

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT 1,
DELHI**

Present: Justice Vikas Kunvar Srivastav (Retd.)

Presiding Officer,

CGIT-cum-Labour Court Delhi-1.

**Misc. Application No. 199/2022 (in Appeal
No.D-1/56/2022)**

M/s. Shakuntalam Education Society Appellant

Vs.

APFC/ RPFC, Delhi (East)

Respondent

Order: - 28.04.2023

Through Counsels: -

1. Sh. S.K. Gupta, for the Appellant
2. Sh. S.N. Mahanta, for the Respondent

1. The present application is filed on behalf of the Appellant under Section 5 and Section 29 of the Limitation Act, 1963 read with Rule 7 of the Tribunal (Procedure) Rules, 1997 (which shall hereinafter be referred for brevity and convenience as “the Rules” only) seeking condonation of delay

in filing the appeal against an order passed by the Respondent under section 7A of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' (which shall hereinafter be referred for brevity and convenience as "the Act" only).

2. The Appellant by his application has submitted that the Respondent by way of an order dated 25.08.2022 passed u/s 7 A of "the Act" proceeded to assess an amount of Rs. 59,60, 714/- as dues to be paid by the Appellant towards P.F. Contributions for the period 10/06/2006 to 11/2020 and the same was communicated to the Appellant on 26.08.2022.

3. Further citing the circumstances which lead to the knowledge of the impugned order, the Appellant submitted that the Appellant / Applicant came to know about passing of the impugned order on 02/11/2022 when Ms. Kusha Arora, fees incharge /AR approached the Respondent to know about the impugned order. The copy of the impugned order was provided to

her on the same day. And therefore, the Appellant requested that the limitation for filing the Appeal shall be counted from the date of knowledge of the impugned order i.e. 02/11/2022.

4. The Appellant further submitted that under Sub-section (2) of Section 7-I read with Section 21 of “the Act”, the power has been vested in the Central Government to provide the period/time for filing the Appeal before this Tribunal. The Central Government in exercise of such powers while providing the period of limitation, does not have the powers to limit the powers of this Tribunal to condone delay for a period of 60 days only and in absence of any guidelines on law of limitation in the statute itself, the power of this Tribunal to condone delay could not be limited to the period of 60 days. Thus, Proviso to Rule 7(2) of “the Rules” provides the limit of 60 days for condonation of delay for discretion of this Tribunal to be exercised is ultra-vires. “The Rules” are void and annulled.

5. The Ld. Counsel for the Appellant by way of

submissions in his application emphasized upon the applicability of the Limitation Act, 1963. It is submitted on behalf of the Appellant that the proviso to Rule 7(2) of “The Rules” being the delegated legislation cannot be said to be excluding the operation of section 29 (2) of the Limitation Act, 1963 which is a statutory provision having superior efficacy over the delegated legislation and all the provisions of Section 4 to 24 of Limitation Act, 1963, in view of Section 29 (2) of the said Act, 1963, would apply in the proceedings before this Tribunal for seeking condonation of delay. In these circumstances, the proviso to Rule 7(2) of “the Rule” are directory in nature and does not control the powers of this Tribunal to condone the delay as per Section 29(2) of the Limitation Act, 1961, the Section 4 to 24 (inclusive) shall apply in this matter as “the Rules” has not expressly excluded that the Limitation Act, 1963 is not applicable for condonation of delay.

6. The Ld. Counsel for the Appellant by way of his written arguments in this matter submitted

that the impugned order was not served upon the Appellant through speed post. By way of the following date chart –

Date of 7 A order	25/08/2022
Date of knowledge	02/11/2022
Date of filing	16/12/2022

the Appellant submitted that the present Appeal is within the limitation period of the extended period of 60 days after the expiry of the first 60 days as prescribed under Rule 7(2) of “the Rules”.

7. The appellant has also relied upon the judgement delivered in the following cases -

- (i) D. Saibaba Vs. Bar Council of India & anr.
(2003) 6 SCC 18
- (ii) Assistant Transport & Others Vs. Nand Singh, (1979)4 SCC 19
- (iii) UOI Vs. Central Tibetan School, SLP Diary NO. 19846/2020 SC
- (iv) Budhana Urban Co-operative Vs. Dy. Director, WP No. 4607 of 2014
- (v) R K Sahu Vs. RPFC, 2012 LLR 574”.

