

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7784 OF 2010

Union of India and ors.	... Petitioners
Versus	
P. Mahadevayya and ors.	... Respondents.

WITH

WRIT PETITION NO. 7055 OF 2010

Union of India and ors.	... Petitioners
Versus	
Vijay D. Kasbe and ors.	... Respondents.

WITH

WRIT PETITION NO. 7157 OF 2010

Union of India and ors.	... Petitioners
Versus	
M.S. Rao and ors.	... Respondents.

WITH

WRIT PETITION NO. 7257 OF 2010

Union of India and ors.	... Petitioners
Versus	
Arvind Sen	... Respondent.

WITH

WRIT PETITION NO. 7271 OF 2010

Union of India and ors.	... Petitioners
Versus	
S.R. Pagar and ors.	... Respondents.

WITH

WRIT PETITION NO. 7480 OF 2010

Union of India and ors.	... Petitioners
Versus	
Ashok R. Satale and ors.	... Respondents.

WITH

WRIT PETITION NO. 7758 OF 2010

Union of India and ors.	... Petitioners
Versus	
Y.G. Swamy	... Respondent.

WITH

WRIT PETITION NO. 8273 OF 2010

Union of India and ors.	... Petitioners
Versus	
P.R. Gaikwad and ors.	... Respondents.

WITH
WRIT PETITION NO. 8287 OF 2010

Union of India and ors. ... Petitioners
Versus
C. Ravindran and ors. ... Respondents.

WITH
WRIT PETITION NO. 2603 OF 2007

A.K. Biswas and ors. ... Petitioners
Versus
Union of India and ors. ... Respondents.

Mrs Neeta V. Masurkar a/w. Mr.Y.S. Bhate, D.A.Dube and Upendra Lokegaonkar and Nieyaati Masurkar for the Petitioners - Union of India (UOI), Security Printing and Minting Corporation of India Ltd. (SPMC), India Security Press (ISP), Currency Note Press (CNP) in WP 7784, 7055, 7157, 7257, 7271, 7480, 7758, 8273 and 8287 of 2010 and 2603 of 2007.

Ms Leena Patil for the Petitioners in WP No.2603 of 2007.

Ms Seema Sarnaik I/b Amey Tamhane & Mr. Chetan Agarwal for the Respondent(s) in WP 7784, 7055 and 7257 of 2010.

Mr. Chetan Agarwal for the Respondent No.51 in WP 8273 of 2010.

Mr. G.K. Masand I/b Mr. Ajeet A. Manwani for the Respondent(s) in WP 7157, 7271 and 7480 of 2010.

Mr. G.K. Masand I/b Mr. Himanshu Shukla for Respondent Nos. 19 to 22, 27, 29, 30 and 31 in WP 8273 of 2010.

Mr. C.D. More I/b Singhania and Partners for the Petitioner in WP 8273 and 8287 of 2010.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 28.06.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Since the common issues of law and facts arise in these matters, it is only appropriate that all these petitions are disposed of by common judgment and order. Learned counsel for the parties agreed to adoption of such a course of action.

3] In all these writ petitions except Writ Petition No. 2603 of 2007, the petitioners are Union of India (UOI), Security Printing and Minting Corporation of India Ltd. (SPMC), India Security Press (ISP), Currency Note Press (CNP).

4] The challenge in these writ petitions is to the common judgment and order dated 9.6.2010 made by the Central Administrative Tribunal, Mumbai Bench in Transfer Application No. 1 of 1995 and O.A. Nos.411, 413, 294, 428, 688 & 726 of 2005, O.A. No. 379 of 2006, O.A. No.1352 of 1995, O.A. Nos. 769 and 354 of 1996, by which, the Central Administrative Tribunal allowed all these Original Applications except O.A. No. 769 of 1996 and T.A. No. 1 of 1995 partly. O.A. No. 769 of 1996 was ordered to be merged with O.A. No. 413 of 2005 and was accordingly disposed of along with disposal of O.A. No. 413 of 2005. The Central

Administrative Tribunal, ordered the petitioners, i.e., UOI, SPMC, ISP & CNP, to pay to the respondents Double Over Time Allowance (DOTA) along with arrears to be determined for a period not exceeding two years prior to the respondents instituting their respective O.As.

