

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 26th May, 2015

+ W.P.(C) 3390/2015

SIDHARTH ENGINEERING WORKS Petitioner
Through: Mr. S.K. Gupta, Adv.

versus

REGIONAL PROVIDENT FUND COMMISSIONER
..... Respondent
Through: Mr. Arvind Kr. Verma, Adv.

**CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH**

VED PRAKASH VAISH, J. (ORAL)

1. This is a petition under Articles 226/227 of the Constitution of India against order dated 31.03.2014 passed by the learned Employees' Provident Fund Appellate Tribunal (hereinafter referred to as 'EPFAT'), Delhi in ATA No. 155(20)2012 whereby the appeal filed by the petitioner was dismissed.
2. Mr. Arvind Kumar Verma, Advocate appearing for the respondent submits that he does not want to file counter affidavit.
3. With the consent of learned counsel for the parties, the matter is taken up for final disposal.
4. The brief facts as borne out from the petition are that vide order dated 10.07.2007, the respondent determined the provident fund dues

payable by the petitioner under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act'). Vide order dated 04.03.2011, the EPFAT remanded the matter back to the Authority with the direction to ascertain the staff strength of the establishment at the relevant period. After enquiry under Section 7A of the Act, vide order dated 22.12.2011 the respondent upheld its earlier order dated 10.07.2007. Against the said order the petitioner preferred an appeal before the EPFAT, Delhi bearing ATA No. 155(20)2012 under Section 7I of the Act. Vide order dated 14.02.2012, the appeal was admitted and the respondent was directed to file reply. On 24.03.2014, the appeal was adjourned to 25.03.2014 and no proceedings were held on 25.03.2014. Vide impugned order dated 31.03.2014, the appeal was dismissed without according an opportunity of being heard to the petitioner.

5. Learned counsel for the petitioner submits that the appeal was admitted by learned Presiding Officer, EPFAT on 14.02.2012 and the appeal was adjourned to 17.07.2012. Thereafter, the appeal was taken up for hearing on 24.03.2014 and on the said date, the appeal was adjourned to 25.03.2014. However, without providing an opportunity of being heard to the petitioner, the impugned order dated 31.03.2014 was pronounced by the EPFAT. The impugned order dated 31.03.2014 was not announced in the open Court.

6. Learned counsel for the petitioner further submits that the petitioner moved an application on 25.09.2014 seeking certified copy of proceedings dated 25.03.2014 which was not supplied under the pretext that no proceedings were conducted on 25.03.2014. Thereafter, on 02.12.2014 (page 82 of the paper book), the petitioner moved an

application under Right to Information Act, 2005 and sought the requisite information and the same was replied to by the Registrar, EPFAT vide reply dated 26.12.2014 (page 83 of the paper book). In reply to the said RTI application, the Registrar, EPFAT informed the petitioner that as per record available on file, there is no order dated 25.03.2014.

7. It is not disputed by the counsel for the respondent that the appeal was admitted by EPFAT on 14.02.2012 and the appeal was adjourned to 17.07.2012. Thereafter, the appeal was taken up for hearing on 24.03.2014 and the same was adjourned to 25.03.2014.

8. Learned counsel for the respondent is unable to show whether the appeal was listed or the appeal was heard on 25.03.2014. The same is also clear from reply to the RTI application filed by the petitioner that there is no order dated 25.03.2014 available in the file. It appears that the appeal was decided by the EPFAT without hearing the petitioner.

9. The interest of justice requires that an opportunity be provided to the petitioner to present its case.

10. Having considered the facts and circumstances of the case, the impugned order dated 31.03.2014 passed by EPFAT is set aside and the matter is remanded back to the EPFAT, New Delhi to pass a fresh order and decide the matter expeditiously after hearing both the parties in accordance with law.

11. Both the parties are directed to appear before the Presiding Officer, EPFAT, Delhi on 04.06.2015 at 10.00 A.M.

12. With the aforesaid observations, the appeal stands disposed of.

CM No.6064/2015

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

MAY 26th, 2015
gm