

**BEFORE THE 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-1/11/2022

M/s. Walter Bushnell Medipure Pvt. Ltd.

Appellant

VS.

APFC, Delhi (South)

Respondent

ORDER DATED:-25/05/2022

Present:- Shri Mareesh Pravir Sahay, Ld. Counsel for the Appellant.

Shri Manu Parashar, Ld. Counsel for the Respondent.

This order deals with the admission and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the petitions being served on the respondent, learned counsel for the respondent Shri Manu Parashar appeared and participated in the hearing. The record reveals that the impugned order u/s 7A was passed by the commissioner on 25/11/2021, communicated to the appellant establishment on 26/11/2021 and the appellant filed the appeal 28/02/2022. The Registry has thus reported that the same has been filed within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 –O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the report of the EO alleging non compliance of the statutory deposits under the Act in respect of

eligible employees for the period 6/2016 to 9/2018 after bifurcating the basic wage in to various allowances. It was also reported that the establishment for the period 2016-2017 and 2017-2018, the establishment had booked a big amount as stipend paid, but failed to produce any standing order or approval for engagement of apprentices. The respondent when served show cause notice on the appellant establishment, a proper and detail reply was submitted. But the commissioner decided to held inquiry u/s 7A of the Act and summon dated 6/6/2019 was served. The establishment again gave a detailed reply. In it's reply the establishment denied the allegation of non compliance and informed that the company has stopped operation since 30/06/2017 and currently there are no employees working. But the establishment is regularly paying the administrative charges. But the reply was found incomplete and the inquiry proceeded leading to passing of the impugned order. Documents produced during the inquiry showing payment to trainees who are not the on roll employees was not accepted. Though it was argued that all the allowances cannot be computed under the wage, the submission was not accepted. None of the submissions were considered while passing the impugned order and the commissioner without going through the details of the written submission passed the order which is based upon the report of the E O only. Citing various judgments of the Hon'ble SC, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the objection raised by the appellant. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. The appellant has relied upon the judgment of the Hon'ble SC in the case of **Bridge and Roofs reported in (1963) 3 SCR ,978** and the case of **Manipal Academy of Higher Education(2008) 5 SCC428** to support the argument advanced.He thereby submitted that all these aspects if would be considered, the appellant has a fair chance of success. More over the Respondent in the mean time has recovered Rs. 4,96,086/- from the Bank Account. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He argued that during the period under inquiry, as observed by the EO, a huge amount was found to have been shown as stipend paid to the trainees and the establishment intentionally did so to avoid PF liabilities. When called upon to produce the approval for engagement of trainees, the establishment failed to satisfy. He also submitted that the EO made inspection on multiple occasions and opportunity was afforded to explain the circumstances leading to the presumption of willful omission in compliance of statutory deposits. But the reply submitted by the establishment on each occasion was found incomplete and not to the point. Hence the commissioner, after giving due consideration to all the materials placed before him passed the well reasoned and well discussed order. He also submitted that the appellant has failed to make out a case for waiver of the condition of pre deposit.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the persons in respect of whom the establishment has not complied the PF contribution have been shown as trainees and the amount has been paid as stipend. At this stage no opinion can be formed on the status of those persons. At the same time it need to be considered that the period in respect of which inquiry was initiated are from 6/2016 to 3/2018 and the amount assessed is 13,37,842/- and a part there of amounting to Rs 4,96,086/- has already been recovered from the appellant's Bank Account. The recovered amount is more than 35% of the assessed amount. Without going to the other details as pointed out by the appellant while challenging the order as arbitrary, and at this stage of admission without making a roving inquiry on the merits of the appeal, it is felt proper to extend protection to the appellant pending disposal of the appeal. It is directed that pending disposal of the appeal, the balance of the assessed amount be protected from being recovered from the appellant as the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended. The amount recovered shall be taken into account for compliance of the provisions of sec 7O of the Act and hence ordered that the respondent is directed to deposit recovered amount towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar of the tribunal initially for a period of one year with provision for auto renewal with 06 weeks of this order. The

appeal stands admitted and there shall be stay on execution of the impugned order till finalization of the appeal. Call on 21.07.2022 for filing the reply by the Ld. Counsel for the respondent.

