CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

CUM LABOUR COURT DELHI1

ROOM No.207 ROUSE AVENUE, DISTRICT COURT

COMPLEX, NEW DELHI-110002

Present: Justice Vikas Kunvar Srivastav (Retd.)

Presiding Officer,

CGIT-cum-Labour Court Delhi-1.

Misc. Application No.201/2022 (Appeal No. D-1/58/2022) filed on behalf of the Appellant seeking condonation of delay in filing the statutory appeal

M/s. Delhi High Court Bar Association Appellant

Vs.

RPFC, Delhi (C) Respondent

Order:- 15.02.2023

Through Counsels:-

1. Sh. Rajiv Shukla & Sh. Sanjay Kumar, for the Appellant

2. Sh.Manu Parashar, for the Respondent

1. Aggrieved from the order of the Regional Provident Funds Commissioner-II, Delhi (Central) dated on 17.03.2020 passed under Section 14B and 7Q of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' (which shall hereinafter be referred for brevity and convenience as "EPF Act" only) an appeal under Section 7I is preferred in this Appellate Tribunal on 21.12.2022. The Appeal is filed on behalf of the Appellant 'Delhi High Court Bar Association' through it's Honorary Secretary, obviously beyond the limitation period of 60 days from the date of order as prescribed in the Tribunal (Procedure) Rules, 1997 under Rule 7(2).

2. The instant Misc. Application is filed by the Appellant to condone the delay in filing the appeal setting forth reasons inter alia which prevented the Appellant to file the appeal within the prescribed period of limitation. The said application is supported with affidavit and also

with a supplementary affidavit dated 08.01.20212. The reason argued by the Appellant are briefly stated hereunder:-

(i.) The order impugned in the appeal bearing the date of issuance 17.03.2020 is served and made available to the Appellant only on 20.10.2022.

(ii.) Despite the direction issued by the Delhi High Court in United News Of India Ltd. Vs. RPFC New Delhi (2021) LLR445 and the Civicon Engineering Vs. CBT (2021) LLR 189 to upload all the orders on the EPFO website and to serve the same through email , the impugned order was neither uploaded on website nor served on the Appellant through it's email.

(iii.) That it was not possible for the Appellant to know about the impugned order physically attending the EPFO Office due to the country wide lockdown in pandemic of Covid-19 and closure of offices for physical visits just after the passing of the impugned order dated 17.03.2020.

(iv.) The Appellant vide it's letter dated 06.11.2020 requested the concerned Recovery-Officer of the RPFC to supply the copy of the order impugned in this appeal, as the same had

not been served upon them. Various steps were taken from time to time for getting/ receiving the order but the same could be made available and served on the Appellant only on 20.10.2022, which is evident from the proceedings before the recovery officer dated 20.10.2022. As such the limitation period legally be computed not from the date of order but from the date when it is communicated , served and brought in the knowledge of the Appellant.

3. The Respondent filed objection and rebutted the aforesaid reasons set forth by the Appellant to show what prevented it to prefer the appeal within the prescribed period of limitation, seeking the condonation of delay. The Respondent raised the following objections:-

(i.) The impugned order dated 17.03.2020 is well communicated to the Appellant vide letter No. DL-C /DL /CPM /3580/ 14B-7Q/13578 dated 08.04.2020, therefore, the present appeal is filed after a delay of more than 900 days which is beyond the prescribed limitation period of 60 days and even beyond the further statutory extended period of 60 days also.

(ii.) Appellant has neither in the application and affidavit for

condonation of delay nor in it's supplementary affidavit mentioned how many days of delay is sought to be condoned assigning day to day explanation.