8. Replying to the application of the Appellant

filed for condonation of delay, the Ld. Counsel for the Respondent submitted that the Appellant needs to explained delay on day to day basis. No such explanation is given by the Appellant in the instant application. It is true that this Tribunal has discretionary power under Rule 7(2) of “the Rules” to condone further 60 days over and above the statutory period prescribed in the Act but this discretion shall not be exercised as a matter of routine.

9. Answering to Para 4 of the application filed for condonation of delay, the Respondent specifically stated that the A/R of the Appellant was well aware of each and every proceeding conducted before 7 A authority as the Appellant was represented through the A/R during the 7 A proceedings before the Respondent authority and was also aware about the date on which impugned order is passed. To substantiate the claim, the Ld. Counsel for the respondent has enclosed the copy of the daily proceedings showing the presence of the A/R of the Appellant. Further, it is specifically

denied by the Respondent that the copy of the order was supplied first time on 02/11/2022 as the impugned order was supplied to the A/R of the Appellant by hand on 28/08/2022. In support of arguments the Respondent has submitted a copy of the covering letter dated 28/08/2022 identifying the signature of the A/R of the Appellant. It is also submitted on behalf of the Respondent that the impugned order was also served through speed post at the registered office of the Appellant.

10. Further replying to Para 5 of the application filed for condonation of delay, the Respondent specifically stated that the Appellant miserably failed to explained day to day delay in filing the Appeal as the appeal is filed after the expiry of the statutory time limit of first 60 days as per “the Rules”. The Appellant has filed no documents to prove the contention of the Appellant that the impugned order was received on 02/11/2022 and therefore, the entire version of the applicant is wrong and misleading, hence, may be rejected by this Tribunal in his reply to the said application

the Respondent has submitted that the application is filed on the basis of wrong facts and misleading averments without providing any reason behind the delay in filing the Appeal and therefore, are liable to be rejected.

11. The Ld. Counsel for the respondent by way of his reply as well as written submission to the application filed for condonation of delay, submitted that the present application is not maintainable because Limitation Act, 1963 and specifically section 29(2) of the Limitation Act, 1963 is not applicable in a special act like EPF & MP Act, 1952. The provision of “the Act” are complete where specific time period is prescribed for filing the appeal before this Tribunal and hence, the appellant cannot be permitted to take shelter of the Limitation Act, 1963.

12. After hearing both the parties at length and going through the submissions - both oral and written, this Tribunal has to decide that whether:-

(i) the provisions of Section 4 to 24 and 29(2) of

the Limitation Act, 1963 are attracted while deciding the question of limitation in the appeals filed under Section 7 I of “the Act?”

(ii) the Appellant has described the reason for delay in filing the appeal before this Tribunal?

(iii) the reason are sufficient enough to the satisfaction of the Tribunal for condoning the delay in filing the appeal before this Tribunal?

13. Here the provisions of Section 29 of the Limitation Act, 1963 are reproduced for ready reference :-

29. Savings.—*(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).*

(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 in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of “easement” in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

Further, the Provision of Section 5 of the

Limitation Act, 1963 runs as under :-

5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

14. In view of the provision of Section 29, Sub Section (2) of the Limitation Act, 1963, the plea of the Appellant/ Applicant regarding the applicability of Section 5 of the Limitation Act, 1963 in a matter of Appeal filed belatedly under Section 7 I of the 'Employees' Provident Funds & Miscellaneous Provisions Act, 1952' with provision of Rule 7(2) of the 'Tribunal (Procedure) Rules, 1997' stands replied. The limitation prescribed

under Rule 7(2) of “the Rules” has not been excluded anywhere in the case of filing the appeal under the Section 7 I of “the Act” either in itself or in the Limitation Act. Further, the Industrial Tribunal being a court to deal with the Appeal filed under a special act namely ‘Employees’ Provident Funds & Miscellaneous Provisions Act, 1952’ and in accordance with the ‘Tribunal (Procedure) Rules, 1997’. Therefore, it has a restriction not to go beyond the statutory provisions made herein regarding filing of the Appeal. The discretion to condone the delay has specifically been provided after the initial prescribed period of limitation of 60 days , if satisfactorily explained as to the causes which prevented the Appellant to file within the further extended period of 60 days only.

