

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

NO. CGIT/LC/EPFA/MISC-16/2022

M/s Prasad Contractor and Fabricators,
156, Sanga Garden, Awadhpuri, Phase-II,
Khajurikalan, Bhopal (M.P.) - 462021

.....Appellant

Versus

The Assistant Provident Fund Commissioner,
EPF Sub Regional Office, 59, Arera Hills,
Bhopal (M.P.) - 462011

.....Respondent

ORDER
(12-02-2025)

Let the case be taken up for hearing.

Learned Counsel for parties present.

Heard on application for restoration filed by the appellant that affidavit be set aside of order dated 18-08-2022 and restore EPF Appeal No.226-2017 for hearing.

Learned Counsel for the respondent has vehemently opposed the application orally.

As the record reveals that the said appeal was first pending before EPF Tribunal, Delhi from where it was received on transfer. Notices were sent to respective learned counsel for the parties. The learned counsel for appellant did not appear in-spite of the fact that notices regarding transfer and date of listing was served on him on his email-id mentioned in the vakalatnama filed by him in the said appeal and after waiting for two dates the appeal was dismissed for absence of appellant vide order dated 18-08-2022.

The said restoration application is beyond limitation as per the rules. The applicant has filed an application for condoning delay and for the reasons mentioned therein being satisfactory, the delay is condoned.

The ground taken for not receiving the notice of the said date of hearing was that it was never served on the appellant or his counsel. It has been submitted by learned counsel for the appellant that Justice requires the dispute to be adjudicated on merits .

The main objection from the side of the respondent is that in-spite of notice sufficiently being served on learned counsel/appellant, no one cared to appear hence the appeal does not deserve any discretion of the Tribunal and the petition is liable to be dismissed.

After having perused the record of the appeal in the light of the rival arguments it came out that after the reference was received by this Tribunal, notices were ordered to be issued and notice was sent to learned counsel for appellant on his email-id as mentioned in his vakalatnama.

Rule 11(1) of EPF 1977 which deals about the service and issuance of notices by the Tribunal reads as follows:-

“1. Notices or processes to be issued by the Tribunal may be served by any of the following modes directed by the Tribunal:-

- (i) service by the party itself;***
- (ii) by hand delivery (Dasti) through process server;***
- (iii) by registered post with acknowledgement due.***

Reference of Order 3 Rule 5 of CPC requires to be referred here which are as follows:-

Service of process on Pleader:- “Any process served on the pleader who has been duly appointed to act in Court for any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.”

Further more Order 5 Rule 9(1) of CPC which is regarding issuance of notices and service of summons to parties is also requested to be mentioned here as follows:-

“9(1) Delivery of summons by Court- Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.”

From the comparative reading of the aforesaid provision, it is clear that the EPF rules does not provide or service of notice on email-id of any of the parties or their counsel. Since the rules do not prohibit such service , hence provision of CPC will apply where there is no provision in the EPF rules on the point of service of notice on pleaders counsel for parties or their recognized agents, hence service on the learned counsel for the appellant/applicant on his email-id as declared by him in the vakalatnama as a sufficient service on him which also be deemed as sufficient service on the party which is appellant in the present case, hence the contention of the appellant/applicant that no notice was served on him or his learned counsel is unfounded and cannot be accepted. It is held that the notice was duly served on the learned counsel for the appellant/appellant hence sufficient service will be deemed on the party whom the learned counsel represents. As mentioned in C.P.C. the learned counsel or appellant had professional obligation to appear before the Tribunal in response to the notice or inform his client about the date and seek instructions from him. If he did not have time to seek instructions from his client after he received the notice, he could have requested the Tribunal for granting some time for seeking instructions or seek permission to withdraw from the case which he did not do. Certainly, it was a fault on the part of learned counsel for the appellant.

The point here arises is should the party be allowed to suffer for any lapse on the part of his learned counsel as it has happened in this case. The answer according to me is a clear no. The Courts do not exist to punish the parties for their fault rather they exist to dispense justice between the parties. Keeping the cardinal principles in mind, the application for restoration deserves to be allowed but on cost. Hence allowing the application for restoration at a cost of Rs.10,000/- to be paid by the appellant/applicant to respondent within 15days from the order, is restored to its original No.CGIT/LC/EPFA-226/2017 . Parties are directed to appear in the appeal on **24-03-2025** for arguments.

(P.K.SRIVASTAVA)
PRESIDING OFFICER