5] The petitioners in the above referred petitions contend that no DOTA is payable since the respondents discharge only supervisory duties and not supervisory duties coupled with manual duties. The petitioners further contend that the petitioners are already paying these respondents a special allowance and therefore, there is no question of such respondents insisting upon DOTA. By separate civil applications, which have already been disposed of. Learned counsel for the petitioners point out that some of the respondents have already compromised the matter by agreeing to accept only special allowance and not insist upon the payment of DOTA. Learned counsel for the petitioners, therefore, made it clear that any reference to the respondents in these petitions may be treated as reference to only such of the respondents who have not entered into compromise with the petitioners and who have

not been ordered to be deleted from the array of the respondents in the cause title of these petitions.

6] In Writ Petition No. 2603 of 2007, the Central Administrative Tribunal has taken a view which is contrary to the view taken by its judgment and order dated 09.06.2010, which is the subject matter of the aforesaid writ petitions. Therefore, Writ Petition No. 2603 of 2007 has been instituted by the employees of UOI, SPMC, ISP & CNP. These employees challenge the judgment and order dated 15.09.2006 made by the Central Administrative Tribunal dismissing their O.A. No. 26 of 2000 and holding that they are not entitled to DOTA. Again, in this petition also, some of the petitioners, have already compromised with the respondents and therefore, any reference to the petitioners in Writ Petition No. 2603 of 2007 will mean and imply reference to such of the petitioners, who have not compromised and consequently, whose names have not been ordered to be deleted from the array of the petitioners in the cause title of this petition.

7] Taking into consideration the aforesaid facts and circumstances and the admitted position that the main issue in all these matters is whether the employees, who had instituted various Original Applications/Transfer Applications are entitled to DOTA, it is only appropriate that all these matters are disposed of by common judgment and order.

8] Mr. Bhate has appeared for UOI, SPMC, ISP & CNP in all the writ petitions except Writ Petition No. 2603 of 2007. Ms Masurkar has appeared for UOI, SPMC, ISP & CNP in Writ Petition No. 2603 of 2007, wherein these parties have been impleaded as the respondents. In essence, both Mr. Bhate and Ms Masurkar have contended that the employees were not entitled to any DOTA and therefore, all the writ petitions except Writ Petition No. 2603 of 2007 are required to be allowed and Writ Petition No. 2603 of 2007 is required to be dismissed.

9] Mr. Bhate and Ms Masurkar agree that all these matters have to be examined in the light of the provisions contained in sections 2(l), 59(1), 64(1) of the Factories Act,

1948 and Rule 100 of Maharashtra Factories Rules 1963. Mr. Bhate and Ms Masurkar submitted that the provisions of section 59(1) of the Factories Act, which provide that where a worker works in a factory for more than 9 hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages, will not apply to employees in the present case, who are only supervisors and therefore, the exemption in Rule 100 of the Factories Rules will exempt such employees from the benefit of section 59(1) of the Factories Act.

10] Mr. Bhate and Ms Masurkar submit that the crucial issue involved in the present matters is, therefore, whether employees in the present matters are discharging only supervisory functions or whether, in addition to supervisory functions, the employees are also discharging any manual functions as a regular part of their duties. Learned counsel agree that if the answer is that the employees are discharging manual functions in addition to their supervisory functions as a regular part of their duties, then, such employees, will be entitled to DOTA. However, if, such

employees are found to be discharging only supervisory functions, then, such employees, will be governed by exemption provided under Rule 100 of the Maharashtra Factories Rules and such employees, will then have to satisfy with only special allowance and will not be entitled to claim any DOTA.

