPF & Misc. Provisions Act, 1952 and regretted that the waiver of damages is not possible in accordance with the Act and Scheme provisions. A copy of the reply from Hon'ble Minister of State (I/C) for Labour & Employment is enclosed for reference.

3. In view of above position, there is no other option than to pay the EPF due and penalty/damages as per the provisions of the Act. CA branch may, therefore, advise the Circle to deal with the matter of payment of these dues as per the provisions of the Act and in consultation with an EPF consultant.

This issues with the approval of competent authority.



06.06.16

[J K Mishra]

Assistant General Manager (Estt-II)

Encl: as above.

General Manager (CA), Corporate Office, BSNL, New Delhi.
U.O. No. 11-5/2010-LE dated 06.06.2016

बन्धु दत्तात्रेय
BANDARU DATTATREYA



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C-II/1(19)11/AP/VIP/CBT/
श्रम एवं रोजगार राज्य मंत्री
(स्वतंत्र प्रभार)
भारत सरकार
श्रम शक्ति भवन, नई दिल्ली-110019
MINISTER OF STATE FOR
LABOUR & EMPLOYMENT
(INDEPENDENT CHARGE)
GOVERNMENT OF INDIA
SHRAM SHAKTI BHAWAN
NEW DELHI - 110119

21 JUL 2015

Dear Dr. Virendra Kumar Ji,

Please refer to your letter dated 11.05.2015 regarding non-payment of Provident Fund to BSNL daily workers.

2. The issue has been examined by the Ministry and the following are the findings:-

(a) The BSNL Casual and Contract Workers Federation reported that the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (the Act) and the Schemes framed thereunder are not implemented in respect of the workers engaged directly and through contractors by Bharat Sanchar Nigam Limited (BSNL) (a fully owned Central Government Public Sector Undertaking).

(b) To resolve the issue, the Central Provident Fund Commissioner called a meeting where Senior Officers from BSNL, Head Office and the President of the BSNL Casual and Contract Workers Federation were present.

(c) During the course of discussion, the Officers present in the meeting from BSNL assured that they will advise their Circle Offices spreading over the country to report compliance in respect of both casual labourers and workers engaged directly by BSNL from the date of its inception, i.e. from 01.10.2000.

(d) Subsequent to the meeting, the General Manager, BSNL provided the Telecom Circle wise number of such casual laborers directly engaged by BSNL and having Temporary Status Mazdoor (TSM) totaling to 3469. Most of these casual labourers have been engaged since the time of Department of Telecom and continue to be engaged by BSNL after its inception on 01.10.2000. It is also noticed that in case of some of these workmen, even the EPF contribution has not been paid by BSNL for the period from 01.10.2000 or from the date of their engagement upto 10.01.2011.

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(e) On receipt of such information, Employees' Provident Fund Organisation directed its Regional Provident Fund Commissioners of various field formations on 22.04.2015 to ensure that all the casual labourers (including those having Temporary Status Mazdoor) are extended benefits as delineated in the Act and the Schemes framed thereunder by BSNL and all the contract workers engaged by BSNL through the contractors are enrolled as members and extended the benefits as delineated in the Act and Schemes framed thereunder by BSNL.

(f) EPFO has also directed its Regional Provident Fund Commissioners of field formations to initiate appropriate proceedings for quantification of dues payable by BSNL in respect of the casual labourers having Temporary Status Mazdoor and recovery thereof.

3. You have pointed out that it will be difficult for BSNL to pay the damages and thus the damages may please be waived. In this regard, I am to draw your kind attention to the following:

(a) Section 14B of the Act empowers the officers of EPFO to levy damages for belated payment/deposit of contribution at the rates specified in Paragraph 32A of the Employees' Provident Funds Scheme, 1952.

(b) The damages so levied under this Section can only be waived in case of 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 (BIFR).

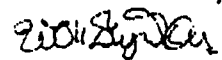
(c) The terms and conditions for reduction and waiver of damages have been spelt out in Paragraph 32B of the Employees' Provident Funds Scheme, 1952.

4. It is learnt that BSNL has not at all deposited the contribution due under the Act and the Scheme thereunder till date and no information in this regard has been received by EPFO. Establishments covered under the Act are required to deposit Provident Fund contribution etc. by 15th of each month. The Damages under Section 14B and the interest under Section 7Q of the Act are not attracted in cases where the contributions are deposited in time i.e. within 15th of the month. Cases where the contributions are received beyond the stipulated date, the delays are computed in accordance with Paragraph 32A of the Employees Provident Funds Scheme, 1952 and damages are calculated and levied accordingly. In case of BSNL, the contributions are yet to be deposited and the process of levying damages will be taken up on payment of contribution.

5. The case of BSNL has been examined by Employees Provident Fund Organisation and it is found that the waiver of damages is not possible in accordance with the Act and Scheme provisions.

With regards

Yours sincerely,



(Bandaru Dattatraya)

Dr. Virendra Kumar
Hon'ble Member of Parliament (Lok Sabha) and
Chairman, Standing Committee on Labour (Lok Sabha).
22, Mahadev Road
New Delhi - 110001.