(iii.) Incorporating a date chart in the reply to the Appellant's application, the respondent shows occurrence of events since the passing of the order impugned in the present appeal to put vehemence on the objection that the appellant was well aware with the order impressed that, it is evident from Appellant's letter dated 06.11.2020 addressed to the Respondent, to keep the recovery certificate dated 26.10.2020 in abeyance and sought permission for inspection of record. However, no inspection was done and a further time was sought. The said date chart is reproduced herewith carving out from para 1 of the reply submitted by the Respondent:-

04.03.2020	Impugned order passed
08.04.2020	Impugned order sent to Appellant
26.10.2020	Recovery Certificate dated 26.10.2020 was received by

	the Appellant
06.11.2020	Appellant request Respondent to keep in abeyance RRC dated 26.10.2020 and request for inspection of record and impugned order.
14.07.2022	Responding to Appellant letter dated 11.04.2022 Respondent asks the Appellant to inspect the record on 23.08.2022 at 3O'clock
02.09.2022	Appellant again seeks 6 weeks time but this time to file comprehensive reply without any whisper as to why records not inspected on 23.08.2022
20.10.2022	Representative of Appellant

	receives copy of the impugned order at it's request
15.11.2022	Hearing at the request of Appellant was scheduled.

(iv) The inaction on the part of Appellant and it's carelessness and lack of bonafide is apparent in not doing anything necessary to file the appeal after writing a letter on 06.11.2020 and again to write a letter on 11.04.2022. It merely shows that appellant is only interested in keeping the recovery in abeyance.

(v.) The order impugned in appeal is computation of damages for the period 04/2017 to 05/2019. Appellant instead of depositing kept the same unpaid. The amount computed as damages is legally ascertained and is to be levied thereby furthering the objective of the beneficial labour legislation. The Privy Council has held in such context that, "a law of limitation and prescription may appear to operate harshly and unjustly in particular case, but if a law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as a judge cannot on applicable grounds, enlarge the time allowed by the law, postpone its operation,

or introduce exceptions not recognised by law." On these grounds the application of Appellant to condone the delay in filing the appeal is prayed to be rejected.

4. Perused the documents and materials placed by the Ld. Counsels on behalf of their respective parties for consideration over the matter involved in the present application seeking condonation of delay in filing the appeal.

5. It is argued by the Ld. Counsel for the Appellant/ Applicant that the Appellant is not an individual person or proprietor of a private firm; to the contrary it is a juridical perosn, an association of advocates constituted and registered under the provisions of Societies Registration Act, 1860. It has it's own bylaws according to which the bar association periodically undergoes in election of it's executive body. As the business of the juridical body of the association is conducted operated and governed through some animate persons who are collectively called executive body. The executive body is headed by Chairman/ president and /or the Secretary/ General Secretary/ Honorary Secretary or who so ever may have been authorised by the association through it's resolution. Obviously when the association

undergoes in election for electing it's executive body every year; the earlier executive body is replaced by the newly elected executive body of the Association who has new animate i.e. living individuals. A Bar Association, therefore, sue or be sued through it's authorized executive office bearers.

6. The Ld. Counsel for the Appellant Bar Association submitted that the impugned order and the proceeding before the Respondent authorities under Section 14 B & 7 Q of the "EPF Act" could have not been came into the knowledge of the Association unless the recovery proceeding is started. The documents particularly the impugned order dated 17.03.2020 itself shows that the proceeding was conducted ex parte recording reason that no one appeared despite the summons were issued to the Bar Association. And therefore, order was passed ex parte. Ld. Counsel further argued that the said order was not communicated to any authorized office bearer like President or Secretary of the executive body or representative of the Bar Association. He further submitted that just after the passing of the order there occurs a country wide pandemic of Covid-19 by reason of which the physical

presence and activities in all the offices whether public offices or private offices were closed and work was being done by virtual mode. This was also the reason; the order could not be communicated to the Bar and the Appellant Bar Association was also not in position to avail the knowledge of the impugned order and even of the proceeding wherein it is passed by the Respondent Authorities. Ld. Counsel further drew the attention of the Tribunal that Appellant Bar Association admittedly had never been defaulter nor is defaulter in paying statutory dues of PF etc. to the Respondent Authorities except the alleged period mentioned in the impugned order 04/2017 to 05/2019.

