



**FOR WEB CIRCULATION**

कर्मचारी भविष्य निधि संगठन

(श्रम एवं रोजगार मंत्रालय, भारत सरकार)

**EMPLOYEES' PROVIDENT FUND ORGANISATION**

(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14-भीकजी कामा प्लेस, नई दिल्ली-110 066.

Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No.LC-7(94)2018/PB/CGIT/imp judgment/

Date: 11-09-2018

To

8820

08 OCT 2018

All Zonal ACCs/All Officer-in-Charge

**Sub:- Land mark Central Government Industrial Tribunal Judgment against condonation of delay - reg.**

Sir,

A Copy of land mark Judgment in the matter of Sarwan Singh Dhiman and sons Vs Regional Provident Fund Commissioner, Chandigarh (EPF No. 02/2017) passed by the Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court -1 Chandigarh has been forwarded to this office by e-mail byRPFC-I & ACC( addl charge) Chandigarh. The copy of complete judgment is being circulated as it may be quite useful for reference in similar cases pending before various CGIT's and other courts.

The order made by CGIT-I, Chandigarh disposed of the application filed by the appellant for condonation of delay in filing appeal before the CGIT. It is alleged by the appellant that the impugned order dated 24.8.2016 under section 7A of EPF&MP Act,1952 has not been received by him, but the Ld. Tribunal has stated that there is nothing on record to show that impugned order was not conveyed to the appellant as required by law. Vide its order dated 25.07.2017 the Ld. CGIT stated that

***" It is clear from the ratio of law laid down in the above authorities that when limitation is provided under special law the question of condonation of delay has to be considered within the parameters contained in the said special law. The Courts cannot be import into the Act or Rule their discretion so as to defeat the very purpose of such special enactment. Resultantly, this Tribunal does not have powers to condone the delay beyond the period of 120 days as mentioned in Rule 7(2) of the Rules. As sequel of above discussion, it is held that appeal filed by the appellant herein is hopelessly time barred as such the delay in filing the appeal is uncondonable in view of the embargo contained in Rule 7(2) of the Rules. Accordingly the application is rejected."***

Encl: - As above.

Yours' faithfully,

(R. M. Verma)

**Additional Central P F Commissioner (Legal)**

Copy to:-

1. Regional P F Commissioner -I, National Data Centre for information and Web

Subject: Land Mark CGIT Judgment against condonation of delay for web-circulation-Reg

To: acc.legal <acc.legal@epfindia.gov.in>,  
LEGAL RPFC <rc.legal@epfindia.gov.in>,  
"ro.chandigarh" <ro.chandigarh@epfindia.gov.in>

Date: 08/17/18 12:45 PM

From: "Addl. CPFC PB,HP EPFO, Ministry of Labour Government of India, New Delhi" <acc.pbhp@epfindia.gov.in>

29.8.17 (Sarwan Singh Dhiman Vs RPFC, Chd-order dt... (3.2MB)

Sir,

Kindly find attached herewith a land mark judgment in respect of RO, Chandigarh made by the Ld. CGIT-I, Chandigarh in EPF No. 02/2017 titled as Sarwan Singh Dhiman and sons Vs Regional PF Commissioner, Chandigarh

The order made by CGIT-I, Chandigarh disposed of the application filed by the appellant for condonation of delay in filing appeal before the CGIT. It is alleged by the appellant that the impugned order dated 24.8.2016 under section 7A of EPF&MP Act,1952 has not been received by him, but the Ld. Tribunal has stated that there is nothing on record to show that impugned order was not conveyed to the appellant as required by law. Vide its order dated 25.07.2017 the Ld. CGIT stated that "It is clear from the ratio of law laid down in the above authorities that when limitation is provided under special law the question of condonation of delay has to be considered within the parameters contained in the said special law. The Courts cannot be import into the Act or Rule their discretion so as to defeat the very purpose of such special enactment. Resultantly, this Tribunal does not have powers to condone the delay beyond the period of 120 days as mentioned in Rule 7(2) of the Rules. As sequel of above discussion, it is held that appeal filed by the appellant herein is hopelessly time barred as such the delay in filing the appeal is uncondonable in view of the embargo contained in Rule 7(2) of the Rules. Accordingly the application is rejected."

The copy of complete judgment is being forwarded for all-India circulation as it may be quite useful for reference in similar cases pending before various CGIT's and other courts.

Regards

(V. Ranganath)

Regional PF Commissioner-I &

Additional Central PF Commissioner[Addl. Charge]

Zonal Office (PB&HP)

*Imp b*  
*[Signature]*  
*20/8/2018*

अ.के.प.नि.आ. (पी./विधि) सचिवालय  
Addl. C.P.F.C. (P/Legal) Secretariat  
हायरी सं.  
दिनांक

*Ref = (Legal)*

*Advt. 24/8/18*

*[Signature]*  
*21/8/18*

*8041*

*Ref = [Signature]*



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**CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT-I CHANDIGARH.  
EPF NO. 2/2017**

Sarwan Singh Dhiman and sons

.....Appellant

Versus

Regional Provident Fund Commissioner Chd.

