CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 1, DELHI

Misc. Application No. 97/2024

M/s. Jagriti Public School **Appellant**

Vs.

APFC/ RPFC, Delhi (South) **Respondent**

1. Sh. Nikhil Patnaik, Advocate for the Appellant

2. Ms. Saranga, Proxy Counsel (for Sh. Rakesh Wadhwa, Advocate) for the Respondent.

Order

Mr. Justice Vikas Kunvar Srivastav,Presiding Officer,
Retired Judge of Hon'ble High Court of judicature at Allahabad

1. The present application is filed on behalf of the Appellant under Rule 7 (2) 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 & 7 B 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 in the present application has submitted that the Respondent by way of an order dated 31.01.2024 which was issued on 06.02.2024 passed u/s 7 A of "the Act" proceeded to assess an amount of Rs.8,10,4520/- as dues to be paid by the Appellant towards P.F. Contributions for the period 04/2019 to 06/2019.

3. The Appellant in his application also submitted that he had filed an application for review under sub-section (1) of Section 7B of "the Act" before the Respondent against the impugned order passed under Section 7 A of 'the Act.' The said application was submitted in the office of the Respondent on 24.02.2024. Although

the application for review was filed within the prescribed period of 45 days , however, Respondent authority passed an order dated 04.07.2024 whereby the application for review was rejected.

4. Aggrieved by the order passed under Section 7 A of “the Act’ and citing the reason of rejection of the review application vide order dated 04.07.2024 passed under Section 7 B of ‘the Act’, the appellant has preferred this appeal and attributed the delay in filing the appeal to the order passed by respondent authority under Section 7 B after the expiry of more than three months from receipt of the review -application.

5. The Appellant/Applicant further submitted that the respondent has acted in violation of law and without considering the documents and submissions provided by the Applicant during the inquiry under Section 7 A. Further, the appellant/ applicant was precluded from filing the appeal until the review of the applicant under Section 7 A of the Act was pending before the respondent authority as an alternate efficacious remedy was available to the applicant The Appellant further submitted that the delay in filing the appeal is neither intentional nor willful but due to the rational reasons and sufficient cause shown in this application; in fact, the delay is attributable to the Respondent authority due to the negligence and inaction on the part of the Respondent. Citing all these reasons, the Appellant/Applicant requested to condone the delay in filing the appeal.

6. The Ld. Counsel for the Respondent in response to this application has filed written objection and arguments were also done on 30.09.2024 by Ms. Saranga representing Sh.Rakesh Wadhwa , ld. counsel for respondent. The Ld. Counsel for the Respondent by way of his written objection has stated the application as false, absurd, misleading and concocted and denied them vehemently. Respondent strongly urged to consider 06.02.2024 as the date of issuance of the order and stated that the appeal is filed with a delay of more than 128 days.

7. 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.*

8. 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***

<u>further period of 60 days.</u>

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. Sub-Rule (2) of Rule 7 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 is 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.

10. 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, "<u>Any person aggrieved by a notification</u> issued by the Central Government or <u>an order</u> <u>passed by</u> the Central Government or any other <u>authority under the Act</u>, <u>may within 60 days from the date of issue</u> of the notification/ <u>order prefer an appeal to the tribunal</u>" 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 by ….an order” is corelated 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.

11. The question before the Appellate Tribunal is as to what would be the relevant date for the purpose of commencement of period of limitation. If the date of issuance of order (in the case before this Tribunal 06.02.2024) is treated to be the relevant date for the purpose of computing the period of 60 days as prescribed under the Rule 7(2) proviso of the Tribunal (Procedure) Rules, 1997, several anomalous and absurd situation may arise. If the Limitation period in the Rule 7 (2) proviso in the context of an order passed is interpreted in such a narrow approach that the period of limitation shall commence from the date of order cannot be acceptable in the interest of justice. An aggrieved party concerned with an ‘order’ is legitimately be rightful to avail remedy provided in the scheme of the Act and Rules framed thereunder but unless the order is communicated or is known to him he would not be able to avail that remedy.

12. In the instant case, the “impugned Order” under appeal passed under Section 7A of ‘the Act’ on it’s face makes it clear that, it was passed on 31.01.2024 and issued on 06.02.2024. While contesting the application for condonation of delay in the present appeal by the appellant, the Ld. Counsel for the Respondent has not shown any reason for passing of the review order dated 04.07.2024 under Section 7 B of ‘the Act’ after an expiry of more than three months from receiving the review application dated 24.02.2024.