7. This is also emphatically argued that in the year 2020 and onward there was no executive body in existence for the reason election could not be held due to the closure in lockdown of Covid-19. When the new executive body after the restoration of the physical working in offices, an election was held in due course of by-laws of the Association and the Appellant Bar Association got competence and ability to sue or be sued.

8. Ld. Counsel for the Appellant further argued that the

inspection of the records was requested and the Respondent authority permitted to inspect the records, thereafter, the knowledge of the proceeding and impugned order persuaded the Appellant to move the statutory Appeal against the order. Ld. Counsel citing case laws of Hon'ble Supreme Court and High Courts emphasised on this fact that whenever he came into the knowledge of the order by receiving the copy of the impugned order on 20.10.2022, without any further delay, the appeal is moved. The delay is not in the eye of law because the date of order merges in the knowledge of the order when it is communicated on the affected parties.

9. On the other hand, Ld. Counsel for the Respondent submitted that the appeal is hopelessly time barred as it is not moved within 60 days from the date of order i.e. 17.03.2020 while the order was dispatched on 08.04.2020 to the Appellant. They could have filed the appeal within 60 days as provided in the Rule 7(2) of the Tribunal (Procedure) Rules, 1997. Further, there is no explanation of day to day delay in the application and affidavit seeking condonation of delay in filing the appeal, as such the application is not maintainable. Ld. Counsel further submitted that admittedly,

the Appellant appeared in the proceeding of recovery and they came into the knowledge of the order. The Appellant on 06.11.2020 prays the recovery officer to keep in abeyance the recovery certificate dated 26.10.2020. it is sufficient to show that they were well aware with the impugned order. Ld. Counsel further impressed upon the Appellant's letter dated 11.04.2022 wherein they asked inspection of the record and vide order dated 14.07.2022 of the Respondent's Officer, they were given opportunity to inspect the record on 23.07.2022, but inspection was not done and a further opportunity was sought. This shows that the Appellant are adopting dilatory tactics only in this way or that way to keep in abeyance the recovery of legally computed dues of the poor labours. Ld. Counsel further emphasised that what so ever hardship may have that cannot be given priority over the trouble of the poor labourers. Therefore, the application should be rejected however, ld. Counsel for the Respondent did not rebut the fact that the copy of the impugned order was provided to the Appellant's representative on 20.10.2022.

10. After hearing the parties at length, the Tribunal before

going further with the discussion on the justification of the prayer made by the Appellant to condone the delay in filing the Appeal, thinks proper and relevant to quote some legal provisions from the "EPF Act" and Rules therein relating ascertainment of damages:

> ***14B. Power to recover damages.—****Where an employer makes default in the payment of any contribution to the Fund 3 [, the 2 [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 4 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of 5 [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, 6 [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 7 [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

8 [Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

9 [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.]

In view of the aforesaid provision, it is explicit from the provisions of the Act that before making any recovery, the Authorised Officer of the Respondent had to ensure whether the summons issued to the employer/ establishment is duly served to ensure the affording opportunity of hearing to the employer. An order, if passed ex parte is not an illegal order, it is equally capable of being implemented legally as the order passed on merit after hearing the parties, therefore the authority must be cautious as to the service of summons/ notice upon the concerned. Moreover Section 14 B, though, penal in nature but the purpose is to compensate the employees . Penal Order must be passed in the knowledge and hearing of the charged employer.

11. An order is not bad only for the reason of some irregularity in the service of summons. But in the present case no record or document for establishing effective service of summons / notices upon the competent officer of the Bar Association is placed before the Tribunal. Even the impugned order dated 17.03.2020 is not mentioning any such effective

service upon the person / officer who is served with such summon. The impugned order is passed ex parte, therefore, it shall be presumed that the a Bar Association ppellant against whom it is passed ex parte were not in knowledge of the proceeding against them.

