

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT
No.1, DELHI; ROOM No.207 ROUSE AVENUE, DISTRICT COURT
COMPLEX, NEW DELHI-110002**

Present:

Justice Vikas Kunvar Srivastav (Retd. Allahabad High Court)
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.

Appeal No. D-1/40/2022

M/s. Superior Securitas Appellant
Through Sh. B.K Chhabra, Ld. Counsel for the Appellant

Vs.

RPFC, Delhi (E)
Respondent
Through Sh. Gurumukh Singh, Ld. Counsel for the Respondent

ORDER DATED :- 23.11.2022

**APPLICATION FOR CONDOINATION OF DELAY
UNDER SECTION 151 FILED ON BEHALF OF
APPELLANT**

1. The present application is filed on behalf of the Appellant under section 151 C.P.C. seeking condonation of delay in filing the appeal under Section 7 I of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (which shall hereinafter be referred for brevity and convenience as the 'Act' only) against an order passed by the Respondent Authority u/s. 14B & 7Q of the 'Act' on 29.12.2021 allegedly sent to the Appellant by the Respondent authority with letter dated 08.04.2022 received on 12.04.2022.

2. Notice having being served, counsels for both the parties appeared through their respective counsels. As the copy of the aforesaid Misc. application was already served upon the opposite party with the memo of

appeal through the Ld. Counsel for the Respondent, the written objections to the application for condonation of delay on behalf of the Respondent is also filed on 01.11.2022. Further, on completion of the arguments, both the counsels submitted the case laws in support of their arguments and after detailed submissions on behalf of both the parties; the matter was reserved for orders on the said application.

3. Briefly stating, the appellant of the present appeal, M/s. Superior Securitas came before this Tribunal in appeal against the order dated 29.12.2021 of R.P.F.C.-II (the present Respondent) in an enquiry u/s 14 B & 7Q of the 'Act' due to the alleged delayed payments of the PF dues for the period commencing from 16.11.2018 to 29.02.2020 imposing damages to the tune of Rs. 8,37,655 and interest u/s 7Q of the 'Act' to the tune of Rs. 9,42,440/-. It is said vide letter dated 30.03.2022, the Appellant/ Applicant asked to provide copy of the order passed by the Respondent under Section 14 B & 7 Q of the 'Act' to his counsel. The Respondent vide letter dated 08.04.2022 provided the copy of the impugned orders in the appeal to the learned counsel received to him on 12.04.2022. Previously, the orders impugned in appeal both u/s 14B & 7Q of the Act were issued officially under the seal and signature of the respondent on 29.12.2021.

4. The registry has reported that the appeal preferred u/s 7 I of the 'Act' belatedly on 10.06.2022. It is further pointed out that the present appeal is preferred after 42 days of the expiry of 120 days from the date of issue of order.

5. The main thrust of the contention as to the appeal being well within prescribed period of limitation as provided in Section 7(2) of the 'Act' read with sub-

rule (2) of Rule 7 of the “Tribunal (Procedure) Rules, 1997’ as the same is filed within 120 days from the date, the appellant came into the knowledge of the impugned order under appeal. The Appellant to fortify his contention as to the date of knowledge of the order placed reliance on a letter of the authorized officer of Respondent RPFC dated 08.04.2022 addressed to the Appellant’s counsel’s firm ‘M/s. Batra & Associates (Advocates and Associates)’ under caption “Forwarding of the copy of order under Section 14B of the EPF & MP Act, 1952” and “Forwarding of the copy of order under Section 7Q of the EPF & MP Act, 1952” with reference to the letter dated 30.03.2022 vide which the establishment has requested to provide a copy of order passed under Section 14 B & 7Q of the ‘Act’ to it’s Advocate’s firm ‘M/s. Batra & Associates (Advocates and Associates)’ addressed at C-49, LGF, Kalkaji, New Delhi-110019 attaching copy of the order.