11] The aforesaid contentions of Mr. Bhate and Ms Masurkar are quite consistent with the contentions made by Shri. V. S. Masurkar, learned counsel appearing on behalf of Union of India before the Central Administrative Tribunal, which contentions have been recorded at paragraph 18 of the common judgment and order dated 9.06.2010 and read as follows:

"18. Shri. V.S. Masurkar, learned counsel appearing on behalf of the respondents has submitted that after the judgment and order dated 31.01.2006 of the Hon'ble High Court of Bombay in Writ Petition No. 5956/2005 the dispute in these matters have been narrowed down. What requires to be done is giving a factual finding as to whether the applicants are doing manual labour as a regular part of their duties. If the answer is 'yes' they will be entitled to double OTA. If the answer is 'no' they will be hit by the exemption provided under Rule 100 of the Maharashtra Factories rule and, consequently, have to be satisfied with the 'special allowance' that they are getting as per the decision of the respondents.

(emphasis supplied)

12] Mr. Bhate and Ms Masurkar submit that in the pleadings in the O.As., the employees nowhere pleaded that they were discharging manual duties, in addition to supervisory duties as a regular part of their duties. In any case, learned counsel submitted that from the material produced on record by both parties, including in particular, the appraisal reports, it is very clear that the employees were discharging only supervisory functions as a party of their regular duties. Learned counsel submit that based upon very same nature of duties, the Central Administrative Tribunal, in the case of A.K. Biswas and others, by its judgment and order dated 15.09.2006, has held that the employees were discharging only supervisory functions. They submit that the Central Administrative Tribunal in its common judgment and order dated 9.06.2010 has, however, based upon the same material, taken a contrary view. They submit that the Central Administrative Tribunal is required to be consistent with the views which it takes because, admittedly, there was no difference as such between the employees in O.A. No. 26 of 2000 and the employees in remaining O.As. They submit that most of the

duties rendered by the employees were purely supervisory in nature and therefore, the exemption in Rule 100 of the Factories Rules was clearly attracted. For all these reasons, learned counsel submit that all the writ petitions except Writ Petition No. 2603 of 2007 are liable to be allowed and Writ Petition No. 2603 of 2007 is liable to be dismissed.

13] Ms Sarnaik and Mr. Masand appear for the respondents employees in all the writ petitions except Writ Petition no. 2603 of 2007. Ms Leena Patil appears for the petitioners – employees in Writ Petition No. 2603 of 2007. All these counsels have, in unison, submitted that principle of consistency would require that the view taken by the Central Administrative Tribunal in its later judgment and order dated 15.09.2006 in O.A. No. 26 of 2000 be reversed and the view taken in all the remaining O.As. which form the subject matter of all the writ petitions except Writ Petition No. 2603 of 2007 be maintained.

14] Learned counsel for the employees submitted that from the material produced on record not just by the employees, but also by the employers, it is very clear that

the employees in addition to their supervisory functions were actually undertaking manual duties. Learned counsel, therefore, submit the exemption in Rule 100 of the Maharashtra Factories Rules, therefore, did not apply to the employees, who were consequently entitled to DOTA.

15] The learned counsel pointed out that in such matters, mere *nomenclature* is irrelevant. Besides, they point out that most of the employees were no doubt discharging supervisory functions, but in addition to such supervisory functions, such employees, were invariably discharging manual duties as a regular part of their duties. Learned counsel point out that supervision does not imply, supervision over machines and materials, but supervision implies supervision over men. Learned counsel point out that there have been several precedents, concerning ISP & CNP itself, where, such employees, have been accepted as discharging not merely supervisory functions, but manual functions in addition to supervisory functions. For all these reasons, learned counsel urge that all the writ petitions except Writ Petition No. 2603 of 2007 may be dismissed and Writ Petition No. 2603 of 2007 may be allowed.

16] The rival contentions now fall for our determination.

17] As accepted by learned counsel for UOI, SPMC, ISP & CNP, the main issue involved in all these matters is whether the employees in the present case can be said to be discharging only supervisory functions or whether the employees, in addition to supervisory functions were discharging manual functions as a regular part of their duties.