12. The impugned order passed under section 14 B is made appealable under in the Act under Section 7I which is quoted hereunder for easy reference:-

> *7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or* ***any authority,*** *under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C,* ***or section 14B, may prefer an appeal to a Tribunal against such*** *notification or* ***order.*** *(2) Every appeal*

under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

13. The Sub Section 2 of the Section 7 I provides that such appeal under sub Section 1 shall be filed in such form and manner within such time and be accompanied by such fees as may be prescribed. Here Rules framed for the purpose of the Appellate tribunal to exercise powers under Section 7 I are important . The Tribunal (Procedure) Rules, 1997, in it's Rule 7 provides as under:-

7. Fee, time for filing appeal, deposit of amount due on filing appeal.— (1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees Two Thousand to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said

Tribunal situate.

(2) **Any person aggrieved** by a notification issued by the Central Government or **an order passed by** the Central Government or any other **authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.**

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined

under Section 7-A. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

14. Sub-Rule (2) of Rule 7 specifically provides that the appeal under Section 7 I may be filed within 60 days from the date of issue of the notification / order before the Tribunal. This would be noteworthy that whatever the date of the order may be, the relevant date for preferring an appeal by the aggrieved person is the "date of issue of the order". The proviso appended with that sub rule provides that the tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period extend the said period by a further period of 60 days. The intention of the Rule is very much clear. The Tribunal is empowered to exercise its discretion to satisfy itself whether there is sufficient reasons for the Appellant which prevented filing of the appeal within the 60 days as prescribed in sub rule (2) of Rule 7, but this empowerment of Tribunal is strictly to be exercised within the

further 60 days only. It means the Tribunal has no power to exercise it's discretion as aforesaid beyond 120 days from the date of issuance of the impugned order.

15. In view of the aforesaid provision , in the present case before considering the reason set forth by the Appellant/ Applicant to explain why the appeal could have not been filed within the 60 days from the date of issuance of the order i.e. to say from 17.03.2020 and the objection of the Ld. Counsel for the Respondent that the Tribunal has no power to consider and exercise it's jurisdiction over the reasons set forth by the Appellant/ Applicant , if delay in filing the appeal is beyond 120 days from the date of issuance of the order, this is to be kept into mind that the impugned order is passed in proceeding under section 14 B which was conducted ex parte. Here the question would be that what is the meaning of the words used in the Rule 7 sub rule (2) "date of issue of notification/ order".

16. The question before the Appellate Tribunal is as to what would be the relevant date for the purpose of commencement of period of limitation. If the date of issuance of order (in the case before this Tribunal 17.03.2020) is

treated to be the relevant date for the purpose of computing the period of 60 days as prescribed under the Rule 7(2) proviso of the Tribunal (Procedure) Rules, 1997, several anomalous and absurd situation may arise. An ex parte order which is passed without the knowledge of the aggrieved party, would render the remedy (provided in the "EPF Act" and Rules of 1997 framed thereunder) against the order meaningless as the same would be lost by running out of the limitation period. The aggrieved party would not even know that an order against him has been passed. If the Limitation period in the Rule 7 (2) proviso in the context of an order passed ex parte is interpreted in such a narrow approach that the period of limitation shall commence from the date of order cannot be acceptable in the interest of justice. An aggrieved party concerned with an 'order' is legitimately be rightful to avail remedy provided in the scheme of the Act and Rules framed thereunder but unless the order is communicated or is known to him he would not be able to avail that remedy.

The Appellant has relied upon the judgement of Hon'ble the Supreme Court in the case of D. Sai Baba Vs. Bar Council of

India & Anr (2003)6 SCC 186 and in the case of National Winder Vs. The Presiding officer, Employees' Provident Fund Appellate Tribunal and Ors. Decided by Hon'ble High Court of Allahabad in Writ Petition No. 66766 of 2005. In support o f his arguments that for condonation of delay, date of communication of the order is the date of knowledge and merely because the Appellant filed the Appeal after lapse of statutory time limit, the Tribunal is not divested of it's power to hear the appeal.

