

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

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

ATA No. 87(16)2011

M/s. Mckinsey Knowledge Centre Of India Ltd. Appellant

Vs.

RPFC/ APFC, Gurugram Respondent

**Order dated :-03-February-2022**

Present:- Shri R.R. Kumar, Ld. Counsel for the Appellant.  
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the application filed by the petitioner who was the appellant of the appeal, disposed of by order dt 29.10.2022. Copy of the application was served on the Respondent and argument was heard on 6.2.2022.

The petitioner has stated that the appeal was filed in the year 2011 and the appellant was diligently pursuing the matter through his counsel. Due to covid 19 shut down the Tribunal was not functioning on day to day basis and matters were adjourned in a routine manner. After the Tribunal started functioning after the covid 19 shut down, the appeal was listed for the first time on 29.10.21. But no fresh notice in this regard was served on the appellant. More over the counsel for the appellant fell ill in the last week of October 2021 and thus , missed the cause list of 29.10.21 uploaded in the website of the Tribunal and could not instruct his Associate to attend, leading to passing of the ex parte order dt 29.10.2021. It is further stated that the absence of the counsel on 29.10.2021 was not intentional but for a circumstance beyond his control. The appeal involves the valuable right of the appellant and he has a fair chance of success. Hence in the interest of justice the dismissed appeal be restored and a chance of hearing be given to the appellant.

The learned counsel for the respondent in his reply submitted that the application filed by the appellant invoking the provision of Rule 15 of the Tribunal (procedure Rules) is not maintainable as the appeal was not dismissed for default. The order dt 29.10.2021 has been passed on merit and cannot be set aside under Rule 15.

On hearing the submission and on perusal of the record it is found that the appeal was not listed for the first time on 29.10.2021.it was the date when the final order was passed. The first date of listing after the covid shut down was 4.10.21 when respondent was present but none appeared on behalf of the appellant. Hence considering the pleadings of the parties and

on hearing the submission of the respondent it was reserved for orders on 29.10.2021.

As per the contention of the appellant in the present petition his advocate was ill in the last week of October when the matter was listed for orders. Why he did not participate in the hearing on 4.10.2021 i.e in the first week of October has not been explained. With regard to the objection taken by the appellant that no notice was served afresh after the Tribunal started functioning after the covid lock down, be it stated that according to the SOP uploaded by the Tribunal the cause lists were being uploaded in the website and the procedure of giving fresh notice to individual litigant was never adopted. The omission on the part of the appellant can not be attributable to non service of fresh notice on resumption of Tribunal functioning .

On procedural aspect it is hereby observed that Rule 15 of the Tribunal Rule provides that when on the date fixed for hearing of the appeal ,the appellant does not appear when the appeal was called for hearing, the Tribunal may , in it's discretion either dismiss the appeal for default or hear and decide on merit. In the instant matter the appeal was decided on merit as it was an old matter of 2011, pleading of the parties was complete and the learned counsel for the respondent also advanced his part f the argument. More over at the time of admission there was a direction to the respondent not to take any recovery action pending disposal of the appeal.

Hence, for the reasons mentioned in the forgoing paragraphs, the petition filed is held devoid of merit and rejected.

(Presiding Officer)