The impugned order passed under section 7A is made appealable in “the Act” under Section 7I which is quoted hereunder for easy reference: -

7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the

*Central Government, or an order passed by the Central Government or **any authority**, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, **or sub-section (1) of section 7A**, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, **may prefer an appeal to a Tribunal against such notification or order.** (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.*

15. The Sub Section 2 of the Section 7 I provides that such appeal under sub Section 1 shall be filed in such form and manner within such time and be accompanied by such fees as may be prescribed. Here Rules framed for the purpose of the Appellate tribunal to exercise powers under Section 7 I are important. The Tribunal (Procedure) Rules, 1997,

in it's Rule 7 provides as under: -

7. Fee, time for filing appeal, deposit of amount due on filing appeal.— (1)

Every appeal filed with the Registrar shall be accompanied by a fee of Rupees Two Thousand to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

*(2) **Any person aggrieved** by a notification issued by the Central Government or **an order passed by** the Central Government or any other **authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.***

Provided that the Tribunal may if it

is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

16. Sub-Rule (2) of Rule 7 of “the Rules” specifically provides that the appeal under Section 7 I may be filed within 60 days from the date of issue of the notification / order before the Tribunal. This would be noteworthy that whatever

the date of the order may be, the relevant date for preferring an appeal by the aggrieved person is the “date of issue of the order”. The proviso appended with that sub rule provides that the tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period extend the said period by a further period of 60 days. The intention of the Rule is very much clear. The Tribunal is empowered to exercise its discretion to satisfy itself whether there are sufficient reasons for the Appellant which prevented filing of the appeal within the 60 days as prescribed in sub rule (2) of Rule 7, but this empowerment of Tribunal is strictly to be exercised within the further 60 days only. It means the Tribunal has no power to exercise it’s discretion as aforesaid beyond 120 days from the date of issuance of the impugned order.

17. The word “Issue” in the context of the provisions in Rule 7(2) proviso is an transitive word which literally means , “to put forth or distribute usually officially to send out for sale, circulation or

publication.” In Rule 7(2), the opening sentence which uses the words, “Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order prefer an appeal to the tribunal” envisages the “issue of order” to the aggrieved party. Above sentence carved out from the Rule 7(2) does not simply use the words, “date of order” and therefore, express the legislative intention. The words ‘date of issue of order’ implies sending out the order for communication to the concerned parties. The opening words of the provision of Rule 7(2), “Any person aggrieved byan order” is correlated with the words ending with “may prefer an appeal to the Tribunal” is to be legally construed that the party communicated with the order if aggrieved, may avail the remedy of filing appeal against the order.

18. The Ld. Respondent while replying to the delay condonation application filed on behalf of the

Appellant, had clearly mentioned that the impugned order was served upon the Respondent on 28.08.2022. the submissions made on behalf of the Respondent runs as under :-

“That in response to the Para under reply (Para 5) the answering respondent specifically states that the appellant miserably failed to explain day to day delay in filing the appeal. The appellant should explain why he has not filed the appeal even after expiry of 60 days whereas the copy of the order was received on 28.08.2022.

The appellant also failed to explain the delay beyond the statutory period. It is specifically stated that no document filed to prove the contention of the appellant that the order was received on 02.11.2022. The appellant also failed to produce any statement/ order wherein it has been stated that the copy was

supplied on 02.11.2022. Hence the entire version of the applicant is wrong and misleading hence may be rejected.”

The above submissions of the Ld. Respondent as well as the evidence provided as enclosure to the reply shows that the impugned order is well communicated in August, 2022, itself. The details of the relevant dates as per the submissions of the Ld. Counsel for the Respondent are as follows:-

Date of 7 A order	25/08/2022
Date of issuance/ communication	26/08/2022
Date of receipt by the Appellant	28/08/2022

19. Further, as the appeal is not filed within initial and basic period of limitation of 60 day from the date of issuance/communication of order, without assigning any justification. So far as appeal within the further extended period of limitation is concerned, it requires cause to be assigned which prevented the appellant to file the appeal within time to the satisfaction of the court. It is not satisfactory explanation that the AR of the

appellant went to the office of the Respondent and got the copy of the order. It is not on the sweat will of the appellant to decide on its own when and how to collect the copy of order suiting to itself, so as to create fresh limitation.

Order

The application for condonation of delay in filing the Appeal under Section 7 I of “the Act” having no substance and valid explanation for the delay, deserves to be dismissed. The appeal bearing No. D-1/56/2022 is also not admissible as barred by limitation period.

The application for condonation of delay is dismissed.

Justice Vikas Kunvar Srivastav (Retd.)

Presiding Officer,

CGIT-cum-Labour Court No.1, Delhi.

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