IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1309 OF 2014

Anchor Industries Employees Union .. Petitioner

Vs

1.The Presiding Officer, Employees Provident Fund Appellate Tribunal and Anr. .. Respondents

Mr.Prakash V. Dhopatkar, Advocate for Petitioner.
Mr. Suresh Kumar, Advocate for Respondent no.2.
Mr.R.S.Pai with Mr. A.R.Pai and Mr. Nishant Vyas i/b M/s Sanjay Udeshi & Co, Advocate for respondent no.3.

CORAM : R.G.KETKAR,J.
DATE : 16/02/2015

PC:

1. Heard Mr. Prakash Dhopatkar, learned counsel for the petitioner, Mr.Suresh Kumar, learned counsel for respondent no.2 and Mr. R.S.Pai, learned counsel for respondent no. 3 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 3.10.2013 passed by the learned Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi (for short, “Tribunal”) in A.T.A No.514 (9) 2012. By that order, the Tribunal dismissed the appeal preferred by the petitioner challenging the order dated 29.10.2010 passed by Regional Provident Fund Commissioner-1, Regional Office, Kandivali (for short, “Commissioner”) under section 7B of the Employees'

Provident Funds and Miscellaneous Provisions Act, 1952 (for short, “Act”).

3. In support of this petition, Mr. Dhopatkar submitted that order under Section 7A of the Act was passed in two parts. Order of first part was passed on 8.6.1992 and the order of second part was passed on 12.11.1992. Aggrieved by these orders, the petitioner preferred Review Petition under section 7B of the Act on or about 22.9.2009. By order dated 29.10.2010, the Commissioner dismissed the application for review on the ground that it was filed after more than 18 years and was not filed within 45 days as specified in 79A of the Employees' Provident Fund Scheme, 1952 (for short, “Scheme”). Aggrieved by that decision, the petitioner preferred Appeal before the Tribunal. By the impugned order, the Tribunal dismissed the Appeal on the ground that under Rule 7(2) of the Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997 (for short, “Rules”), any person aggrieved by an order passed by any authority under the Act has to file appeal within 60 days from the date of the order to the Tribunal. Proviso thereto lays down that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring appeal within the prescribed period, extend the said period by a further period of 60 days. The Tribunal held that the Appeal is barred by limitation.

4. Mr. Dhopatkar raised two-fold contentions. In the first

place, he submitted that by the order dated 2.4.2013 the Tribunal noted that the application for review under section 7B of the Act was filed after a lapse of more than 10 years. Despite that, the appeal was admitted for consideration. He submitted that once having admitted the appeal for consideration, the Tribunal was not justified in dismissing the appeal on the ground that it is barred by limitation. The appeal ought to have decided on merits and not only on the ground that the appeal is barred by limitation. Secondly, it is submitted that in any case principles of natural justice are violated while deciding the proceedings.

5. On the other hand, Mr. Pai supported the impugned order. He submitted that order under section 7A was passed in two parts. First part order was passed on 8.6.1992 and the second part order was passed on 12.11.1992. The application for review was filed after nearly 17 years, that is to say on 22.9.2009. In view of paragraph 79A of the Scheme, no application for review of an order can be entertained unless the application for review is submitted within 45 days from the date of making such order. As the Review Application is filed after more than 17 years, it was rightly dismissed by the Commissioner on 29.10.2010. Even the Appeal under section 7B was filed on or about 9.3.2012. In view of rule 7(2) of the Rules, the Tribunal rightly held that the Appeal is barred by limitation.

6. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the petitioner filed application for review under section 7B on 22.9.2009 against the orders dated 8.6.1992 and 12.11.1992 passed under section 7A of the Act. Paragraph 79A of the Scheme reads as under:

> "79A. **Filing application for review:-** Any person aggrieved by an order made under sub-section (1) of section 7A and who desires to obtain a review of such order may apply for a review of that order, as provided in sub-section (1) of section 7B of the Act in Form 9 to the officer who passed such order;
>
> Provided that no application for review of an order will be entertained by the concerned officer, unless the application for review is submitted within 45 days from the date of making such order."

Perusal of paragraph 79A, extracted herein above, clearly shows that the application for review of an order has to be submitted within 45 days from making of such order. There is no further provision enabling the authority to condone delay in filing application for review. That apart, the Review Application was dismissed on 29.10.2010. The petitioner filed Appeal under section 7B on 9.3.2012. Rule 7(2) of the Rules reads as under :

> "**7. Fee, time for filing appeal, deposit of amount due on filing appeal:**-
>
> (1) xxx xxx
>
> (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 further period of 60 days.
>
> Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75 per cent of the amount due from him as determined under section 7A.
>
> 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."

Perusal of the above rule clearly shows that any person aggrieved by the order has to file appeal within a period of 60 days from the date of the order. Proviso thereto lays down that the Tribunal, if it is satisfied that the appellant was prevented by sufficient cause from preferring appeal within the prescribed period, has power to extend the said period for a further period of 60 days. In other words, beyond this, the Tribunal has no power to condone the delay. The Tribunal, therefore, was justified in dismissing the appeal preferred by the petitioner.

7. Mr. Dhopatkar submitted that by order dated 2.4.2013 the Tribunal admitted the Appeal. Once the Appeal is admitted it cannot be dismissed on technical ground that it is barred by limitation. The Tribunal ought to have decided the Appeal on merits. I do not find any merit in this submission for more than one reason. In the first place, the appeal could not have been

admitted without first condoning the delay. If the submission of Mr. Dhopatkar is accepted, it would restore illegal order passed by the Tribunal on 2.4.2013. In view of the decision of Apex Court in the case of Maharaja Chintamani Saralnath Sahadeo Vs. State of Bihar – AIR 1999 SC 3609, the submission deserves to be rejected. Secondly, after considering the explanation submitted by the petitioner, the Tribunal held that the Appeal is barred by limitation. I, therefore, do not find any merit in the submission of Mr Dhopatkar. Lastly Mr Dhopatkar submitted that there is violation of principles of natural justice in deciding the proceedings. It is not in dispute that all the orders were passed after hearing the petitioner. In view thereof, there is no question of breach of principles of natural justice. No other contention was advanced. Hence, the Petition fails and the same is dismissed.

(R.G.KETKAR, J.)