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

+ **W.P.(C) 5857/2020 & CM APPLs. 21156-57/2020**

SHIVALIK HOUSE KEEPING SERVICES Petitioner

Through: Mr. S.K. Gupta, Advocate.
versus

REGIONAL PROVIDENT FUND COMMISSIONER..... Respondent

Through: Dr. Subhash C. Gupta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **01.09.2020**

1. This hearing has been held through video conferencing.
2. The present petition has been filed challenging the Central Government Industrial Tribunal's (*hereinafter*, "CGIT") order dated 7th August, 2020 arising out of the appeal challenging order dated 5th February, 2020 passed by the Regional Provident Fund Commissioner (*hereinafter*, "RPFC").
- 3 The grievance of the ld. counsel for Petitioner is two-fold. Firstly, that the original order dated 5th February, 2020 was passed without hearing the Petitioner. Secondly, insofar as Section 7Q of The Employees Provident Funds and Miscellaneous Provisions Act, 1952 with regard to interest is concerned, no order was passed by the CGIT.
4. A perusal of the record shows that the notice dated 2nd January, 2020 was, in fact, returnable on 7th January, 2020, but was only received on 16th January, 2020. The Petitioner was therefore unable to appear on the said date. Thereafter, email dated 27th January, 2020 was sent by the Respondent informing the Petitioner that the matter has been listed for 28th January,

2020. However, this email was only perused by the Petitioner on 28th January, 2020. Thus, in effect, the Petitioner was not heard before the RPFC.

5. The amounts of Rs.17,69,302/- as damages and interest of Rs.9,88,387/- were imposed by the impugned order dated 5th February, 2020. The said order was appealed against before the CGIT which granted an interim order dated 7th August, 2020, only staying the damages portion of the award of RPFC, subject to deposit of Rs.3,50,000/-.

6. Both the parties are represented before this Court. It is quite clear after seeing the record that the Petitioner had not been given an opportunity before the RPFC on merits. Since the Petitioner had not been given an opportunity, CGIT ought not to have gone into the merits of the matter. The proper course of action is to afford the Petitioner a hearing before the RPFC itself, in order to ensure that it may put forward its case on merits as to whether the damages and interest are leviable or not.

7. Under these circumstances, the order dated 5th February, 2020 is set aside and the matter is remanded back to the RPFC for fresh adjudication on merits after hearing both the parties. The matter is fixed for directions before the RPFC on 5th October, 2020. On the said date, the RPFC may hear the parties and then pass an order on merits.

8. The RPFC shall not be affected by the observations either in the order dated 5th February, 2020 or the order dated 7th August, 2020 passed by the CGIT.

9. With these observations, the present petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 1, 2020/dj/T/Ak