

**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. D-1/109/2019

M/s Sharan

Appellant

VS.

RPFC, Delhi (South)

Respondent

ORDER DATED:-17.03.2021

Present:- Shri Amit Kumar Singh, Ld. Counsel for the Appellant.
Shri B.B. Pradhan, Ld. Counsel for the Respondent.

This order deals with the applications filed by the appellant for condonation of delay and waiver of the condition of pre deposit for admission of the appeal. Notice was served on the Respondent and learned advocate Shri B B Pradhan appeared and participated in the hearing by filing written objection to the delay condonation petition.

Perusal of the note of the Registry reveals that the impugned order was passed on 20.11.18 and the captioned appeal was filed on 6.12.19 i.e beyond the period of limitation. The appellant has admitted in the petition that the appeal was filed after 321 days since the date of order, though the EPF Appellate Tribunal(Procedure) Rule provides the appeal to be filed within 60 days from the date of communication of the order which can be extended for a further period of 60 days by the Tribunal in appropriate cases.

The learned counsel for the appellant submitted that the establishment was diligently attending the proceeding till 5.2.18, when the documents and records asked for were submitted. The AR for the establishment was informed that the next date of hearing would be intimated as the department representative needs time to verify the documents. But the next date of hearing was never intimated and the appellant came to know about the impugned order when recovery notice was served. He then collected an authenticated copy of the order on 30.10.19 and filed the appeal on 6.12.19. The period of limitation if computed from the date of receipt of the order which is proved through the endorsement of receipt on the photo copy the appeal is in time. He also submitted that this is not deliberate or with any malafide intention. If the delay will not be condoned the valuable legal right of the appellant would be defeated.

The learned counsel for the Respondent has placed some documents on record along with his reply, which proves that the AR for the appellant was present during inquiry held on 5.2.18, when the matter was adjourned to 23.2.18. For submission of year wise calculation of the assessment by the EO. There is no mention in the proceeding dated 5.2.18. That the next date will be intimated to the establishment. Rather the AR for the establishment took note of the next date by putting his signature acknowledging the next date of hearing. By exercise of due diligence, the establishment could have ascertained the next step taken in the proceeding which was not done. The impugned order further reveals that the establishment thereafter did not attend the proceeding and the impugned order was passed on 20.11.18 and duly communicated to the appellant which is evident from the document like copy of the dispatch Register filed by the Respondent.

The change of address by the appellant was never intimated to the respondent as required under the Rule. Furthermore the Hon'ble High Court of Delhi in the case of **Saint Soldier Modern Sr. Secondary School vs. RPFC reported in 2014(18) SCT609** have held that the EPF&MP Act is a special legislation and when the said Act prescribes limitation for 60 days which can be extended by the Tribunal for a further period of 60 days no further extension of time can be allowed by the Tribunal beyond that period. It was similarly held by the Hon'ble S C in the case of Ever Green Senior Secondary School vs. PO EPFAT,2015(4)SCT 57. Hence keeping the principle decided by the Hon'ble courts and since the explanation offered by the appellant do not appear convincing on the face of the documents filed by the Respondent, it is held that the appellant has not successfully explained the delay that occurred in filing the appeal and the same can not be condoned. There is no need for passing any order on the application filed u/s 70 of the Act.

The appeal is not admitted and dismissed as barred by Limitation. Consign the Record as per Law.

Sd/-
Presiding Officer