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**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**  
**CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,**  
**JABALPUR**

**NO. CGIT/LC/EPFA-MISC-01-2020**

**PRESENT: P.K.SRIVASTAVA**  
**H.J.S.(Retd.)**

**M/S Nityanand Shikshan Samitti**

**APPELLANT**

**Versus**

**The Assistant Provident Fund Commissioner**  
**Ujjain(M.P.)**

**RESPONDENT**

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**Shri Vijay Kumar Tripathi** : **Learned Counsel for Appellant.**

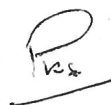
**Shri J.K.Pillai** : **Learned Counsel for Respondent.**

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**( O R D E R . )**

**(Passed on this 21-3-2022 )**

1. EPF Appeal No. 100/2017 was received on transfer from EPF Appellate Tribunal Delhi and dated 4-6-2018 was fixed for hearing of parties. Notices were sent to the parties. Notice to the learned counsel for appellant Shri S.K.Gupta was sent on his email-id provided in his vakalatnama and was served on 13-11-2019. When the appeal was taken up for hearing none was present from the side of the appellant inspite of notice to the learned counsel for appellant and respondent was represented through its learned counsel at the time of hearing, hence the appeal was dismissed with cost and interim order regarding stay of recovery stood discharged as mentioned in the order. As the record shows, notice regarding dismissal of the appeal was sent to the parties, particularly to the appellant by the Registrar of this Tribunal on 18-11-2019 through speed post (Tracking ID RI575536242IM). The Appellant filed the



present application for restoration with an application for condonation of delay along with affidavit and letter of Respondent/OP Annexure-1 by which the applicant/appellant claims to have the knowledge regarding the dismissal of the appeal. According to the appellant/applicant they received a letter dated 2-1-2020 sent by OP/Respondent on them on 4-1-2020 and came to know about the dismissal of the appeal. It is their case that on receiving the letter, they consulted their advocate at Ratlam. He sent the file to the present learned counsel to file a restoration and application for condonation of delay on 22-2-2020. Ground taken for restoration was that the learned Counsel Shri S.K.Gupta who was conducting the appeal when it was heard before Appellate Tribunal Delhi did not inform the applicant /appellant regarding transfer of the appeal. Accordingly, it has been prayed that condoning the delay, the appeal be restored and be heard on merits. The affidavit of the present applicant/appellant has been filed in support.

2. Learned Counsel for the respondent, Shri J.K.Pillai, though has not filed any written objection on application of condonation of delay and restoration but has vehemently opposed these applications in his oral submissions.
3. I have heard arguments of Shri Vijay Kumar Tripathi, learned counsel for the applicant/appellant and Shri J.K.Pillai, learned counsel for the Respondent and have gone through the record including the record of the Appeal to be restored. Learned Counsel for the applicant has submitted that they came to know about the dismissal of the said appeal by this Tribunal only on 4-1-2020, thereafter they approached their counsel for legal advice who advised them to file restoration application. According to the learned counsel, the delay in filing restoration is liable to be condoned under Section 5 of the limitation Act. Learned Counsel has referred to various cases in this respect :-


1. KALLO(Smt.) ALIAS KALAWATI Vs. PYARI BEGUM(SMT)7 OTHERS (2002) 7 SCC 764.

2. PEARSON INDIAN EDUCATION SERVICES PRIVATE LIMITED VS. ASSISTANT PROVIDENT FUND COMMISSIONER, DELHI, W.P.NO.(C)2047/2020 decided by Single Bench of Hon'ble High Court of Delhi.

3. M.K.PRASAD VS. P.ARUMUGAM(2001) 6 SCC 176.

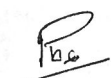
The learned counsel has further submitted that cases should be decided on merits, the doors of justice should not be closed on technicalities, hence the delay is liable to be condoned and restoration should be allowed.

4. Learned Counsel for Respondent has submitted that since the Employees Provident Fund And Misc. Provisions Act, 1952, herein after referred to the word "Act", provides a separate scheme of limitation, hence the general law as mentioned in Limitation Act 1963 will not apply in the case in hand. He further submitted that since the Act is a special legislation, providing special provisions regarding limitation, they are applicable in the case in hand. According to the learned counsel, the limitation prescribed for filing restoration of appeal dismissed in default is 30 days from the date of dismissal, the application for condonation of delay and restoration are liable to be dismissed, as submitted by learned counsel for the Respondent.

