

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, JABALPUR**

NO. CGIT/LC/EPFA/MISC-19/2019

Present – P.K. Srivastava

H.J.S. (Retd.)

**Dr. Hari Singh Gaur Vishwavidyalaya,
Sagar (M.P.)
Through Registrar**

...Applicant/Appellant

Versus

- 1. The Regional Provident Fund Commissioner,
EPFO, 10, Civil Lines, Sagar M.P.**
- 2. The Assistant Provident Fund Commissioner,
EPFO, 10, Civil Lines, Sagar M.P.**

...Respondent

J U D G M E N T
(01-04-2025)

The Applicant University which is the Appellant Establishment in the EPF Appeal No. 47 (8)/2013 has filed the restoration application through its learned Counsel seeking setting aside of order dated 06.12.2016 passed by my learned Predecessor in Delhi by which the appeal was dismissed by him due to non appearance of anyone from the side of appellant establishment on the date 06.12.2016 when the appeal was fixed and was taken up for hearing.

The restoration application is also accompanied with an application for condonation of delay. Affidavits have been filed in support of the applications. The Respondent Authority has preferred objections.

I have heard learned Counsel Mr. Rahul Choubey for the Applicant Establishment and Mr. J.K. Pillai for Respondent OP on these two applications. I have gone through the record as well.

According to the Applicant, they preferred an appeal before the Tribunal against order of Respondent Authority dated 20.11.2012, whereby they were held to have defaulted in deposit of EPF dues of their employees for the period 04/1982 to 07/2003 and were held to be liable for payment of penal damages u/s. 14-B of the Act assessed at Rs. 6,20,54,394/-.

They had engaged a Counsel at Delhi. They had notice of the date of hearing on 06.12.2016 but due to negligence of staff, it got mixed up with other documents, hence they could not contact their Counsel. The appeal was dismissed on 06.12.2016. They first came to know about the dismissal of the appeal in the third week of December 2018, when files of the Section being rearranged and found the notice of the date. Thereafter, they contacted their local Counsel in Delhi and came to know that the jurisdiction had now been transferred to CGIT at Jabalpur by way of amendment in the Finance Act, 2017, which came into force w.e.f. 26.05.2016. Thereafter, they filed this application for restoration before this Tribunal.

The Respondent side taken a case that the petition for restoration is highly barred by limitation which is 30 days from the date of order of dismissal as mentioned in EPF Appellate Tribunal (Procedure) Rules 1997, hence cannot be given benefit of Limitation Act 1963. Learned Counsel for Applicant Petitioner has relied on Judgment of Single Bench of Hon'ble High Court of Delhi in the case of management of **SES Baba Nebhraj Senior Secondary School Vs. Rajkumari Khanchandani**, reported in (2011) 181 DLT 204 W.P. (C) No. 1605/1996, the relevant paragraphs of the judgment are being reproduced as follows :-

“37. I have discussed both the different situations. In one situation negative cap is there, where delay cannot be condoned beyond the maximum limit prescribed. In other situation, no clear cut provision provided if, the aggrieved person is prevented by the circumstances beyond control. In the instant case under [Section 11 \(6\)](#) of Delhi School Education Act, 1963 the Tribunal enjoy some power as vested in a Court of Appeal by [the Code of Civil Procedure](#), 1908 under [Delhi School Education Act, 1963](#) no such negative cap is given.

38. In my opinion, the law is very clear; there is a principle of interpretation of statute that the plain or grammatical construction which leads to injustice or absurdity is to be avoided. [Section 11](#) of the Delhi School Education Act, sub-clause 6 thereof undoubtedly confers on the tribunal appellate powers which it exercises as if it were a court of appeal upon [Code of Civil Procedure](#), therefore, to my mind would have the power to condone delay in appeal before it by recourse to [Section 5](#) of the Limitation Act. The judgments cited and relied upon by counsel for the petitioner do not foreclose the powers of a tribunal if powers of a court of appeal are bestowed upon it by statute itself.

