

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM NO 208, ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Misc. Application u/s 7 L (2) in APPEAL NO.D-2/01/2017

M/s. Delphique India Pvt. Ltd.

Appellant

Through:- Shri S.K. Khanna, Ld. Counsel for the Appellant

Vs.

APFC, Gurgaon

Respondent

Through:- Shri B.B. Pradhan, Ld. Counsel for the Respondent.

ORDER DATED 23-July-2021

This order deals with an application filed by the respondent of the appeal invoking the provision of law laid u/s 7L(2) of the EPF &MP Act, for review of the order dated 24.09.2019 passed by this Tribunal disposing the Appeal and setting aside the impugned order.

It has been stated in the petition that the Appeal was filed challenging the order passed by the commissioner u/s 7A of the EPF & MP Act on the ground that the inquiry was conducted on the basis of complaints received from some individuals but the commissioner passed the order without giving opportunity to the establishment of cross examining those complainants. Apart from that, several other grounds were also taken by the appellant challenging the legality of the impugned order including non identification of beneficiaries and non following of departmental circulars in conducting the inquiry. But this Tribunal while passing the final order omitted to consider that the said stand taken by the appellant was contrary to the clear finding given by the commissioner about the 109 no of beneficiaries in respect of whom the establishment had admitted the omission and default in the subscription on account of ignorance that the benefit is to be extended to the casual workers too. Those 109 workers, since were identified by the EO, this finding of the Tribunal is a mistake apparent on the face of the record. Unless the same would be rectified in exercise of the power u/ 7L(2) of the Act, the petitioner

/Respondent, a department working on to provide social security to the workers would suffer and the benevolent purpose of the EPF & M P Act would be defeated.

Copy of the review petition was served on the Appellant's counsel who argued on the petition without filing any written objection to the petition.

The learned counsel for the petitioner/respondent further submitted drawing the attention of the tribunal to the impugned order that the commissioner had passed the order separately indicating the non compliance in respect of 109 workers and the 3 complainants who had submitted affidavit during the inquiry. The same was accepted by the establishment and never any opportunity was asked for their cross examination. Hence the impugned order was not suffering from any irregularity. He thus vehemently argued that majority no of workers since identified, the order of the Tribunal in setting aside the impugned order would cause injustice to the said identified workers. He thereby argued for remand of the matter for fresh consideration of the same. To buttress his argument he submitted that the scope of Review provide u/s 7L(2) is wide and by exercise of power under that provision the Tribunal can rectify any mistake committed during adjudication.

By placing reliance in the case of **Grindlays Bank Ltd .vs. Central Govt Industrial Tribunal & Others, AIR 1981 SC 606**, he submitted that the error pointed out being a procedural and inadvertent error the Tribunal is empowered to rectify the same which would serve the ends of justice.

In his reply the learned counsel for the opposite party/Appellant submitted that the scope of Review u/s 7L(2) is limited to correction of errors which is apparent on the face of the record. But in his petition the petitioner has raised many questions touching the merit of the appeal, which cannot be entertained. If it is so done, the same will have the effect of re hearing of the appeal on merit by the tribunal for review of its own final order passed, which is not permissible under law. He thereby argued for rejection of the application. Reliance has been passed by the opposite party/appellant in the case of **Food**

Corporation Of India ,DirbavsRPFC,Bhatinda,decided by the Hon'ble High Court of Delhi in WPC5678/2013, where in the Hon'ble court have held that the power of review can be exercised to rectify any factual mistake, calculation or error of like nature. The Tribunal, in the grab of this power cannot recall or reverse it's own order.

On hearing the submission advanced by the counsel for both the parties and perusal of the provision of sec 7L(2) it appears that the tribunal within a period of 5 years from the date of the order is empowered to rectify any mistake apparent from the record by amending the order passed. But the provision never empowers the Tribunal to rehear the matter on merit when some points are re canvassed after disposal of the appeal. In view of the stand taken by the respondent in the petition with regard to ambiguity in respect of the identified and non identified workers, it is clear that the respondent /petitioner wants rehearing of the disposed of appeal, which is not permissible under the scope and ambit of law laid u/s 7L(2) of the Act.

Be it stated that the provision for rectification of an order, stems from the fundamental principle that justice is above everything, the power for review is an exercise to remove the error and not for disturbing the finality. In the present matter the Review prayed for if would be allowed , the same will have the effect of hearing an appeal against it's own order, which is not permissible under the provisions of sec 7L(2) of the EPF&MP Act.

The petition for review, filed by the respondent is held devoid of merit and rejected. Consign the record as per law.

Sd/-
Pranita Mohanty
(Presiding Officer)