18] There is no dispute whatsoever that ISP, CNP and India Government Mint answer definition of "*factory*" within the meaning assigned to this term under section 2(m) of the Factories Act, 1948. There is also no dispute that the employees, who had instituted O.As. before the CAT were employees at such factories. There is also no serious dispute that the applicants, who were posted as Technical Supervisor to supervise not merely over men, but also over machines, Works Engineers (Electrical) engaged to do works connected to or incidental to the manufacturing process, Inspectors (Control) etc. substantially answer the definition

of “*worker*” within the meaning assigned to this term under section 2(l) of the Factories Act, 1948. This is in fact, recorded by the CAT in paragraph 19.1 of the common judgment and order dated 09.06.2010 and has not really been contested by the employers.

19] There is consequently, no serious dispute that but for section 64(1) of the Factories Act, 1948 read with the provisions contained in Rule 100 of the Maharashtra Factories Rules, which deal with exemptions, such employees, would have otherwise been entitled to benefits of section 59(1) of the Factories Act, 1948. Section 59(1) of the Factories Act, 1948 provides that where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

20] However, in section 64(1) of the Factories Act, 1948 empowers the State Government to make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or

empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed, and the provisions of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared. Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936, as amended from time to time, be entitled to extra wages in respect of overtime work under section 59.

21] In pursuance of powers vested in the State Government under section 64(1) of the Factories Act, 1948, the State Government has framed Rule 100 in the Maharashtra Factories Rules, 1963, which reads thus:

“Rule – 100:

PERSONS DEFINED TO HOLD POSITION OF SUPERVISION OR EMPLOYED IN A CONFIDENTIAL POSITION.

(1) In a factory the following persons shall be deemed to hold position of supervision or management within the meaning of sub-section (1) of section 64, provided they are not required to perform manual labour or clerical work as a regular part of their duties namely:

- (i) The Manager, Deputy Manager, Assistant Manager, Production Manager, Works Manager and the General Manager;*
- (ii) Departmental Head, Assistant Departmental Head, Departmental in-charge or Assistant Departmental in-charge;*
- (iii) Chief Engineer, Deputy Chief Engineer and Assistant Engineer;*
- (iv) Chief Chemist, Laboratory incharge;*
- (v) Personnel Manager, Personnel Officer;*
- (vi) Labour Officer, Assistant Labour Officer;*
- (vii) Welfare Officer, Additional Welfare Officer or Assistant Welfare Officer;*
- (viii) Safety Officer;*
- (ix) Security Officer;*
- (x) Foreman, Chageman, Overseer and Supervisor;***
- (xi) Jobber in Textile Factories;*
- (xii) Head Store Keeper and Assistant Store Keeper;*
- (xiii) Boiler Sarang or such Boiler Attendants who are in-charge of a battery of boilers and are only required to do supervisory work;*
- (xiv) Any other person who in the opinion of the Chief Inspector, holds a position of supervision or Management and is so declared in writing by him."*

(emphasis supplied)

22] In order that the exemption in terms of section 64(1) r/w. Rule 100 of the Maharashtra Factories Rules, 1963 is to apply, the following predicates must be fulfilled:

- (a) The employees concerned must fall within one or more of the categories set out in sub-clauses (i) to

(xiv); and

(b) Such persons must not be required to perform manual labour or clerical work as regular part of their duties;

23] Therefore, merely because the employees working in a factory fall in one or more of the categories specified in clauses (i) to (xiv) of Rule 100 of the Maharashtra Factories Rules 1963, that by itself, will not exclude them from the benefits under the Factories Act. Further, the predicates to be fulfilled is that such employees, as a regular part of their duties, are not required to perform manual labour or clerical work. To state it alternatively, therefore, for the exemption to apply to any particular employee or class of employees, it is necessary that such employees belong to the categories specified in clause (i) to clause (xiv) of Rule 100 of the Factories Rules, 1963 and further, it is also necessary that such employees are not required to perform manual labour or clerical work as a regular part of their duties.

