

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

**EPF Misc. No.- 09/2022**

**Present – P.K. Srivastava**

**H.J.S. (Retd.)**

**M/s. Radha Mohan Higher Secondary School**  
**Dhekha Rewa, through Its Secretary**  
**Ramashray Prasad Tripathi**  
**S/o. Shri Mohan Ram Tripathi**  
**R/o. Beeda Road, Dhekaha, Rewa (M.P.)**

**Applicant/Appellant Establishment**

**Vs.**

**Assistant Provident Fund Commissioner**  
**(Bhavishya Nidhi Bhawan) Vijay Nagar**  
**Jabalpur (M.P.)-482002**

**Respondent Authority**

**Shri Paresh Pareek**

**:**

**Learned Counsel for Applicant.**

**Shri J.K. Pillai**

**:**

**Learned Counsel for Respondent.**

**JUDGMENT**

- 1.** Applicant/Appellant Establishment has filed petition with affidavit for setting aside order dated 05.10.2021, passed by this Tribunal by which the EPF Appeal No.- 40/2017, filed by the Applicant was dismissed due to none presence of Applicant/his learned Counsel. The Respondent side has filed written objection with affidavit and to restore it for hearing.
- 2.** **The grounds** taken in the petition are mainly that, the appeal was filed before the Tribunal in Delhi form where it was transferred to this Tribunal in Jabalpur. He did not receive any notice of any date. Also it is the case of the Applicant that after they came to know about dismissal of appeal, only on 12.07.2022, when they received a notice of recovery of amount under appeal sent by the opposite party. Thereafter, he filed the restoration petition on 01.08.2022.

3. The Respondent side has opposed the petition that it was the Applicant who had filed the appeal. After transfer of the appeal in Jabalpur, several dates were fixed but he did not appear. Also it has been stated the application is barred by limitation and that since the Employees Provident Fund and Miscellaneous Provisions Act and Rules framed therein provide specific period of limitation, hence the General Provisions of Limitation Act 1963 will not apply.
4. I have **heard arguments** of Shri Paresh Pareek learned Counsel for the Applicant Establishment and Shri J.K. Pillai, learned Counsel for the Respondent Authority. I have gone through the record.
5. Perusal of the record of said EPF Appeal reveals that before the Tribunal in Delhi, the Applicant was represented by his learned Counsel Shri Paresh Pareek. Notice was sent by this Tribunal in Jabalpur to the learned Counsel Shri Paresh Pareek on his Mail ID mentioned in records, which was not served on him because as per report office, the e-mail address was not present.
6. The Rules of 1997, framed under the Act i.e. Rule 7(2) prescribe specific period of limitation, hence general provisions of limitation as mentioned in Limitation Act 1963 will not apply in the case in hand.
7. Limitation will run from the date of order as it is provided in Rule 7(2). Record of the appeal shows that copy of the order of dismissal of the appeal due to non presence was sent to the parties on 07.10.2021.
8. Learned Counsel for Respondent Authority has opposed this application with an argument that the Act and Rules provide specific period of limitation for filing restoration which is 30 days from the date of order, hence provisions of Limitation Act will not apply and the petition is worth rejection.
9. Reference of case ***SES Baba Nebhraj Senior Secondary School Vs. Rajkumari Khanchandani***, reported in ***(2011) 181 DLT 204 W.P. (C) No. 1605/1996***, is **taken here**, the relevant paragraphs of the judgment are being reproduced as follows :-

*“37. I have discussed both the different situations. In one situation negative cap is there, where delay cannot be condoned beyond the maximum limit prescribed. In other situation, no clear cut provision provided if, the aggrieved person is prevented by the circumstances beyond control. In the instant case under [Section 11 \(6\)](#) of Delhi School Education Act, 1963 the Tribunal enjoy some power as vested in a Court of Appeal by [the Code of Civil Procedure, 1908](#) under [Delhi School Education Act, 1963](#) no such negative cap is given.*

*38. In my opinion, the law is very clear; there is a principle of interpretation of statute that the plain or grammatical construction which leads to injustice or*

*absurdity is to be avoided. Section 11 of the Delhi School Education Act, sub-clause 6 thereof undoubtedly confers on the tribunal appellate powers which it exercises as if it were a court of appeal upon Code of Civil Procedure, therefore, to my mind would have the power to condone delay in appeal before it by recourse to Section 5 of the Limitation Act. The judgments cited and relied upon by counsel for the petitioner do not foreclose the powers of a tribunal if powers of a court of appeal are bestowed upon it by statute itself.*

*39. Additionally, this issue has already been decided in the case of Geeta Bal Bharti Sr. Sec. School (supra) WP(C) No.1605 of 1996 Page 25 of 26 that Delhi School Education Act, 1973 the powers are bestowed upon the Tribunal to dispose of appeals under the Act as if it were appellate court within the meaning of the Code of Civil Procedure, therefore, would have the power to condone delay in filing provided the Tribunal was satisfied that sufficient cause had been shown as required under Section 5 of the Limitation Act, 1963. The said Tribunal is headed by a District Judge appointed by Lt.Governor, NCT of Delhi after no objection given by the Hon<sup>ble</sup> the Chief Justice of this Court. The presiding officer of the Tribunal is not an administrative body but a quasi-judicial armed with sub-section 6 of Section 11."*

10. Relying on the principle laid down in the case referred to above and also keeping in view the cardinal principle of law that it is not the job of Courts to punish the parties for their faults rather the Courts exists for dispensing justice between the parties and also that so far as possible, disputes should be decided on merits, also in the light of facts and circumstances of the case in hand as mentioned above, I am of the considered view that interest of justice in this case will be served if the application for restoration is allowed but on cost.

### **ORDER**

Restoration application is allowed on cost Rs. 8000/- to be paid by the Applicant to the Respondent Authority within 15 days from today. On the condition of payment of cost as mentioned within time prescribed and filing its receipt before the Registry, the Appeal No. 40/2017 is restored on its original number setting aside order dated 05.10.2021 dismissing the appeal in default. Non compliance of this order shall stand in its vacation and the petition for restoration shall stand dismissed.

Date:- 29/04/2025

P.K. Srivastava  
(Presiding Officer)

Judgment Signed, dated and pronounced.

Date:- 29/04/2025

P.K. Srivastava  
(Presiding Officer)