17. The word "Issue" in the context of the provisions in Rule 7(2) proviso is an transitive word which literally means , "to put forth or distribute usually officially to send out for sale, circulation or publication." In Rule 7(2), the opening sentence which uses the words, "Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order prefer an appeal to the tribunal" envisages the "issue of order" to the aggrieved party. Above sentence carved out from the Rule 7(2) does not simply use the words, "date of order" and therefore, express the legislative intention. The words

'date of issue of order' implies sending out the order for communication to the concerned parties. The opening words of the provision of Rule 7(2), "Any person aggrieved by ….an order" is corelated with the words ending with "may prefer an appeal to the Tribunal" is to be legally construed that the party communicated with the order if aggrieved, may avail the remedy of filing appeal against the order.

18. For the process of communication, the order must be issued to a specific addressee in other words there must be a sender and a receiver, communication is made through any prescribed mode of service upon the addressee such as personal or postal delivery of the order, or by electronic mode such as email, fax, whatsapp etc. Communication of the issued order is said to have completed with service of the order upon the addressee. In the context of order passed in an ex parte proceeding, the burden heavily lies upon the sender to prove the effective service upon the receiver. Effective service of the order upon the concerned party to the proceeding may be actual or constructive after which that party can be held to be in knowledge of the order. It would not be enough to hold a person to have the knowledge of the order

on the ground that from the consequences flowing from the order the person might have gathered the information of the order, unless the order is actually served on or availed by such person.

19. In the present case the Respondent has not shown the service of notice and summons of the proceedings of enquiry run ex parte against the Appellant. After ex parte concluding the inquiry, order was passed ex parte and shown to have issued on 17.03.2020. This is a bald statement by the Respondent in their objection that impugned ex parte order was sent on 08.04.2020 to the Appellant which is an Association. Which of the competent officer of the Association is served with the copy of the order, is not stated. Proof of service of the order in question upon the Bar Association (the Appellant) is not placed on record. Only ground for attributing knowledge of the impugned order on the Association is taken by the Respondent is on the basis of a letter dated 11.04.2021 to the recovery officer by the Appellant praying to keep in abeyance the Recovery Certificate issued consequent upon some adverse order not known to them. It is also admitted that after the passing of

the order in question, there was a country wide lock down due to the pandemic Covid-19. It is also admitted that the order in question was actually and personally provided to the representative of the Appellant Bar Association only on 20.10.2022. it clearly establishes that Appellant Bar Association is communicated / served with the impugned order issued on 17.03.2020 only on 20.10.2022. Therefore they (Appellant) could not legitimately be expected to have occasion to avail remedy of statutory appeal against the order within 60 days from the date of issue of the order that is to say dated 17.03.2020.

20. In the aforesaid facts and circumstances this Appellate Tribunal is of considered opinion that in the instant matter the date of issue of the ex parte order with which the Appellant Bar Association is aggrieved shall be treated the actual communication/ service of that order to it i.e. 20.10.2022. The limitation period under Rule 7(2) of 60 days shall commence to run from 20.10.2022 and will continue upto 19.12.2022. The appeal under Section 7 I of the "EPF Act" filed by the Appellate Bar Association on 21.12.2022 shall be deemed to have been filed after two days delay,

therefore, falls within the extended period of limitation of 60 days . The reasons are well explained , hence, the delay is condoned exercising the power conferred to condone the delay upto 120 days from “issue/ communication of the order”.

Order

The Application of Appellate Bar Association to condone the delay in filing the appeal is allowed.

List the matter on 20.02.2023 when the parties are to submit their arguments as to the maintainability and tenability of the appeal moved jointly, against the order passed under Section 7 Q jointly with the appealable order under Section 14 B as well as the interim prayer seeking stay on execution of the impugned orders.

Justice Vikas Kunvar Srivastav (Retd.)

Presiding Officer,

CGIT-cum-Labour Court No.1, Delhi.

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