

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

ATA No D-2/16/2022

M/s. Rakushka Internatioinal Appellant
Through- Shri Vivek Kaushal, Ld. Counsel for the Appellant.

VS.

RPFC, Gurgaon Respondent
Through;- Shri, Chakardhar Panda, Ld. Counsel for the Respondent.

ORDER DATED – 15/03/2023

This order deals with the application filed by the appellant praying restoration of the order dated 01.11.2022 on the grounds stated therein. The application is supported by an affidavit and the FDR of Rs. 2,95,858/-.

The applicant has stated that the appeal was filed challenging the order dated 08.03.2022 passed by the RPFC Gurgaon, u/s 7 A of the Act. Argument on admission and application filed u/s 7 O was heard on 05.07.2022 and matter was adjourned for pronouncement of order to 05.09.2022. But on that day the Presiding Officer of this Tribunal was taking up the matters of NIT Mumbai and all the matters listed before this Tribunal were adjourned to other dates enblock. Thus the next date of this proceeding was noted down as 11.11.2022 by the counsel for the appellant. The Appellant was under the bona fide impression that the order will be passed on the next date i.e. on 11.11.2022. But the Tribunal, on 05.09.2022 pronounced the order from the Camp Court at Mumbai, wherein the appeal was directed to be admitted subject to deposit of 40 per cent of the assessed amount within six weeks from the date of the order. Though the order was uploaded in the website, the same escaped the notice of the Appellant. As a result thereof, the Tribunal dismissed the appeal by order dated 01.11.2022 on account of non compliance. The appellant has thus stated that for the

bona fide reasons indicated, the order dated 01.11.2022 be set aside and the appeal be restored to its original no. as the appellant has already submitted that FDR of the directed amount along with the application

The Respondent filed a written reply challenging the prayer for restoration. It has been stated that there is not provision under the EPF Act and Rules for restoring the appeal dismissed for non compliance of the direction given towards the compliance of the provisions of Section 7 O of the Act.

To support his argument the Ld. Counsel for the Appellant relied upon the judgment of the Hon'ble high Court of Delhi in the case of **M/s Dewan Chand Through Its partner Vikarm Kumar Vs. The Central Board Trustes Through Its Secretary & Ors.** and submitted that when the applicant was unaware of the date of impugned order and was under a bona fide impression that the order is yet to be passed, the explanation offered is satisfactory and a pragmatic approach should be adopted instead of taking a hyper technical view of the matter. To counter the argument of the Ld. Counsel for the Respondent he also submitted that the order dated 01.11.2022 if would be recalled the same shall not amount to review of the order passed by the Tribunal.

Having heard the argument advanced by the counsel for both the parties it appears that the appellant had a bona fide reason to believe that the presiding officer of the Tribunal being absent, the order shall be passed on a subsequent date with that impression he escaped noticing the order dated 05.09.2022 which in turn led to non compliance of the direction given in that order and dismissal of the appeal.

For the bona fide mistake committed by the appellant it is felt proper to allow the application. Accordingly, the application is allowed and the FDR filed by the appellant is taken on record and the appeal dismissed for non compliance is restored to its original number. Call the matter on 11.04.2023 for reply to be filed by the Respondent.

Presiding Officer