

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**

**MUMBAI**

Present

Justice Ravindra Nath Kakkar

**CGIT-1/EPFA/119 OF 2017**

M/s Nirmal Lifestyle Realty Pvt.Ltd.,

... Appellant

Vs.

1. Regional Provident Fund Commissioner  
Thane

...Respondent

2. M/s. Ralliwolf Ltd,

Presence:

For the Appellant

:Mr.H.L.Chheda (A.R)

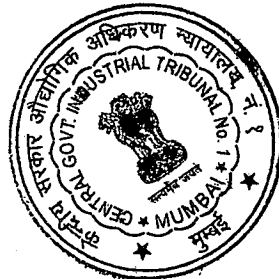
For the Respondent

: Mr. Suresh Kumar, Adv.

Mumbai, dated 26<sup>th</sup> July 2021.

**JUDGEMENT**

1. The Appellant has filed application u/s 7-L (2) read with section 7-B (5) of Employees' Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as "Act") along with Rule 21 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 for review of the final order dated 05-10-2016 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi.
2. The grievance of the Appellant is that impugned order passed by the Respondent suffers from illegality and infirmity which needs to be checked by this Tribunal and hence on this ground the order dated 05-10-2016 passed by Employees'



Provident Fund Appellate Tribunal, New Delhi to be reviewed in the interest of justice and equity.

3. Respondent opposed the review application by filing reply in support of the final order dated 05-10-2016 passed by EPF Appellate Tribunal, New Delhi.
4. Heard both parties at length.
5. In order to appreciate and adjudicate the review petition, the relevant provisions are reproduced as below:

Section 7-L (2) of the Employees' Provident Fund and Miscellaneous Provision Act, 1952:

*"(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal: Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard."*

Section 7-B(5) of the Employees' Provident Fund and Miscellaneous Provision Act, 1952:

*"(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A."*

and Rule 21 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997:



*"21. Orders and directions in certain cases.—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."*

6. From the perusal of the above provisions, it is clear that there is no power of review similar to as confirmed under 7-B of the Act whilst it is only a power conferred on the Tribunal in order to correct any mistake apparent from the record. Further, there is no mention of any apparent mistake in the order of Tribunal in the entire application.
7. It transpires that by making this application Appellant is seeking the review of the order which has been passed on merit.
8. In this way, the Appellant wants to challenge the final order of the Employees' Provident Fund Appellate Tribunal, New Delhi by filing the review application before this Tribunal on the same ground as contended before the EPFA Tribunal earlier.
9. It is pertinent to mention that Appellant aggrieved by the order dated 29-05-2015 passed by the Regional Provident Fund Commissioner u/s 14-B of the Act preferred appeal before EPFA Tribunal, New Delhi and the Tribunal after hearing both the parties passed the final order dated 05-10-2016 and considering the mitigating circumstances assessed the damages to the tune of 20% of the originally assessed damages by the Regional Provident Fund Commissioner. Aggrieved by this order of the EPFA Tribunal, New Delhi, it is stated by the learned counsel of the Respondent that they have filed writ petition against the order bearing number WP13448 of 2017 which is still pending before Hon'ble High Court.
10. Additionally, I would like to refer to the judgment passed by Hon'ble High Court of Kerala in Parthas Textiles, Kottayam v. Employees Provident Funds Appellate Tribunal, New Delhi, O.P. No. 5572 of 1998 Ker. reported in 2009 (4) KHC 815 wherein it held,



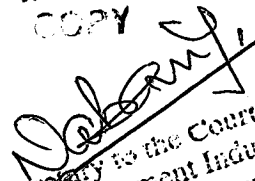
"...The tribunal does not have inherent power of review. Therefore, in order to exercise a power of review it must be conferred on the Tribunal by law either specifically or by implication. In this case, the Act does not confer any power of review on the Tribunal either specifically or by implication even after specifically conferring such a right under Section 7B on the concerned officer who passed order under Section 7A of the Act. What is thus emerging from the discussion is that the power of review is not statutorily conferred on the Tribunal and what is conferred on it under Section 7L(2) is only a specific power to rectify any mistake apparent from the record. Mere description of the said power by using the nomenclature 'review' cannot and will not expand or extend the scope and ambit of the power under Section 7L(2) which is statutorily restricted only for rectifying mistake apparent from the record."

In ratio of the above judgment, it is absolutely clear that the purpose behind Section 7-L(2) is only for the rectification of mistake which is apparent from the face of the record. Needless to say, patent errors are to be looked for and not the latent errors touching the merits of the case as only the ex-facie view is permissible to correct the order.


11. In view of the aforesaid reasons, I am of the considered opinion that application filed by the Appellant under Section 7-L (2) read with Section 7-B (5) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 along with Rule 21 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 by way of appeal is to be dismissed and is accordingly dismissed with no order as to cost.

12. The copy of the order be sent to both the parties, file be consigned to the record room after due compliance, and this order be uploaded over official web-portal of this Tribunal.

वही प्रतिलिपि  
THIS COPY

  
Secretary to the Court  
Central Government Industrial  
Tribunal-cum-Labour Court No. 1  
Mumbai



  
(JUSTICE R. N. KAKKAR)  
PRESIDING OFFICER