6. In affidavit filed by the Appellant in support of it’s application moved under Section 151 of Code of Civil Procedure, 1908 for condonation of delay in filing the appeal before the Tribunal, the Appellant states in para 2& 3, without specifically mentioning the date of original order passed u/s 14 B & 7Q of the Act and refers only the date 08.04.2022 & 12.04.2022 as the date of impugned order for the purpose of counting the commencing date of prescribed limitation for the filing of appeal u/s 7 I of the ‘Act’. The said paras are reproduced herewith:-

(2) That the respondent without supplying the original copy of the impugned orders dated 08.04.2022 initiated the recovery proceeding and the appellant aggrieved from this action of the respondent demanded the

copy of the order several times. Despite the demand of the copy of the order several times the respondent has supplied the copy of the same and received by the appellant on 12.04.2022.

(3) That the respondent hereby submit that the order in fact first time is supplied to the applicant/ appellant on 12.04.2022 through post to the appellant.

7. Though the appeal is filed u/s 7I of the 'Act' before the Tribunal against the order u/s 14B & 7Q of the 'Act' passed by the Authorised Officer of the Respondent RPFC on 29.12.2021, then also the appellant peculiarly enough, has not sought condonation of delay under provisions of the 'Act' and applied for the same under Section 151 of the Code of Civil Procedure, 1908 without referring the relevant provision in that regard in the 'Act' and the Tribunal (Procedure) Rules, 1997. The moving of appeal by the Appellant under the provision of the 'Act' and referring other provisions of the 'Act' in the memo of appeal, is itself sufficient to gather that, appellant has knowingly moved the delay condonation application under Section 151 of the Code of Civil Procedure, 1908 and not by reason of any mistake or lack of awareness as to the legal provision of condonation of delay in filing the appeal in the Act & Rules there under.

8. Section 7 I of the 'Act' which provides for Appeal to Tribunal and the provision of Rule 7 of the Tribunal (Procedure) Rules, 1997 regarding Fee, time for filing the appeal, deposit of amount due on filing appeal, are being reproduced hereunder , highlighting the relevant for the purpose of discussion:-

Sec. 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.

Read with

Rule 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 five hundred 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.

9. A plain reading of the aforesaid statutory provisions indicate that in terms of sub-section (2) of Section 7I every appeal under subsection (1) is to be filed in such form and manner within such time as may be prescribed. In furtherance of the above, Rule 7 of the Tribunal (Procedure) Rules, 1997 provide that the appeal may be preferred within 60 days from the date of issue of the order, 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 same period by a further period of 60 days.

10. It is in view of the aforesaid provisions, the Respondent has vehemently contended that the appeal is hopelessly barred and after the period of 60 days

prescribed for preferring an appeal, if there is a delay then such delay can be condoned and no further. The respective Paras 2,3 & 4 are carved out from the objection herein below:-

2. That appellant has no cause of action to move the instant application under reply and the same is not legally maintainable against the express provision of Section 7-O of the EPF & MP Act, 1952 which is mandatory to be complied with on filing the appeal.

3. That the appellant filed the present application is not filed under provisions of EPF & MP Act, 1952, and as such the application of the appellant is not maintainable and liable to be dismissed.

4. That the appellant is strictly liable to deposit 75% of the amount due from him as determined by an officer referred to in Section 7-Q and 14-B of EPF & MP Act, 1952 which is necessary of the entertain the Appeal by the Hon'ble Tribunal.