24] As noted earlier, the CAT, in almost all the O.As. instituted by the employees except O.A. No. 26 of 2000, has

held that the employees in question, as a regular part of their duties, discharged manual labour. Only in O.A. No. 26 of 2000 as the CAT held that the employees concerned do not perform any manual labour. The moot question, therefore, involved in all these matters is whether the CAT, on the basis of the material before it, was justified in holding that the employees in all the O.A.s except O.A. No. 26 of 2000 were actually performing manual labour as a part of their duties. Similarly, the moot question in Writ Petition No. 2603 of 2007 is whether the CAT, on the basis of material before it was justified in holding that the employees in O.A. No. 26 of 2000 were not performing manual labour as a part of their regular duties.

25] There is no merit in the contention of Mr. Bhate and Ms Masurkar that there were no pleading in the O.As. that the employees were performing manual labour. From the perusal of O.As. including in particular, the pleadings in O.A. No. 428 of 2005, it is seen that there are clear pleadings regards the performance of manual work by the employees. There are pleadings to the effect that the employees, notwithstanding their category as supervisors, are made

directly responsible for production and performs the skilled work like delicate and complex setting of machine as and when required. There are pleadings that the employees undertake other manual and unskilled work associated with the production like cleaning/washing of plates and blankets and bringing raw materials from store. From the pleadings that the employees supervised directly on the machine on production and are required to work manually on machines to undertake intricate setting and thereby achieving predefined production. Such pleadings are found in paragraph 4.11 of O.A. No. 428 of 2005.

26] The UOI, SPMC, ISP & CNP in response to the pleadings in paragraph 4.11 of O.A. No. 428 of 2005 have stated that duties performed by the employees are supervisory in nature and they are not being any manual work as claimed by them or otherwise. Thereafter, it is stated that the employees are put to strict proof thereof. Thereafter, it is stated that a careful reading of the list of duties annexed by the applicants themselves at pages 55 to 57 indicates the applicants are discharging duties which are wholly supervisory in nature. This response is at paragraph

36 of the respondents' reply to the pleadings OA. No. 428 of 2005.

27] From the aforesaid, it is quite clear that the case of Mr. Bhate and Ms Masurkar that there are no pleadings in the O.As. to the effect that the applicants (employees) were performing manual labour is not at all correct. Not only, there are pleadings in the O.As., including paragraph 4.11 of the O.A., but further, the employees had annexed a list of duties at pages 55 to 57 set out in great details, the actual manual duties performed by them as regular part of their duties.

28] Further, from the response in paragraph 36, it is also clear that denials on the part of UOI, SPMC, ISP & CNP were quite evasive. There was no specific denial of the facts pleaded by the employees in their O.As. There was no specific denial to the effect that the duties referred to in the list annexed at pages 55 to 57 were never performed by the employees. All that was stated that such duties are wholly supervisory in nature and involve no element of manual labour as a regular part of their duties.

29] Before the CAT, the material was produced by the employees in each of the O.As to indicate the nature of duties discharged by them. The employers themselves produce appraisal reports along with comments of the reviewing officer for the purpose of demonstrating duties discharged by the employees. The CAT, upon assessment of such material produced on record by either of the parties, has recorded findings of fact in the common judgment and order dated 9.6.2010 to the effect that the employees, notwithstanding, nomenclature of their positions were in fact required to perform manual labour as a regular part of their duties. With the assistance of learned counsel for the parties, we have perused such material which has been referred to by the CAT in its common judgment and order dated 9.6.2010. Taking into consideration the limited parameters of judicial review, we are not in a position to say that the findings of fact recorded by the CAT suffer from any perversity, so as to warrant interference with the common judgment and order dated 9.6.2010.

30] From the contentions raised by Mr. Bhate and Ms Masurkar, it does appear that the employers carry impression that supervision includes supervision over machines and not merely supervision over men. This approach is not quite consistent with the decisions of the Hon'ble Supreme Court as also this court on the issue.

