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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8921 OF 2015

SANJAY KASHINATHRAO KALE
VERSUS
UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Shri J.N.Singh.
Assistant Solicitor General of India for R/1 & 2: Shri S.B.Deshpande.
Advocate for R/3 : Shri K.B.Chaudhari a/w Shri Nitin K. Chaudhari.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 07th September, 2015

Per Court:

1 The Petitioner has raised a limited grievance in this petition as against the order dated 20.07.2015 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No.754(9)2006, by which the appeal of the Petitioner preferred under Section 7(I) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 has been dismissed in default.

2 A complete copy of the impugned order dated 20.07.2015 is placed on record and is marked as Exhibit X for identification.

3 Shri Singh, learned Advocate for the Petitioner, submits that this appeal has been filed long ago in the year 2006 before the Appellate

Tribunal. He submits that the Petitioner has made solemn statements in paragraphs 6(q) and 6(s) of the petition that no opportunity of hearing was given to him.

4 Shri Singh further submits that the date of hearing as on 20.07.2015 was not informed/ intimated to the Petitioner. There has been no notice issued by the Appellate Tribunal to the Petitioner. Though the Tribunal has stated in the impugned order that online postal receipt No.ED606812445IN is placed on record and the same reveals that the court notice was duly served upon the Petitioner herein, no such notice was served.

5 Shri Singh, therefore, submits that the matter may be posted on any date before the Appellate Tribunal and the Petitioner shall ensure that the matter is worked out on the said date, no adjournment would be asked for and in the event, the Petitioner remains absent, the Appellate Tribunal may proceed to decide the appeal in the absence of the Petitioner.

6 Shri Deshpande, learned Assistant Solicitor General of India has appeared on behalf of Respondent Nos.1 and 2/ Union of India. Shri K.B.Chaudhari, learned Advocate, appears for Respondent No.3. Both the learned Advocates submit that there is a presumption that the online

postal receipt would indicate proper service of the court notice. If the Petitioner has been unable to take note of the same, he can blame himself. The matter is of 2006 and hence, the Petitioner can put forth no excuse for having not prosecuted the proceedings with due diligence.

7 I have considered the submissions of the learned Advocates as are recorded herein above. It is evident that the impugned order of the Appellate Tribunal speaks about the online postal receipt. It is held by the Appellate Tribunal that the said receipt indicates service of a court notice.

8 It cannot be overlooked that the appeal was earlier decided by the Appellate Tribunal on 18.08.2011. This Court by its order dated 14.06.2013 in Writ Petition No.1327/2012 had set aside the order of the Appellate Tribunal and remitted the Appeal to the Appellate Tribunal for a fresh hearing.

9 In the light of the above, ends of justice would be met by putting the Petitioner to terms of appearing before the Appellate Tribunal on a particular given date and subject to costs so as to enable the appeal to be heard on its merits.

10 As such, this Writ Petition is partly allowed. The order

dismissing the appeal due to the absence of the Petitioner dated 20.07.2015 is quashed and set aside subject to the Petitioner depositing costs of Rs.10,000/- (Rupees Ten Thousand). Appeal ATA No.754(9)2006 is, therefore, remitted to the Appellate Tribunal for a decision afresh after hearing the Petitioner.

11 The Petitioner shall deposit a Demand Draft for Rs.10,000/- (Rupees Ten Thousand) as costs with Respondent No.3 Office at Aurangabad on or before 17.10.2015. Upon depositing the said amount, Respondent No.3 shall issue a receipt for the same and shall also intimate Respondent No.2 about the compliance of this order.

12 The Petitioner shall appear before Respondent No.2/ Appellate Tribunal on 16.11.2015 at 11:00 am. No formal notices be issued.

13 It is made clear that if on 16.11.2015 the Petitioner fails to appear before the Appellate Tribunal, the said Tribunal shall proceed to decide the Appeal on it's own merits in the absence of the Petitioner. Only exception would be if the Appellate Tribunal itself grants an adjournment.

(RAVINDRA V. GHUGE, J.)