11. It is not denied, by the Appellant that it participated in the proceeding of enquiry conducted u/s 14 of the 'Act' through the Authorised Representative. Orders passed by the officer authorized to conduct the enquiry under the 'Act' were in it's knowledge since the very beginning. Orders under Section 14B for assessment of dues of PF and thereafter Section 7Q for interest thereon were in ordinary course of a proceeding of court had been in the knowledge of the establishment appearing through it's authorized representative . It was the right of the

Appellant establishment and its authorized representative to apply copy of if aggrieved there from, but they did not do so. Asking copy of the orders beyond the prescribed period of limitation in the Rule 7(2) of the “Tribunal (Procedure) Rules, 1997, cannot give Appellant a new and extended period of limitation. Moreover the appellant applicant nowhere in the appeal u/s 71 of the Act or in the application for condonation of delay made under section 151 of the Code of Civil Procedure, 1908 claims and pleads that the entire process of enquiry under Section 14 B of the ‘Act’ has been conducted behind his back without his knowledge.

12. In the case M/s. Port Shramik Co-operative Enterprise Ltd. Vs. Employees’ Provident Fund Commissioner 2018 LLR 334 (Cal.H.C) it is held that the limitation period provided under rule 7(2) of the Appellate Tribunal (Procedure) Rules, 1997 cannot be relaxed the relevant observation made in the judgement are as follows:-

3. The tribunal has held that there has been an inordinate delay in filing the appeal and, therefore, the appeal was not plainly maintainable.

4. I find no impropriety in the order passed by the tribunal. The period of limitation for filing an appeal against an order passed under Section 7A or Section 14B of the Employees’ Provident Funds and Miscellaneous Provisions Act is 60 days. If the appellant satisfies the tribunal that it was prevented by sufficient cause from not filing the appeal within the said period of 60 days, in appropriate case, the tribunal has

the power to condone the delay of another 60 days. Thus, even if the tribunal wanted to condone the delay it could not condone it beyond a period of 60 days.

13. It would not be out of context to state that the Appellant being aware of the stringent statutory confinement of power of the Tribunal with regard to the condonation of delay in filing of appeal is non-releasable beyond 120 days did not move application for condonation of delay under rule 7 (2) of the Tribunal (Procedure) Rules, 1997 for admitting the appeal filed by it highly belatedly from the date of issue of the order with ulterior motive the Appellant has alternatively sought condonation of delay under section 151 of the Code of Civil Procedure, 1908. Section 151 of the CPC runs as under-

151. Saving of inherent powers of Court.— Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

14. The aforesaid provision of section 151 in Code of Civil Procedure, 1908 deals with 'saving of inherent powers of Court'. This section states that nothing in CPC shall be considered to restrict or otherwise affect the inherent power to make such orders as may be important for ends of justice or to check abuse of the method of the court. In view of the above, it must be seen to what extent the Code of Civil Procedure, 1908 is applicable in a proceeding before the Appellate Tribunal working under the 'Act'.

15. It must be kept into mind while considering the procedure and powers of the Tribunal and applicability of some of the provisions of Code of Civil Procedure, 1908 in the proceedings under the 'Act', that the 'Act' is a labour legislation wherein the provision is made for provident funds to be deposited by the employer. Section 7 D of the 'Act' provide for the 'Appellate Tribunal' and section 7 I of the 'Act' provide for the 'Appeal to the Appellate Tribunal'. The chapter further provides procedure before the Tribunal, assistance of a legal practitioner, right of hearing and rectification of an order, finality of the order of the Tribunal, deposit of amount due on filing an Appeal, transfer of cases, the manner of recovery, recovery certificate, validity of certificate and such others things. Thus, a special mechanism is inducted in the Act itself. Section 7 J of the 'Act' which runs as under, provides for Procedure of Tribunal :-

7J. Procedure of Tribunals.—(1) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

16. This is important here to note that the Appellate Tribunal discharges its function by entertaining appeal preferred under the 'Act'. Sub Section (2) of the Section 7 J provides for the powers to be exercised in discharge of its function, the Sub Section runs as below-

7J. (2) A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in section 7A and any proceeding before the

Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the all purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

17. The 'officer' referred under section 7 A who conducts the enquiry relating to the following matters enumerated in Section 7 A of the 'Act' which are as under:-

(a) In a case where dispute arises regarding the applicability of this 'Act' to an establishment