31] From the material relied upon by the employers themselves, it is clear that the employees, notwithstanding their designation as superviosrs, as a part of their regular duties, have to perform manual functions, like setting right malfunctioning of feeder, side-lay, double-sheet detector, photocell etc.. so that there is an uninterrupted run. The employers, have to ensure setting of rollers, replacement of unserviceable rollers and re-setting. They have to put on plates and precise registration. They have to put on blankets with proper under packing and trails till printing settles down. They have to mend punctures on the blankets on intricate sports. They have to undertake intricate settings and timings physically such as pressure setting, feeder to machine timing, side-lay timing, gripper setting etc. In case of plate-making, they have to physically

undertake the various processes by manual work at each stage such as mould-making, preparation of assembly, degreasing, silvering, electro forming, polishing, de-chroming, chrome-plating, regeneration of deionised water, analysis of various constituents in the bath by conducting tests in the laboratory, maintenance of utmost purity of the solutions, temperatures, PH etc. to detect contaminants and undertake chemical and electrolytic depuration, preparation of various solutions, procurement of the variety of chemicals anodes and all required raw materials and spares, indigenization of spares etc.

32] The CAT has rightly held that the employers have nowhere contended that the employees were not actually discharging all this duties. The CAT has noted quite correctly that even the employers were relying upon the same material, however, to contend all these functions are supervisory in nature and do not involve performance of manual labour. As noted earlier, such contentions, proceed on the basis of misconception that supervision involves *"supervision over machines"* and *"not merely over men"*. In the light of all such materials, which have not even been

seriously disputed by the employers, we see no good ground to interfere with the findings of fact recorded by the CAT in its common judgment and order dated 9.06.2010.

33] In ***Lloyds Bank Ltd., New Delhi vs. Panna Lal Gupta and ors - AIR 1967 SC 428***, the Hon'ble Supreme Court was dealing with the issue as to whether Clerks can claim special allowance on the that such Clerks were discharging supervisory functions. In this context, the Hon'ble Supreme Court has held that the work that is done by the Clerks in the audit department substantially consists of checking up books of accounts and entries made therein. This checking up is primarily a process of accounting, and the use of the word '*checking*' cannot be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but the checking is purely mechanical, and it cannot be said to include any supervisory function. It would be legitimate to say that the work done in the audit department is important for the proper and efficient functioning of the bank, but it would be

idle to elevate that work to the status of officers who supervise the work of everybody concerned with the bank's establishment.

34] Again, in the case of ***All India Reserve Bank Employees' Association and anr. vs. Reserve Bank of India and anr. - AIR 1966 SC 305***, the Hon'ble Supreme Court has held that the word “*supervise*” and its derivatives are not of precise import. The word must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of the others. The question whether a particular workman is a supervisor within or without the definition of workman is ultimately one of fact, at best one of mixed fact and law. The question will really depend upon the nature of the industry the type of work in which he is engaged the organisational set up of the particular unit of industry and like factor. The work in a Bank involves layer upon layer of checkers and checking is hardly supervision. Where however, there is a power of assigning duties and distribution of work there is supervision. Mere checking of

the work of others is not enough because this checking is a part of accounting and not of supervision. The work done in the audit department of a bank is not supervision.

35] In ***Bombay Dyeing and Manufacturing Company Ltd. vs. R.A. Bidoo and anr. - 1990 (1) LLJ 98***, the Division Bench of this court has held that supervision of plant or machines does not make that work supervisory. Supervision as correctly understood does not extend to supervision of plant or machinery. A person may check whether a machine is working properly or not, but that does not by any stretch of imagination make him a Supervisor. He is only finding out whether the machine is in working condition, and if it is not in a working condition, to see that it is put in a working condition. This cannot be called supervision at all. Supervision means supervision over men and not over machines.

