

ORDER SHEET

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – Cum – LABOUR COURT,
JABALPUR (M.P.)

Date of Order of Proceeding	Order Or Proceeding with Signature of Presiding Officer	Remark
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Case No. EPFA/57/2024

M/s. Raghunath Securities India Pvt. Ltd. V/S RPFC Sagar

16.07.2024	<p>Matter taken up.</p> <p>Adv. Shri Sudeep Chatterjee for Appellant Establishment and Adv. Shri Abhishek Arjariya present for Respondent.</p> <p>Respondent side files Vakalatnama, taken on record. Appellant side files reply with affidavit on the application of Respondent Authority seeking dismissal of the appeal as being not maintainable taken on record.</p> <p>Heard both the sides on application by Respondent filed with affidavit for dismissal of appeal on the ground of maintainability. Perused record.</p> <p>According to learned Counsel for Respondent Authority, the Appellant Establishment has challenged as many as five orders passed by Respondent. They are order dated 24.01.2023 passed U/S. 14B of the Act for the period of assessment 01/2022 to 12/2023, order under Section 14B of the Act passed on 24.01.2023 for the period 01/2018 to 12/2021 and order dated 28.05.2024 passed U/S. 7-B of the act seeking review of the two orders dated 24.01.2023 referred above and order dated 24.01.2024 passed U/S. 7-Q of the Act. He submits that firstly, a composite appeal against different orders passed on different dates relating to different provisions and different periods is impermissible under the Act, secondly, this appeal is beyond period of limitation of 60 days as well extended 60 days as provided under Rule 7 (2) of the Employees Provident Fund</p>	
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Appellate Tribunal Procedure Rules 1997 (in short 'Rules') and **thirdly**, the orders against which the composite review petition was filed, being orders under Section 14-B & 7-Q of the Act, no review is provided U/S. 7-B of the Act, also that the review petition itself is beyond the period of limitation of 45 days from the date of orders as provided in para 79.A of the EPF Scheme 1952.

Learned Counsel for Appellant Establishment has opposed this application, the Appellant Establishment has challenged the order dated 28.05.2024 whereby the review petition was dismissed as barred by limitation, hence the appellant had no option but to file all the aforesaid impugned orders together in the appeal. According to the learned Counsel this appeal has been filed challenging order dated 28.05.2024 on review petition, two orders dated 24.01.2023 passed U/S. 14-B of the Act and order dated 24.01.2023 passed U/S. 7-Q of the Act.

Rule 7(2), para 79A of the Scheme Section 7-B and 7-I of the Act are being reproduced as follows.

7A. Determination of moneys due from employers.—

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary;

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	<p><i>(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—</i></p> <p><i>(a) enforcing the attendance of any person or examining him on oath;</i></p> <p><i>(b) requiring the discovery and production of documents;</i></p> <p><i>(c) receiving evidence on affidavit;</i></p> <p><i>(d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).</i></p> <p><i>(3) No order 4*** shall be made under sub-section (1), unless 5 [the employer concerned] is given a reasonable opportunity of representing his case.</i></p> <p><i>(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section</i></p> <p><i>(1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.</i></p> <p><i>7 (4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-</i></p>	
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section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

7B. Review of orders passed under section 7A.—

(1) Any person aggrieved by an order made under sub-section (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order: Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same: Provided that,—

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(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.

Perusal of Section 7-B and 7-I makes it clear that

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review petition for review of an order passed U/S. 7-A of the Act only is permissible under the Act and that too within period of 45 days from the date of order. There is no provision for review of order passed U/S. 7-Q or Section 14-B of the Act. The Respondent Authority has dismissed this review petition on the ground of limitation as well on non maintainability of the petition because it was for review of orders passed U/S. 14-B & 7-Q of the Act. When review petition does not lie against an order, its dismissal is justified in law that too when it is beyond limitation. Learned Counsel for Appellant Establishment could not cite any provision permitting composite appeal against different orders passed on different dates under different provision for different periods.

Section 7(2) in The Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997'

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal: Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days:

Hence, on the basis of above discussion, it is held that this appeal being a composite appeal against different orders passed on different dates under different provision for different periods, filed beyond period of limitation could not be admitted for hearing.

As regards, the maintainability of appeal against order of review though this order was passed on 28.05.2024 and appeal filed on 26.06.2024,

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apparently within limitation but since the purpose of filing of review is only to cover this whole matter under limitation as it is evident from the facts mentioned above.

EPF Pension Scheme 1952 Para 79A.

Filing application for review Any person aggrieved by an order made under sub-section (1) of section 7-A and who desires to obtain a review of such order may apply for a review of that order, as provided in sub-section (1) of section 7B of the Act in Form 9 to the officer who passed such order: Provided that no application for review of an order will be entertained by the concerned officer, unless the application for review is submitted within 45 days from the date of making such order.

Since, no review of any order passed by the Respondent Authority U/S. 7-Q or 14-B is admissible U/S. 7-B of the Act, the Respondent Authority has rightly dismissed the Review Petition.

No appeal lies against order passed U/S. 7-Q of the Act, hence the Appellant Establishment is at liberty to seek remedy before proper Forum against Order U/S. 7-Q of the Act passed by Respondent Authority.

No other point was pressed.

In the light of above discussion and findings, the said appeal is *sans merit* and is dismissed at admission stage itself.

Presiding Officer