

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P.No.5818 of 2019

ORDER:

Petitioner is aggrieved by the order passed by the Employees' Provident Fund Organisation under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Act (for short 'the Act'). By the time, petitioner preferred appeal, there was delay, therefore petitioner also filed application for condonation of delay. As per Section 7-I of the Act, appeal has to be preferred within (60) days and power is vested in the Tribunal to condone the delay of another (60) days. Petitioner filed appeal along with application to condone the delay. When the application for condonation of delay was taken up for consideration, the Tribunal noted that the order under Section 14B was on 31.7.2018, whereas appeal was filed on 14.12.2018, therefore there was further delay of (13) more days in addition to the initial time limit of (60) days for condonation of delay and therefore, the Tribunal is not competent to condone the delay in filing the appeal beyond (60) days and accordingly dismissed the application.

2. Section 7-I of the Act do not envisage within which time the appeal should be filed. In exercise of the powers conferred by sub-section (1) of section 21 of the Act, the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 were notified. Rule 7 prescribes fee, time for filing appeal and deposit of amount due on filing appeal. According to sub-rule (2), an aggrieved person should file appeal within 60 days from the date of issue of the 'notification/order'. First proviso enables power in the Tribunal to condone the delay of (60) more days. As can be seen from sub-rule (2) of Rule 7, requirement of filing of appeal is from the date of issuance of 'notification/order'. This issuance of notification/order has to be read to mean

from the date of communication of 'notification/order'. Unless notice is communicated to a party, it cannot be assumed that the party is aware of the order passed by quasi-judicial authority. Any decision made in exercise of power of adjudication by quasi judicial authority has to be communicated to the aggrieved party and consequences thereof shall come into effect only from the date of communication and not otherwise. The procedural provisions require liberal construction. Therefore, the date of issue of 'notification/order' has to be read and construed to mean from the date of communication or knowledge to the party who is aggrieved by such decision and not otherwise. If this interpretation is applied, the application filed by the petitioner was within (60) days after the expiry of initial time of (60) days by counting the time from the date of communication and was therefore within (120) days. The Tribunal erred in dismissing the application by holding that there was 13 more days delay in addition to delay of (60) days as per proviso appended to sub-rule (2) of Rule 7.

3. Accordingly, the writ petition is allowed and the matter is remitted to the Tribunal for consideration of condonation delay application No.3 of 2019 without regard to the objections raised on additional delay of (13) days and pass appropriate orders, as per law. As a sequel, the miscellaneous petitions if any, shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 27.3.2019
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