36] The CAT, in the precise context of employees of SPMC, ISP & CNP has taken cognizance of decisions rendered by the tribunals, in which, the tribunal on the basis of evidence before it in relation to similar employees has

ruled that such employees, even though, were styled as supervisors, were in fact performing manual work. The CAT has noted that in some of the cases, the special leave petitions filed against the judgments and orders made by the Tribunals have also been dismissed. In this regard, reference can be made to what is stated in paragraphs 31, 32 and 33 of the common judgment and order dated 9.6.2010:

31. But there is something more. In Padwal's case (supra) this Tribunal had categorically held in para 5 of its order:-

"that the applicants even though they are Supervisors are also performing manual work" (quoted portion reproduced).

The S.L.P. for appeal filed against the Tribunal's decision in Padwal's case was dismissed by the Hon'ble Apex Court.

The Tribunal decided a few matters consistent with the decision in Padwal's case:

(i) B.A. Vaishampayan, O.A.1312/93, order dated 20.06.1994; SLP dismissed by Supreme Court on 16.10.1994.

(ii) V.Kankrej & ors. O.A.202/1994, order dated 20.06.1994 and

(iii) Y.R. Ghoderao & ors., O.A. 29/1996, order dated 25.07.1996.

32. So on the one hand we have a set of decisions of this tribunal holding that the applicants are legally entitled to DOTS; including the decision in Padwal's case giving the categorical finding that the supervisors 'are also performing manual work'. On the other hand, there is the decision dated 15.09.2006 of the Tribunal in the case of A.K. Biswas and others wherein an opposite view has been taken and the same is under challenge before the Hon'ble High Court of Bombay.

Which of the decisions would constitute a precedent ? In the famous Young Vs. Bristol Aeroplane Co. Ltd. (1994 KB at 726, 729), it was declared that the Rule is that where there are previous inconsistent decisions of its own, the Court is free to follow either. It can follow the earlier, but equally, if it thinks fit it can follow the later.

33. In the matters before us in respect of the applicants who are supervisors, our own finding of fact is that the supervisors do perform manual labour and also clerical work as a regular part of their duties. As such, having respectful regard to the direction given by the Hon'ble High Court of Bombay in its judgment dated 31.01.2006 in Writ Petition No. 5956 of 2005, we choose to follow the decisions of this Tribunal in the case of A.P. Padwal and others and not the decision dated 15.09.2006 in the case of A.K. Biswas and others. with the

37] The CAT has analysed in sufficient details the nature of duties discharged by the employees in each of the O.A.s before it. On the basis of the material produced, in each of the O.A.s, we cannot say that the finding recorded by the CAT in each of the O.A.s suffers from any perversity. This is certainly not a case where the findings of fact are based upon no evidence or the findings of fact are based upon misconstruction or misdirection as regards the legal position. Then again, the CAT has relied upon the rulings of the tribunals in similar situation, some of which rulings have already attained the finality upto the Court of the Hon'ble Supreme Court. For all these reasons, we see no good

ground to interfere with the common judgment and order dated 9.6.2010.

38] Now coming to the judgment and order dated 15.09.2006 in O.A. No. 26 of 2000, in which, the CAT has taken a view, which is contrary to the view taken in common judgment and order dated 9.6.2010, which, we have just endorsed, the petitioners in Writ Petition No. 2603 of 2007 have made out the case warranting interference with the same.

39] From the perusal of the material, which has in fact, being referred to by the CAT in its judgment and order dated 15.9.2006, it is seen that the employees in O.A. No.26 of 2000 were actually involved in the maintenance of machines in ensuring proper utilisation of man, machine and material, to take corrective measures, to initiated procurement of material and to conduct suitability test/trial and to initiate suitability report, to procurement of spare parts needed for the machine, monitoring stock of various items and to take trials of raw materials and spare parts for its suitability. Despite all this, the CAT, has held that such

employees were not performing any manual labour, but were solely discharging in supervisory functions. This finding by the CAT is contrary to the weight of the evidence on record. The materials point to one direction but the conclusion to the other. Relevant material has been ignored and the CAT, by not appreciating the legal position as to scope of '*supervision*' has recorded a finding which is contrary to record.