.....Respondent

**ORDER**

Dated: 25.7.2018

This order shall dispose of an application filed by the appellant for condonation of delay in filing the appeal. In fact, appellant has filed an appeal under Section 7-I of the EPF and MP Act (in short The Act) and challenged the impugned order passed by the respondent authority on 24.8.2016 in proceedings under Section 7/A of the Act whereby an amount of Rs 9,76,345/- imposed as EPF dues.

✓ It is alleged by the appellant that impugned order dated 24.8.2016 was never received by the appellant and came to know for only when the first time notice of demand dated 29.5.2017 (Annexure-A) was sent to the appellant. Thereafter, appellant made enquiries from the office of the respondent and appellant was informed that impugned order was passed against appellant on 24.8.2016. Thereafter, appellant applied for copy of the impugned order vide letter dated 17.7.2017 and same was received by the appellant on 24.7.2017. The present appeal is alleged to be within the limitation.

Reply to the application has been filed on behalf of the respondent wherein material facts have been denied. It is alleged that there is delay of 337 days in filing the appeal and the same cannot be condoned. Reference is also made to the judgment of Hon'ble Supreme Court in the case of "Balwant Singh vs. Jagdish singh & Ors", 2010(3) R.C.R. (Civil) 856 wherein it was also as under:

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Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as single benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

I have heard Sh. Gunjan Rishi for the appellant and Sh. Sumeet Goel Adv. for the Respondent.

✓ Admittedly, in the impugned order in the present case so as passed by the respondent authority on 24.8.2016. There is nothing on the record to show that impugned was not conveyed to the appellant as required under law.

In fact, appellant filed the present appeal when the demand notice was sent to the appellant for realization of EPF dues.

During course of argument learned counsel for the appellant strongly urged that limitation can be condoned by this Tribunal even if it is beyond the period of limitation if there is sufficient cause shown by the appellant for filing the appeal late.

After hearing the learned counsel for the parties at length and perusal of the record of the case, I am of the view that appeal in the present case is patently and hopelessly time barred. It is also revealed from the record that appellant has participated in the



proceedings before the respondent authority and was fully aware of the when the same was pending before the respondent authority. 3.

It is neither in doubt nor in dispute that prescribed period for filing an appeal under Rule 7(2) of EPF is 60 days which can be further extended for 60 days by this Tribunal, If sufficient cause is shown for filing the appeal beyond the period of 60 days but within further extended period of 60 days. Thus, an appeal under Act has to be filed by the appellant within the period of 60+60=120 days and any further delay in filing the appeal by the aggrieved party cannot be condoned by this Tribunal in view of the embargo contained in Rule (72) of EPF Rule procedure Rule 1997.

✓ The issue regarding the condonation of delay under special enactment is no more res integra and in Commissioner of Customs and Central Excise Vs. Hongo India Private Limited & Anr., (2009) 5 SCC 791 the question that fell for determination before the Supreme Court was "whether the High Court has power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the prescribed period by applying Section 5 of the Limitation Act, 1963. After elaborate discussion over the issue, the Supreme Court held that whenever statutory provision is made to file an appeal within a particular period then in such cases the provisions of the Limitation Act is not made applicable.

Yet in another recent judgment i.e In M/s Patel Brothers Vs. State of Assam & Ors, AIR 2017 SC 383, the Supreme Court held that the Court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act necessary implications. The Court observed in para 19 as under:-

"19. The High Court has rightly pointed out the well settled principle of law that the court cannot interpret the statute the way they have developed the common law which in a constitutional sense means judicially developed equity. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its

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existence by the judges of the past. The court can exercise no such power in respect of statute, therefore, in the task of interpreting and applying a statute, judges have to be conscious that in the end the statute is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it. What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications."

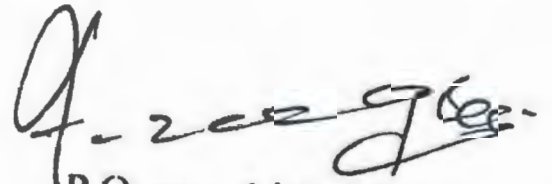
Lastly in the case of Oil and Natural Gas Corporation Ltd. Vs. Gujarat Energy Transmission Corporation Ltd. & others, reported in (2017) 5 SSC 42. while dealing with similar controversy, it was held as under:-

"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."

It is clear from the ratio of law laid down in the above authorities that when limitation is provided under special law the question of condonation of delay has to be considered within the parameters contained in the said special law. The Courts cannot be import into the Act or Rule their discretion so as to defeat the very purpose of such special enactment. Resultantly, this Tribunal does not have powers to condon~~ation~~<sup>tion</sup> the delay beyond the period of 120 days as mentioned in Rule 7(2) of the Rules.

As a sequel of above discussion, it is held that appeal filed by the appellant herein is hopelessly time barred as such the delay in filing the appeal is uncondonable in view of the embargo

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contained in Rule 7(2) of the Rules. Accordingly the application is rejected.



P.O.-cum-Link Officer  
CGIT-1, Chd. 25-07-18