(b) Determine the amount due from any employer under any provisions of this 'Act', the scheme or the [Pension] scheme or the Insurance Scheme, as the case may be

Further, Section 7A(2) of the 'Act' provides that such officer shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters, namely-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

18. The aforesaid provisions tend to show that the Code of Civil Procedure, 1908 has a limited application in proceeding before the authorities under the 'Act' with regard to power for specified purposes. The same powers to the same extent are vested in the Tribunal also. So far as the proceedings before the authorities and the Tribunal is concerned though are quasi-judicial but come within the meaning of Section 193 and 228 of the Indian Penal Code (45 of 1860) a judicial proceeding. Like wise the 'officers' and 'the Tribunal' which the Appellate Tribunal shall be deemed to be 'Civil Court' for the purpose of Section 195 of the Code of Criminal Procedure, 1973. Therefore the Tribunal is not Civil Court for all purposes and applicability of Code of Civil Procedure, 1908 is only to the limited extent while exercising powers in above stated matters.

19. It is further important to see that in the 'Act', a new Section 21 with regard to 'Power to make rules' was substituted by 'Act' 33 of 1988, sec.25, substituted for Section 19A w.e.f. 01-07-1997. For exercise of the powers conferred by Sub-Section (1) of Section 21 of the 'Act' Central Government made the rules namely 'The Tribunal (Procedure) Rules, 1997' which came into force on 21-06-1997. Section 21(1) and relevant Section 21 (2) are reproduced here under for the purpose of discussion in the matter in hand-

21.(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) (* * *)

(b) the form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal;

(c) the manner of certifying the copy of the certificate, to be forwarded to the Recovery Officer under sub-section (2) of section 8C; and

(d) any other matter, which has to be, or may be, prescribed by rules under this Act.

20. The provision of the “Act’ and “The Tribunal (Procedure Rules, 1997” relating to the limitation of 60 days for filing appeal and the power to condone delay to a maximum period of further 60 days from the date of issue of order has sweeping effect over the provision of Indian Limitation Act or any other provision of the general law. Hon’ble Supreme Court in the matter of ‘Oil and Natural Gas Corporation Ltd. Vs. Gujrat Energy Transmission Corporation’ (2017)5 SCC 42 held that :-

15. “ The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of

legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.”

21. With a view to see that proceedings are disposed of as early as possible, the legislature intended to fix “such time” for preferring an appeal section 21(2)(b) refers to the time within which an appeal shall be filed. The legislature further intended while prescribing the period of limitation for preferring an appeal also to provide a period during which if there is a delay, the same can be condoned if the tribunal is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed limitation period. However, the restriction was placed there, that it can be done: ‘if there is a delay of a further period of 60 days and not beyond that.’

22. This has been judicially established by our courts severally that Section 151 of the Code of Civil Procedure, 1908, which deals with inherent powers of the court, cannot be invoked as an alternative to filing fresh suits, appeals, revisions or review. Inherent power of the court under the Code of Civil Procedure, 1908 can only be applicable, if there is no alternative remedy available in accordance with law. Further, inherent powers of the court cannot be invoked to defy the express provision of any law or in contradiction therewith. It comes in aid in exercising powers to grant relief permissible under law to be granted by the court under that law.

23. Prayer to condone delay in filing appeal by moving application u/s 151 of Code of Civil Procedure, 1908 does not deserve to be allowed for the reasons

discussed herein above. Consequent thereupon, appeal is not deserving to be admitted.

Order

The Present Miscellaneous Application filed for condonation of delay by the Appellant/ Applicant under Section 151 of the Code of Civil Procedure, 1908 is rejected . Consequent thereupon, the appeal bearing No. D-1/40/2022 titled “M/s. Superior Securitas Vs. RPFC, Delhi (E)” being barred by limitation is not maintainable.

Justice Vikas Kunvar Srivastav (Retd.)
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.

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