

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAIDate: 24/01/2020

M/S. AIRPORT AUTHORITY OF INDIA

MUMBAI

- APPELLANT

V/s.

ASSISTANT PROVIDENT FUND COMMISSIONER

MUMBAI.

- RESPONDENT

ORDER**Dated : 24th January 2020****Present: Mr. H.L. Chheda, A/R for the Appellant.****Shri Suresh Kumar, Advocate along with Ms. Smita****Advocate for the Respondent.**

1. The present appeal is filed by the appellant under section 7 (i) of the EPF & MP Act, 1952 [hereinafter referred to as 'Act'] against the order dated 16.10.18 passed by the Assistant Provident Fund Commissioner, the Respondent under section 7A of the Act.

2. Along with appeal the appellant has filed application for condonation of delay on the ground that the delay is due to inadequate knowledge on the provisions of EPF Act. As such the delay is not willful but was due to circumstances beyond the control of the appellant. As such there is delay of 280 days in filing the appeal because even the legal luminaries took some time additional for in preparing the appeal. Hence this application for condonation of delay.

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3. Learned Counsel for the respondent opposed the application on the ground that the delay is of more than 10 months when infact the appeal before the tribunal is to be filed within 60 days of passing of the order. In this view the submission is that there is no power to condone the delay on any ground and the reason of any type will not hold good.

4. Learned Counsel for the respondent seeks to rely on the decision in case of Manganga Sahakari Sakhar Karkhana Ltd. V/s. APFC – W.P. No. 2101/2014 (Hon'ble Bombay High Court).

5. Learned Counsel for the appellant on the other hand submitted that the provisions of section 5 to 24 of Limitation Act are attracted to the trial of the appeal u/s. 7A of the act read with provisions of EPF Appellate Tribunal Rules 1997 which rules were framed u/s. 21 (1) of the act by the Central Govt. Submission is to the effect that the tribunal has been empowered to regulate its own procedure u/s. 7 G & K of the act and that all such orders are given finality u/s. 7 N of the act. As such the powers are conferred upon the tribunal as like civil court under the provisions of CPC u/s. 7 – A (2) of the Act He seeks to rely on the decision in case of Keshab Narayan Bannerji & Ors. V/s. State of Bihar – (2000) – 1 – SCC – 607.

6. Next submission of Learned Counsel for the appellant is that section 5 of Limitation Act will apply and in the context reliance is placed on the decision in case of Mukri Gopalan's V/s. Cheppilat Puthanpurayil Aboobacker reported in MANU – WB – 1678 / 2019. Submission is also to the effect that in D.R. Industries case – 2008 (3) Gujarat Law House – Page – 662, Unit of Industries 2010 – I – LLJ – 187 and in case of Arpsc V/s. EPF Tribunal – 2006 – II – LLJ – Page 388 the question as

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to whether tribunal is the civil court for the purpose of limitation act has not been considered and therefore the ratio laid down therein is not applicable in the present case.

7. Heard both sides.

8. So far as provisions of EPF Act is concerned specific limitation is provided under this special act for filing appeal and appeal should have been filed within 60 days from the date of order or from the date of receipt of order. The period of limitation can be extended for further 60 days if there are sufficient grounds. But then in any event legislature specifically intended to exclude the power conferred u/s. 5 of Limitation Act to condone the delay or to extend the period of limitation beyond the period of 60 days. It has been specifically laid down in the decision of Manganga Sahakari Sakhar Karkhana Ltd. V/s. APFC cited supra that the applicability of relevant provisions of section 5 of limitation act to an appeal u/s. 7 (i) of the said act stands excluded. The legislature has specifically provided that the Appellate Tribunal can condone the delay provided it is of the period of maximum 60 days.

9. Reliance is also placed by the Learned Counsel for the respondent on the decision in case of Superintending Engg. V/s. Excise & Taxation Officer Civil Appeal Nos. 8276 – 8277 of 2019 to submit that in a case where the special law does not exclude the provisions of section 4 to 24 of the limitation act by express reference it would nonetheless be open to the court to examine to what extent the scheme of special law exclude the operation of limitation act. If on an examination of the relevant provisions it is clear that provisions of limitation act are necessarily excluded

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then benefits conferred therein cannot be called in aid to condone the delay under the special act.

10. Learned Counsel for the respondent while referring to the decision in case of RPFC Ludhiana V/s. EPF Appellate Tribunal New Delhi – CWP No. 5201 / 2000 submitted that tribunal constituted under EPF & MP Act is not a court but discharges the functions akin to court. It is creature of statute and must act within the law which constitutes it. As such there is no inherent power in the authorities or the tribunal to condone the delay in presenting the appeal against the order passed u/s. 14B of EPF & MP Act.

11. It is then submission of Learned Counsel for the respondent that so far rule 21 of EPF Appellate tribunal Procedure Rules 1997 is concerned, it allows the tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent the abuse of its process or to secure the ends of justice. Hence submission is that rule 21 is in respect of orders passed by the tribunal for giving effect to the orders passed by the tribunal which would be applicable subsequent to the passing of orders by the tribunal.

12. Here in the instant case impugned order came to be passed on 16.10.18. Appeal is filed on 4.10.19 i.e. nearly after 10 months of passing of order. As such the appeal is filed beyond 120 days i.e. 60 + 60 days which is clearly barred by limitation. Even otherwise the reasons mentioned in the application for condoning the delay are not satisfactory especially when it has been stated that this delay was caused due to inadequate knowledge of provisions under EPF and that legal luminaries took time

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for preparing the appeal. In my considered view even the reasons given to the application are not satisfactory.

13. That apart the appeal is clearly barred by limitation. There is no question of condonation of delay. Hence the appeal is rejected being time barred. Hence order.

- **Application for condoning the delay is rejected.**
- **The appeal being time barred is rejected & hence disposed of.**

Date: 24.01.2020

(M.V. Deshpande)
Presiding Officer
CGIT -2, Mumbai