Presiding Officer

**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.**

Appeal No. D-1/06/2019

M/s. Driving Skill Institute & Research
Through Sh. Sandeep Kumar, Ld. Counsel for the Appellant

Appellant

Vs.

APFC-Delhi (N)
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 25/05/2022

More time prayed for filing reply by the Ld. Counsel for the Respondent. Granted. List the matter on 21.07.2022 for filing reply by the Ld. Counsel for the Respondent

Presiding Officer

**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.**

Appeal No. D-1/09/2020

M/s.IIMS Detective Pvt. Ltd. Appellant
Through Sh. Krishan Kartik, Ld. Counsel for the Appellant

Vs.

RPFC-II, Delhi (N) Respondent
Through Sh. Manish Dhir, Ld. Counsel for the Respondent

ORDER DATED :- 25/05/2022

The Ld. Counsel for the Respondent submitted the reply. He is directed to supply the copy of the reply to the Ld. Counsel for the Appellant. List the matter on 21.07.2022 for filing rejoinder, if any, by the Ld. Counsel for the Appellant.

Presiding Officer

**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.**

Appeal No. D-1/16/2021

M/s. Bedi & Bedi Associaes Appellant
Through Sh.S.P Arora & Sh. Rajiv Arora,Ld. Counsel for the Appellant

Vs.

RPFC-Delhi (N) Respondent
Through Sh. Rajesh Manchanda, Ld. Counsel for the Respondent

ORDER DATED :- 25/05/2022

More time prayed for filing reply by the Ld. Counsel for the Respondent. Granted. List the matter on 05.07.2022 for filing reply by the Ld. Counsel for the Respondent

Presiding Officer

**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.**

Appeal No. D-1/24/2021

M/s. Dewan International
Through None for the Appellant

Appellant

Vs.

RPFC & APFC-Delhi (C)
Through Sh. Manish Dhir, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 25/05/2022

The Ld. Counsel for the Respondent submitted the reply to the main appeal. Taken on record. Accordingly, List the matter on 21.07.2022 for filing rejoinder by the Ld. Counsel for the Appellant who is directed to collect the copy of the reply from the Registry of this Tribunal.

Presiding Officer

**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.**

Appeal No. D-1/12/2022

M/s. Data Link Consultancy Appellant
Through Sh.Raj Kumar A/R for the Appellant

Vs.

EPFO-Delhi (N) Respondent
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

ORDER DATED :- 25/05/2022

The A/R appearing for the Appellant moved one application for extension of time for reporting the compliance. Heard both the parties. The time to report the compliance is extended till 03.06.2022 for reporting compliance.

Presiding Officer

**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.**

Appeal No. D-2/08/2022

M/s.Delhi Public School Ghaziabad Society
Through None for the Appellant

Appellant

Vs.

APFC, Gurgaon
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 25/05/2022

Compliance of the order dated 05.04.2022 done. Accordingly, the appeal stands admitted and there shall have stay on operation of the impugned order till finalization of the appeal. List the matter on 04.08.2022 for filing reply by the Ld. Counsel for the Respondent.

Presiding Officer

**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.**

Appeal No. D-2/09/2022

M/s.Xcelserv Solution Pvt. Ltd.
Through Sh. Raj Kumar A/R for the Appellant

Appellant

Vs.

RPFC, Gurgaon
Through Sh. Rajesh Kumar, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 25/05/2022

Compliance of the order dated 07.04.2022 done. Accordingly, the appeal stands admitted and there shall have stay on operation of the impugned order till finalization of the appeal. List the matter on 21.07.2022 for filing reply by the Ld. Counsel for the Respondent.

Presiding Officer

**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.**

Appeal No. D-2/09/2020

M/s. Vitalife Laboratories
Through Sh. Sanjay Kumar, Ld. Counsel for the Appellant

Appellant

Vs.

RPFC, Gurgaon
Through Sh. S.N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 25/05/2022

The Ld. Counsel for the Respondent requested that the matter be heard on 28.07.2022 because another matter pertaining to the same establishment but having a different period of assessment is listed on that day for final arguments. Accordingly, List the matter on 28.07.2022 for final arguments in this matter also.

Presiding Officer