

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

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**CWP-11808-2016 (O&M)
Date of decision:31.08.2017**

M/s XEN (Const.), Punjab Mandi Board, Gurdaspur

....Petitioner

Versus

Employees Provident Fund Appellate Tribunal and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. S.S.Meelu, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant petition, petitioner has challenged the validity of the order dated 09.10.2015 and 22.04.2016 (Annexures P3 and P5 respectively) and further sought for a direction to restore the appeal before respondent No.1.

Petitioner aggrieved by the order of the Regional Provident Fund Commissioner, Amritsar preferred an appeal before the Appellate Tribunal (for short 'EPFAT'). For want of Presiding Officer, petitioner's appeal was pending consideration. In other words, post of Presiding Officer was vacant for some time. For the first time, petitioner's ATA No. 540(11) of 2010 was listed on 09.10.2015 before the Presiding Officer and it was dismissed for non-prosecution. The petitioner filed an application for recalling the order

dated 09.10.2015. Application was rejected on 22.04.2016 on the ground of limitation that the petitioner failed to approach within 30 days from the date of passing the order. Learned counsel for the petitioner submitted that petitioner has good case on merits. Therefore, dismissing petitioner's appeal by the EPFAT on technicality would result in financial loss to the petitioner. Therefore, it was submitted that order of dismissal for non-prosecution passed by the EPFAT be set aside and rejection of application to recall order be set aside.

Learned counsel for the respondents resisted the petitioner's contention stating that there is no provision for condonation of delay in respect of recalling the order passed in original appeal. Therefore, writ petition is liable to be set aside.

Heard learned counsel for the parties.

Having regard to the dates and events even though there is no infirmity in the order of the appellate tribunal since the order has not been passed on merit and the financial implications are involved. Therefore, order of the EPFAT dismissed for non-prosecution so also application for recalling order dated 09.10.2015 are set aside. Appeal No. 540(11) of 2010 is restored. During pendency of this litigation there is change of jurisdiction in respect of entertaining appeal against Regional Provident Fund orders. Therefore, the registry of the EPFAT is hereby directed to transmit the petitioner's appeal to the Central Government Industrial Tribunal, Chandigarh (for short "CGIT, Chandigarh"). The parties are hereby directed to appear before the CGIT, Chandigarh on 01.11.2017. Petitioner is hereby

directed to pay litigation cost of Rs.30,000/- to the respondent No.1-EPF Department within a period of 2 months from today. CGIT, Chandigarh is hereby requested to decide the petitioner's appeal within a period of 6 months.

Accordingly, CWP stands allowed.

31.08.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No