

**(2012) 02 DEL CK 0056**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 4734 of 2011**

BEHL Hospital

APPELLANT

Vs

Asst Provident Fund Commissioner and Others

RESPONDENT

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**Date of Decision :** 13-02-2012

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

**Citation :** (2012) 133 FLR 724 : (2012) LLR 337

**Hon'ble Judges :** P.K. Bhasin, J

**Bench :** Single Bench

**Advocate :** Vineet Kaushik, for the Appellant; Aparna Bhat and Ms. Raj Kumari Banju, for the Respondent

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## Judgement

P.K. Bhasin, J.—The Authority u/s 7A of the Employee's Provident Funds & Miscellaneous Provisions Act, 1952, Asstt. Provident Fund Commissioner passed an order on 23rd October, 2007 whereby the amount of Rs. 6,27,879 on account of the provident fund dues etc. came to be assessed, ex-parte, and the petitioner was called upon to make the payment within fifteen days. According to the petitioner's case, that was an ex-parte order though, on one date, petitioner's representative had appeared before the Authority. Since the petitioner felt that for some good reasons its representative could not appear before the Asstt. Provident Fund Commissioner during the pendency of the assessment proceedings on some dates as recorded in the order dated 23rd October, 2007, he wrote a letter dated 12th November, 2007 to the Asstt. Provident Fund Commissioner giving therein the reasons because of which necessary records could not be produced during the assessment proceedings. He sought an opportunity to produce the records. It is not in dispute that this letter dated 12th November, 2007 was received by the Authority on the same day itself. However, the Authority u/s 7-A did not take cognizance of that letter. The petitioner's case is that subsequently on being advised a formal review application was also moved on 28th January, 2008. However, the Authority did not take notice of even that review application and instead initiated further proceedings to recover

aforesaid dues. Feeling aggrieved, the petitioner filed an appeal before the EPF Appellate Tribunal which was registered as ATA No. 818 (4) 2008. Before the Appellate Authority one of the grievances raised by the appellant was that its review application had not been disposed of. The Appellate Authority vide its order dated 22nd August, 2008 without going into the merits of the case remanded back the matter to the Authority to dispose of the review petition filed before it within a period of 30 days and the recovery of dues was stayed till the decision of the review petition. It appears that before the passing of the said order by the Appellate Tribunal the Authority had already passed an order on 7th March, 2008 rejecting the application which the petitioner had moved on 28th January, 2008 as being time barred.

2. On getting information about the said order dated 7th March, 2008 the petitioner once again approached the Appellate Tribunal bringing to the notice of the Tribunal in its disposed of appeal ATA No. 818 (4) 2008 that its review petition had been disposed of. The Appellate Tribunal, however, did not deal with the correctness of the review order and instead passed an order that the appellant, petitioner herein, should have filed a fresh appeal instead of praying for re-opening of the appeal already disposed of on 22nd August, 2008. Thereafter, the petitioner filed a fresh appeal which came to be rejected by the Appellate Tribunal vide its order dated 7th February, 2011. In that appeal also the petitioner had challenged the original order u/s 7-A dated 23rd October, 2007 and had also made a reference to its representation dated 12th November, 2007 as well as formal review application dated 28th January, 2008 and had also raised a grievance that there were good reasons for petitioner's non-appearance before the Competent Authority u/s 7-A on some dates due to which ex-parte assessment of its liability came to be made on 23rd October, 2007. The learned Appellate Tribunal vide order dated 7th February, 2011 rejected the appeal primarily on the ground that the appellant had failed to place on record necessary material during the proceedings u/s 7-A. Thereafter the petitioner filed a review application before the Appellate Tribunal which also came to be rejected vide order dated 16th May, 2011.

3. Feeling aggrieved, the petitioner approached this Court by filing the present writ petition.

4. The main grievance of the petitioner is that ex-parte order dated 23rd October, 2007 should have been re-called since there were good reasons for the non-appearance on behalf of the petitioner during the proceedings u/s 7-A and the Authority had failed to take note of its representation dated 12th November, 2007 as also subsequently moved formal review application dated 28th January, 2008 was wrongly rejected on the ground that it was time barred.

5. Learned counsel for the respondents submitted that the Appellate Tribunal having upheld the order dated 23rd October, 2007 vide its order dated 7th February, 2011 on the ground that there was no material produced by the petitioner during the proceedings u/s 7-A and since admittedly no material was

placed on record by the petitioner there is no scope of any interference by this Court in this writ petition. Learned counsel for the petitioner also pointed out that this Court had issued limited notice of the writ petition to the respondents and that was in respect of petitioner's grievance that its review petition had been dismissed because of it being time barred having been filed on 28th January, 2008 while petitioner's case was that he had in fact sought review of the order dated 23rd October, 2007 vide its representation dated 12th November, 2007 though it was not formally described as a review petition.

6. During the course of hearing of the petition learned counsel for the respondent did not claim that there is any prescribed proforma for filing a review petition before the Authority which is competent to review orders passed u/s 7-A. It was further contended that the letter dated 12th November, 2007 could not be treated as a review petition and consequently, the Authority was justified in rejecting the petition which was formally described as a review petition, as time barred. Since admittedly there is no prescribed proforma for any aggrieved person to fill up while claiming a review of an order u/s 7-A, I am of the view that whatever the petitioner had claimed in its representation dated 12th November, 2007 could have been considered as a prayer for review of the order u/s 7-A and in case the Authority was of the view that was not a review petition *stricto sensu* even then the order rejecting that prayer on the ground that it was simply a representation and not a formal review petition should have been passed instead of ignoring it altogether. Subsequent petition moved before the Authority on 28th January, 2008 could at the most be said to be a continuation of the representation dated 12th November, 2007.

7. In view of the aforesaid, the matter has to be remanded back to the Authority for deciding the request of the petitioner for recalling of the order dated 23rd October, 2007 on its merits. As a consequence of this conclusion, all the orders passed by the respondents, except the original order dated 23rd October, 2007 u/s 7-A, referred to earlier, stand set aside. The matter is remanded back to the Authority where it shall be taken up for consideration of the petitioner's prayer for review of the order dated 23rd October, 2007 on 12th March, 2012 at 3 p.m. on which date the representatives of the parties can appear before the Authority and it would not be necessary for the Authority to issue any notice for appearance to any of the parties. It is made clear that the Authority would pass appropriate orders uninfluenced by the filing of the present writ petition and its being disposed of in the aforesaid manner.

8. Till the disposal of the review matter before the Competent Authority there shall be stay of recovery proceedings.

9. A copy of this order be given *dasti* to the counsel for both the parties, as requested.