5. Rule 15(2) of the Tribunal Procedure Rules 1997 made under the Employees Provident Fund and Misc Provisions Act-1952 prescribes limitation of 30 days from the date of dismissal of appeal in default for an application for restoration. Rule 15(2) is being reproduced as follows:-

**Action on appeal for appellant's default, Rule 15(2).**

(2) Where an appeal has been dismissed for default and the appellant files an appeal within thirty days from the date of dismissal and



satisfies the Tribunal that there was sufficient cause for his nonappearance when the appeal was called for hearing, the Tribunal shall make an order setting aside the order dismissing the appeal and restore the same.

Provided, however, where the case was disposed of on merits the decision shall not be re-opened except by way of review.

6. The rules do not provide any condonation of limitation nor is there any provision in the Act providing condonation of delay. Since it is a settled law that when there are special provisions they will over ride the general provisions. Since the Act and rules as referred to above have special provisions of limitation, hence provisions of general law as given in Limitation Act, 1963, will not apply to the case in hand. A five Judge Bench decision of Hon'ble Apex Court in Civil Appeal No.210/2005 with Appeal No.8578 of 2014, Judgment dated 25-2-2016 in Pankajakshi(dead)Through L.Rs Chandrika & Others may be referred to in this respect. Para 51 reads as under:-

**“.....being in the nature of special provision vis-à-vis Section 98(2) of the Code of Civil Procedure would apply.....”**

7. In the first case of M.K.Prasad(supra) the suit was filed before Civil Court for mandatory injunction seeking relief of removal of construction and handing over possession to plaintiffs. Hon'ble the Apex Court has made certain observations with reference to Section 5 of the Limitation Act in that case. Thus the facts of the case referred are different to the case in hand. In the next case Kallu(Supra), the appeal was filed against the order of dismissal of writ passed by Single Judge of Hon'ble High Court of Allahabad wherein Hon'ble the Apex Court made certain observations regarding condonation of delay in Limitation Act. In the third case Pearson India Education Services (Supra), the Respondent was allowed to file counter on cost of Rs.5000/-. The order was conditional and the condition was not complied with, hence the Tribunal allowed the appeal without touching its merits. The

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Respondent moved an application seeking setting aside of the order allowing the appeal and restoration and the appeal to be heard fresh on merits. Hon'ble High Court of Delhi made certain observations on review of the order i.e. Review on Procedural and Review on Substantive grounds. It is clear by above description that the facts of the case referred to by learned counsel for applicant are different, hence they do not apply to the case in hand.

8. Even if they take a lenient view, though not mentioned in statute i.e. rule 15(2) of the Limitation Act, 1963 as mentioned above and count the limitation from the date of knowledge of dismissal of appeal, that the dismissal order was sent by speed post on 18-11-2019. Since the post was not returned by the post office to this Tribunal hence there will be a presumption of service within 30 days from the date of registered post as mentioned in the Limitation Act, in the light of Order 5 Rule 19 of Civil Procedure Code & Section 27 of General Clauses Act, 1897 which are being reproduced as follows:-

**Rule 19 Order V of Code of Civil Procedure 1908  
"Examination of serving officer"**

Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

**Section 27 of General Clauses Act, 1897:-** Meaning of service by post.—Where any 2 [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by



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post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Hence if we proceed on this presumption, it will be presumed that the dismissal order was served on 18-12-2019 i.e. within 30 days from the date of registered post which was 18-11-2019. Even if we go by the stand of applicant/appellant that they came to know about the dismissal of the appeal when they received the communication of Respondent/OP dated 2-1-2020. A copy of this letter Annexure A1 to the application. It goes to show that it was sent to the appellant/applicant in Ratlam by Assistant Provident Fund Commissioner, Ratlam. In the application for condonation of delay, it has been stated in para 2 that it was served on 4-1-2020 though there has been attempt to change the date 4-1-2020 by making an over writing which is apparent and is also not-initialed by the person signing it. Furthermore there is no proof that it was served on 4-2-2020, hence this Tribunal is bound to read it as 4-1-2020. Even if they count limitation of 30 days from this date, the restoration petition is beyond the period of 30 days because, it has been filed on 22-2-2020.

9. Hence on the basis of above discussion, and finding, I am of the considered view that the application for condonation of delay in filing restoration is liable to be dismissed.

10. Consequently the restoration application is also liable to be dismissed as barred by limitation.



**ORDER**

Dismissing the application for condonation of delay in filing restoration of appeal No.100/2017, the restoration application is dismissed as barred by limitation.

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

Order signed and dated.

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

**Date:** 21.03.2022