13. The Ld. Counsel for the Respondent RPFC vehemently argued that the appellant establishment admittedly came into knowledge of the impugned order dated 06.02.2024, therefore, the Limitation period as prescribed in the Rule 7 (2) of 60 days shall be counted from that date to run forward and also that the Appellant willfully delayed the filing of appeal though it was within it’s reach

to file the same within time. To evaluate the above argument, the issue must be examined going through the provision of Section 7 I of “the Act” and Rule 7 (2) of “the Rules”. A conjoint reading of both of the provisions make it clear that only the “order” is made appellable and that’s too within 60 days from the date of issue of the order. Simply the knowledge of the order is not useful for the purpose of filing the appeal, unless the same is served / communicated upon and obtained by the affected/ aggrieved party.

14. It is not denied by the Respondent that the Appellant had filed an application for review dated 24.02.2024 and the said review application was rejected by passing an order under Section 7 B of ‘the Act’ vide order dated 04.07.2024. Here it is one again appropriately pointed out that the respondent authority took more than three months to decide the review application causing inordinate delay by the Respondent Authority themselves. The legal principle “one cannot take advantage of his own wrong” applies in the present case in the context of keeping pending the review application which was filed within the prescribed time limit. The argument of the Ld. Counsel for the Respondent is not tenable as to the appeal not filed within the prescribed time of limitation willfully by the Appellant.

15. The question raised by the Respondent why the appellant did not file the appeal within 60 days from the first knowledge of the order on 06.02.2024 is answered in itself as the appellant has filed the review under Section 7 B of “the Act” on 24.02.2024 immediately. The Act provides two remedies against the same order concurrently namely “Review” and “Appeal”. So far as remedy of appeal is concerned, the limitation period as prescribed under the Rule 7 (2) of “the Rules” is 60 days from the date of issue of the order, till then the impugned order was not issued / served and communicated to the Appellant which is appealable under Section 7 I of “the Act”. In preceding Para, I have already held that simply knowledge is not sufficient to commute the limitation period under the provision of Rule 7 (2) for filing the appeal under Section 7 I of “the Act”.

16. The “review application” dated 24.02.2024 as the record placed before the Court shows, was kept unnecessarily for more than three months and ultimately dismissed on 04.07.2024. This is noteworthy here that Section 7 I exclude the order rejecting the review prayer from the precincts of appealable order. The relevant portion of the provisions of Section 7 I of “the Act” are reproduced herewith:-

> *(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.*

The rejection order was communicated to the appellant on 04.07.2024. The appellant now left with no option than to file the appeal under section 7 I of “the Act”. This is also noteworthy that during the pendency of “review” another concurrent remedy against the impugned order namely appeal under Section 7I was not entertainable.

17. This is established legal principle that a person having done wrong cannot take advantage of his own wrong and plead provision of any law to frustrate the lawful trial by a competent court. In such a case, the legal maxim **“Nullus Commodum Capere Potest De Injuria Sua Propria”** applies. It is also settled in the case of ***Kusheshwar Prasad Singh v. State of Bihar, (2007) 11 SCC 447 that:-***

> *16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong".*

ORDER

On the basis of discussions made hereinabove the present misc. application for condonation of the delay in filing the Appeal No. D-1/47/2024 moved by the Appellant Applicant under Rule 7 (2) of the Tribunal (Procedure) Rules, 1997 deserves to be allowed. The delay is condoned. Appeal deserves to be heard on the issue of admission under Section 7 I of "the Act".

Accordingly, respondent is directed to file written objection to the misc. application filed under Section 7 O of 'the Act' seeking waiver/ reduction in the statutory deposit of 75 % of the assessed amount within three weeks. Meanwhile, the respondent authority to put a self-restrain on further course of recovery as the matter is under consideration and hearing before this tribunal.

Sd/-

Justice Vikas Kunvar Srivastav
Presiding Officer,
CGIT-cum-Labour Court No.1, Delhi.
Retired Judge of Hon'ble HighCourt ofjudicature at Allahabad

Date: 03/October/2024_
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