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In the Delhi High Court

Case No : W.P. (C) 6759/2010

Rajasthan Rajya Vidyut Prasaran Nigam Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7-I(2), 7-O
Limitation Act, 1963 — Section 5

Citation : (2014) 143 FLR 200 : (2014) 4 LLJ 533 : (2014) 4 LLN 122 : (2014) LLR 923

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Gautam Gupta, Advocate for the Appellant; Dinesh Kumar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vibhu Bakhru, J.—The present petition has been filed impugning the order dated 26.03.2010 whereby the Appellate Tribunal had rejected application filed by the petitioner for restoration of its appeal, which was dismissed for nonappearance on 24.01.2007.

2. The Registrar, Employees Provident Fund Appellate Tribunal (hereinafter referred to as the ''Tribunal'') is personally present in Court and has produced the dispatch register for the relevant period. This register discloses that the order dated 24.01.2007 was dispatched to the petitioner on 07.03.2007.

3. The petitioner contends that his counsel was not present on the occasion, since he had noted a wrong date in his diary; the date of hearing was noted as 24.03.2007, instead of 24.01.2007. Immediately on receipt of the order dated 24.01.2007, the petitioner filed an application for restoration on 10.03.2007.

4. The aforementioned application for restoration was considered by the Tribunal

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and was dismissed for want of jurisdiction to condone the delay. The Tribunal referred to the decision of Assistant Regional Provident Fund Commissioner Vs. Employees Provident Fund Appellate Tribunal and Others, whereby this Court had held that the power of the Appellate Tribunal to condone the delay in filing an appeal before the Tribunal was limited to the period as specified. This Court had held that Section 5 of the Limitation Act was specifically excluded while calculating the period of limitation for purposes of condoning the delay in filing a belated appeal beyond the period as was specified in Section 7-I(2) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''Act'') read with Rule 7(2) of the Employees'' Provident Funds Appellate Tribunal (Procedure) Rules, 1997(hereinafter referred to as the ''1997 Rules'').

5. Section 7-I(2) reads as follows:

(2) Every appeal under sub-section (1) shall be filled in such form and manner, within such time and may be accompanied by such fees, as may be prescribed.

Rule 7(2) reads as follows:

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or by 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 a Tribunal unless he as deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75 per cent of the amount due from him as determined u/s 7A:

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited u/s 7-O.

6. It is apparent from the plain reading of the aforequoted provisions, that the same have no application in respect of filing of application for restoration of an appeal which has been dismissed for non-appearance.

7. In my view, filing an application for restoration of an appeal, which had been initially filed within the period of limitation, stands on a completely different footing. It is well settled that limitation does not extinguish a right, but only restricts the remedy to approach a court for enforcing the right. In the event, a party fails to take expeditious steps to file an appeal within the period of limitation, its right to seek the remedy would lapse. The rationale for prescribing time limits within which recourse to legal remedies can be availed of was explained by the Supreme Court in the case of AIR 1972 1935 (SC) :-

7..... The necessity for enacting periods of limitation is to ensure that actions

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are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims....

8. An application for restoration of an appeal, which has been dismissed in default, does not fall within the ambit of a Section 7-I(2) of the Act read with rule 7(2) of the 1997 Rules. Thus, the period specified therein would have no application for restoration of an appeal which had been dismissed in default.

9. In my view, the relevant rule applicable for restoration of appeal dismissed due to non-appearance of the appellant is Rule 15 of the 1997 Rules. Rule 15 reads as follows:

15. Action on appeal for appellant''s default.--(1) where on the date fixed for hearing of the appeal or on any other date to which such hearing may be adjourned, the appellant does not appear when the appeal is called for hearing, the Tribunal may, in its discretion either dismiss the appeal for default or hearing and decide it on the merit.

(2) Where an appeal has been dismissed for default and the appellant files and appeal within thirty days from the date of dismissal and satisfied the Tribunal the there was sufficient cause for his non-appearance when the appeal was called for hearing, the Tribunal shall make an order setting aside the order dismissing the appeal and restore the same:

Provided, however, where the case was disposed of on the merits the decision shall not be reopened except by way of review.

10. It is settled law that the period of limitation does not begin from the date of the order, but from the date of knowledge of the order. In the present case the order dated 24.01.2007 was, concededly, dispatched on 07.03.2007 and the application for restoration of the appeal was filed immediately thereafter, on 10.03.2007.

11. The period of limitation under Rule 15 of the 1997 Rules would have to be computed from the date of communication of the order. The Supreme Court in the case of D. Saibaba Vs. Bar Council of India and Another, stated this principle as under:

9. So far as the commencement of the period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression "the date

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of that order" as occurring in Section 48-AA has to be construed as meaning the date of communication or knowledge of the order to the review petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided.

12. The question whether an appeal has to be restored cannot be viewed in the light of the limitation as prescribed for filing an appeal before the Tribunal. This is a matter which has to be considered on the bona fide of the explanation given for restoration of the appeal and also by considering the reasonableness of the period of delay, if any. In the present case, it is evident that there has been no delay because if the order was dispatched on 07.03.2007, the petitioner could not have received the same earlier than 08.03.2007 and the application for restoration was filed immediately on 10.03.2007.

13. In my view, the Tribunal has completely misdirected itself in considering that it lacked the jurisdiction for restoring the appeal, which undisputedly, had been filed within the period of limitation.

14. It is also noted that there was no delay in filing the application for restoration of the appeal, since the order of 24.01.2007 itself had been dispatched by the Tribunal on 07.03.2007 and the application was filed three days later. The application was, therefore, filed within the period as specified under Rule 15 of the 1997 Rules.

15. The writ petition is, accordingly, allowed and the appeal filed by the petitioner before the Appellate Tribunal being ATA No. 106(12)/2002 is restored to its original number as on 27.01.2007. The parties shall bear their own costs.

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