39. Additionally, this issue has already been decided in the case of Geeta Bal Bharti Sr. Sec. School (supra) WP(C) No.1605 of 1996 Page 25 of 26 that [Delhi School Education Act, 1973](#) the powers are bestowed upon the Tribunal to dispose of appeals under the Act as if it were appellate court within the meaning [of the Code of Civil Procedure](#), therefore, would have the power to condone delay in filing provided the Tribunal was satisfied that sufficient cause had been shown as required under [Section 5](#) of the Limitation Act, 1963. The said Tribunal is headed by a District Judge appointed by Lt.Governor, NCT of Delhi after no objection given by the Hon'ble the Chief Justice of this Court. The presiding officer of the Tribunal is not an administrative body but a quasi-judicial armed with sub-[section 6 of Section 11.](#)"

In another case of *M/s. C.D. Steel Pvt. Ltd. Vs. APFC & Others*, decided by Hon'ble Calcutta High Court and reported in (2022) 05 CALCK 0034, WPA No. 20721/2021, the issue of application of Limitation Act 1963 with respect to the EPF Rules (mentioned above), was considered and decided. The relevant portion of the said judgment is being reproduced as follows :-

17. Bar to the Tribunal to condone the delay beyond the period prescribed under Rule 7(2) of the Rules of 1997 and applicability of [section 29\(2\)](#) of the Act of 1963 have been strenuously argued by learned counsels for both the parties. Placing reliance on the authority in *Commissioner of Customs and Central Excise (supra)*, learned counsel for the respondents has submitted that in absence of any clause condoning the delay in filing an application under a [Special Act](#), there is complete exclusion of [section 5](#) of the Limitation Act and the interpretation of limitation given in the [Special Act](#) cannot be diluted by the Court.

18. In *Superintending Engineer/Dehar Power House (supra)*, the Hon'ble Supreme Court has observed that because of the provisions of the [Central Excise Act](#), it was held that the time limit prescribed for making a reference to the High Court was absolute and unextendable by the Court under [section 5](#) of the Limitation Act.

19. [The Excise Act](#) being a fiscal statute cannot be equated with the Act of 1952 which is a beneficial legislation and should be dealt with leniently.

20. At this juncture, reference to [section 29\(2\)](#) of the Limitation Act, 1963 may be relevant.

"29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of [section 3](#) shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in [sections 4 to 24\(inclusive\)](#) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

21. In other words, the provisions of the [Limitation Act](#) shall apply to any suit, appeal or application under any special or local law to the extent to which they are not expressly excluded by such law. This proposition of law has been endorsed by the Hon'ble Supreme Court in the authorities in *Superintending Engineer/Dehar Power House (supra)* and *Mukri Gopalan (supra)*. In this case, there being no express exclusion of the [Limitation Act](#) in the Rules of 1997, the proceeding will attract [section 29\(2\)](#) of the Limitation Act and consequently [section 5](#) of the Limitation Act shall apply to the proceeding before the Tribunal. The Tribunal, therefore, has the authority to invoke [section 5](#) of the Limitation Act to condone the delay, if at all, in preferring the appeal.

In the light of the above discussion, the objection from the side of the OP Respondent that Limitation Act 1963 will not apply in the case in hand cannot be accepted and it is held that the Limitation Act 1963 will apply in the case in hand also.

The ground of delay taken by the Applicant is with respect to bureaucratic meshing of files/ inaction and incompetent supervision. It is the general principle of law that disputes should be decided on merits as far as possible and justice should not be refused on technical grounds. Learned Counsel Applicant Establishment has referred to judgment of Hon'ble Supreme Court in *M.K. Prasad Vs. P. Anumugam*, reported in *AIR 2009 SC 2497*, in which there was delay of three years which was condoned on cost of Rs. 50,000/-. In another case of *M/s. Shrinivas Charitable Trust Vs. Deputy Commissioner, Income Tax*, reported in *(2005) SUPREME (MAD) 1712* and *M/s. Reliance Insurance Vs. Paras Ram*, *(2011) 4 CPR 89*, long delays were condoned on the principle that Courts should take pragmatic steps to avoid refusal of justice on technical grounds.

The Applicant Establishment is an Educational Institution. No doubt they have been lacking due diligence in prosecuting their case and have been very reckless in this respect. Since, the amount under appeal is huge and the general policy of law is to decide disputes on merits so far as possible. The Courts do not exist to punish the parties for their fault rather they exist to dispense justice between the parties. Keeping these cardinal principles in mind, the application for restoration deserves to be allowed but on exemplarily high cost.

ORDER

Hence condoning the delay thus allowing the application for restoration consequently at a cost of Rs.1,00,000/- which shall be deposited by the Applicant Establishment with the State Legal Services Authority, Jabalpur within 30 days from the order ATA No. 47(8) /2013 is restored to its Original Number in CGIT, Jabalpur. It will be numbered as a fresh appeal.

The Appellant Establishment shall also file an undertaking that they will not seek unnecessary adjournment in disposal of appeal. Non compliance of the order within the prescribed time frame will result in dismissal of the restoration petition.

Date:-01/04/2025

**P.K. Srivastava
(Presiding Officer)**

Judgment Signed, dated and pronounced.

Date:-01/04/2025

**P.K. Srivastava
(Presiding Officer)**