40] As regards the contention that the CAT in case of at least 44 other employees who were discharging similar functions had allowed them DOTA, the CAT, at paragraph 6 of the impugned judgment and order dated 15.9.2006 has observed as follows:

“6. Another argument advanced by the learned counsel on behalf of the applicants is that they cannot be treated differently from 44 other supervisors, who have been allowed by this Tribunal to draw OTA at double the rate. To our mind this argument is not legally tenable, inasmuch as, this position was known to the High Court while dealing with W.P. No. 5956 of 2005 wherein it was clearly mentioned that this Tribunal had passed its earlier order following its own decision in Ashok Pandharinath Padwal's case (supra). Notwithstanding this position, the High Court held that this Tribunal has to determine whether the applicants are or are not required to perform manual labour or clerical work as a regular part of their duties. Also

relying on the principle laid by the apex court in Government of U.P & anotehr vs. B. Satyanarayan Rao (Dead) by Lrs and others (2000 SCC L & S 486), the decision in Ashok Pandharinat Padwal's case (supra) can be ignored on the principle of per incuriam as certain relevant provision of law were not considered in the said case. By the same logic, the principle of equal pay for equal work has no relevance to the instant case. The apex court has stated very clearly in State of Haryana and ors. Vs. Charanjit Singh & ors. (2006 (1) SC SLJ 1) that the principle of equal pay for equal work has no mechanical application in every case."

(emphasis supplied)

41] To our mind, this is not at all a satisfactory manner of dealing with serious contention raised before the CAT. In dealing with the contention in this manner, the CAT, has not only misconstrued the scope of the remand order made by this court but further, has also, brushed aside the decision in Padwal's case, which as noted earlier, has attained the finality right upto the level of the Hon'ble Supreme Court.

42] The CAT has gone to the extent of saying that the decision in Padwal's case (supra) "*can be ignored on the principle of per incuriam as certain provisions of law were not considered in the said case*". Now this is hardly a satisfactory manner with which, the decisions of the Hon'ble Supreme Court can be dealt with. The CAT, has not

bothered to specify which “*relevant provisions of law*” were not considered in the said case. The CAT, was not at all justified in brushing aside the binding precedents by styling the same as “*per incuriam*” without even proceeding further to state as to why it has come to the conclusion that such precedents were indeed “*per incuriam*” . Besides, now that we have endorsed the common judgment and order dated 9.6.2010 in the connected O.As., there is no question of the impugned judgment and order dated 15.9.2006 in O.A. No. 26 of 2000 being allowed to prevail. Accordingly, we set aside the impugned judgment and order dated 15.9.2006.

43] For all the aforesaid reasons, we dismiss all the writ petitions except Writ Petition No. 2603 of 2007. Rule in all the writ petitions except Writ Petition No. 2603 of 2007 is discharged. The interim orders, if any, are hereby vacated.

44] However, we allow Writ Petition No. 2603 of 2007 and set aside the CAT's judgment and order dated 15.09.2006 in O.A. No. 26 of 2000 and thereby make Rule absolute in terms of prayer clause (a). We direct the respondents to

award and pay to the petitioners in Writ Petition No. 2603 of 2007, except the petitioners, who have already compromised the matter with the respondents, DOTA with effect from the period not exceeding two years prior to filing of O.A. No. 26 of 2000.

45] At the request of Mr. Bhate and Ms Masurkar, we clarify that the relief in these matter is restricted to only such of the petitioners and such of the respondents, who have not compromised the matter and whose names stand deleted by virtue of the orders made in the civil applications, which we have disposed of along with these petitions. Further, at their request, it is also clarified that such respondents or the petitioners, as the case may be, who are now held entitled to receive DOTA, will not be entitled to receive special allowances, as have been now accepted by some of the employees, who have compromised the matter. This is because the employees can get either special allowance or DOTA, but not both.

46] Since, the matters have been pending for quite some time, we direct the UOI, SPMC, ISP & CNP to work out the

entitlement and pay the same to the employees now held entitled to receive the same as expeditiously as possible and in any case on or before 31.10.2018.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)