

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II,
ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/24/2019

M/S Quami Patrika

Appellant

Versus

APFC- Delhi (N)

Respondent

ORDER DATED-21.07.2022

(Pronounced from Camp Court at Mumbai)

Present: Shri S.P Arora & Shri Rajiv Arora, Ld. Counsel for the Appellant.
Shri Narender Kumar, Ld. Counsel for the Respondent.

This order deals with an application filed by the appellant invoking the provisions of Rule 21 of the EPFAT (Procedure) Rules 1997.

The grievance of the appellant/petitioner is that an appeal was filed on 08.04.2019 challenging the orders passed by APFC Delhi North on 31/12/2018. On 24.03.2021 this tribunal passed an order for admission of the appeal subject to the condition that 10% of the amount assessed u/s 7A of the Act shall be deposited by the appellant within 3 weeks from the date of the order towards compliance of the provisions of section 7O and as a pre condition for admission of the appeal. It was directed in the said order that the matter shall be listed on 28th April 2021 for compliance of the direction given in the order. But soon after the said order the functioning of the tribunal was affected for the outbreak of the second wave of COVID 19 and the cases were adjourned enblock till 05.01.2022. On 05.01.2022 when the matter came up the advocate for the appellant categorically informed the tribunal that he is not aware whether the order dated

24.03.2021 has been complied or not. The counsel for the appellant sought time for inquiring about the same and the matter was adjourned to 31.03.2022 for checking the status of the compliance. On 28.03.2022 the appellant's counsel received a call from EPFO Delhi North to know that the appeal has been dismissed for non compliance of the order dated 24.03.2021. On 31.03.2022 one FDR was deposited with the registry of this tribunal by the appellant/establishment which was accepted. But subsequently the same was returned with the information that for the dismissal of the appeal, the FDR cannot be accepted.

By filing the present petition the appellant has stated that the non compliance of the direction given in the order dated 24.03.2021 was not intentional but for the acute health condition of the sole proprietor of the establishment and the difficulties faced for outbreak of corona. The Ld. Counsel for the appellant during course of argument submitted that the appellant with all bonafide intention had submitted the FDR in the registry on 31st March 2022. But prior to that by order dated 05.01.2022 the appeal was dismissed. He further submitted that when on 05.01.2022 the advocate of the appellant in the open court was allowed time till 31.03.2022 for checking whether compliance has been done or not, the order of dismissal passed on 05.01.2022 is prejudicial to the appellant. Thereby the appellant has prayed for restoration of the appeal to file in the interest of justice. To support the contention the appellant has placed reliance in the case of **N Bhageerathan vs. APFC decided by the Hon'ble High Court of Madras in WP No. 12818 of 2010** and in the case of **Pearson India Education Services Pvt. Ltd. vs. APFC decided by the Hon'ble High Court of Delhi in WPC No. 2047 of 2020** and argued that the tribunal under the provisions of section 7(J)(2) of the EPF Act is a civil court and under Rule 15 of the Appellate Tribunal Rule entertain the application to restore the appeal dismissed for default or to restore the application for restoration dismissed for default. Relying on the judgment of Pearson India referred supra he argued that the tribunal is endowed with such ancillary and incidental power as are necessary to

discharge its function effectively for the purpose of doing justice between the parties. He thereby argued that the tribunal has the power of procedural review.

The Ld. Counsel for the respondent vehemently opposed the stand taken by the appellant and argued that the tribunal is not a civil court to exercise all the powers vested in that court under the provisions of C.P.C or C.r.P.C. He also argued that the provisions of Rule 15 of the tribunal procedure rules only prescribes for restoration of an appeal dismissed for default. But here is a case where the appeal was dismissed for non compliance of the mandatory provisions of section 7O of the Act which has laid down the pre condition for admission of the appeal.

On hearing the argument and on perusal of the record it is clearly found that on 05.01.2022 an order was passed in presence of the counsel for both the parties wherein the appeal was directed to be dismissed for non compliance of the earlier orders. There is no reference about the adjournment given to 31.03.2022 as has been alleged in the petition by the appellant. Apart from this it is pertinent to state here that this tribunal in terms of section 7J(2) is to be treated as Civil Court for the purpose of section 195 and chapter xxvi of the C.r.P.C which deals with the offences affecting the administration of justice and nothing more than that. Hence, the argument of the appellant that under the provisions of section 7J(2) this tribunal is a civil court for all purpose and the said provision read with Rule 15 of the Act and section 151 of the CPC empowers the tribunal to restore the appeal dismissed for any purpose whatsoever may be is not accepted. The provision of law laid under Rule 15 of the tribunal procedure Rule since prescribes for restoration of the appeal dismissed for default only, no order of restoration can be passed in respect of an appeal dismissed for non compliance of the mandatory provisions of section 7O of the EPF and MP act. The petition is thus held devoid of merit and rejected.

Presiding Officer