

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 20.08.2015

CWP No.18227 of 2012(O&M)

BSNL		... Petitioner
	Versus	
Union of India & anr.		... Respondents

CWP No.18353 of 2012(O&M)

BSNL		... Petitioner
	Versus	
Union of India & anr.		... Respondents

CWP No.18365 of 2012(O&M)

BSNL		... Petitioner
	Versus	
Union of India & anr.		... Respondents

CWP No.18733 of 2012(O&M)

BSNL		... Petitioner
	Versus	
Union of India & anr.		... Respondents

CWP No.18740 of 2012(O&M)

BSNL		... Petitioner
	Versus	
Union of India & anr.		... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arvind Rajotia, Advocate,
for the petitioner.

Mr. Sanjay Tangri, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of five writ petitions bearing Nos.18227,

18353, 18365, 18733 and 18740 of 2012.

BSNL has filed this petition under articles 226 and 227 of the Constitution of India praying for quashing of the order passed in review application against the basic order passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). The provisions for appeals to the Tribunal constituted under the Act and prescribed in Section 7-I of the Act. Section 7-I of the Act confers a right of appeals against an order passed by any authority etc. under the proviso to sub-section (3) or sub-section (4) of Section 1 or Section 3 or sub-section (1) of Section 7-A or Section 7-B of the Act except an order rejecting the application for review referred to sub-section 5 thereof etc.

This means that order passed under Section 7-A of the Act suffers an exemption against a review application at first sight. However, Section 7-B of the Act deals with review of orders under Section 7-A which prescribes as follows:-

“7B. Review of orders passed under Section

7A.- (1) Any person aggrieved by an order made under sub-section(1) of Section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the Officer who passed the order:

Provided that such officer may also on his own

motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under subsection(1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that,-

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under Section 7A.”

Mr. Sanjay Tangri appearing for the Organization points out to sub-clause (5) of Section 7-B of the Act to submit that by legal fiction the appeal under the Act lies against an order passed under review as if

the order passed under review was the original order passed under

Section 7-A of the Act.

Learned counsel for the petitioner submits that BSNL has been prejudiced and grievously effected by the impugned order passed in review since BSNL was not heard when the order was passed and therefore the order deserves to be set aside on breach of principles of natural justice. He, therefore, argues that there is no bar in Articles 226 or 227 of the Constitution of India to entertain the petition. That may be so but an equally effective and alternative remedy is available to the petitioner to appeal to the Employees' Provident Funds Appellate Tribunal, New Delhi which factor deters this court to intervene when hardly any special reasons are made out to circumvent due process of the law.

The petition is, therefore, dismissed with liberty to the petitioner to approach the appellate authority to claim relief, if any, admissible in accordance with law. Delay will be dealt with by the exemptions in the Limitation Act, 1963 read with the subject matter EPF Act.

20.08.2015**monika****(RAJIV NARAIN RAINA)
JUDGE**