

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

OA 769/96

TRANSFER APPLICATION NO.01/1995 & ORIGINAL APPLICATION
Nos.411/2005, 413/2005, 294/2005, 726/2005, 379/2006,
428/2005, 688/2005, 1352/1995, 769/1996 and 354/1996.

Dated this Wednesday the 9th day of June 2010.

CORAM : Hon'ble Shri Jog Singh, Member (J)
Hon'ble Shri Sudhakar Mishra, Member (A).

TA. No.01/1995

1. Shri M.N. Gholap
Inspector,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
2. Shri R.M. Aher
Supervisor,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
3. Shri P. Mahadevayya
Works Engineer,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
4. Shri S.B. Adke
Store Keeper,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
5. Dr. H.M. Datar
Assistant Medical Officer,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
6. Smt. T. Pillai
Sister-in-Charge,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
7. Shri N.N. Sardesai
Junior Accounts Officer,
C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.
8. Shri A.K. Biswas
Sectional Officer,

C/o. Currency Note Press,
Jail Road, Nasik Road,
District - Nasik.

Petitioners

(By Advocate Shri K.R. Yelwe)

Vs.

1. The Union of India.
2. The General Manager,
The India Security Press,
Jail Road, Nasik Road,
District Nasik.
3. The General Manager,
Currency Note Press,
Jail Road, Nasik Road,
District Nasik.

Respondents

OA No.411/2005

1. P.R. Gaikwad
2. R.D. Saini
3. A.N. Wagale
4. D.V. Sonawane
5. R.D. Mahale
6. R.D. Shinde
7. S.S. Uttekar
8. M.N. Shardul
9. S.N. Lokhande
10. C.K. Nikumbh
11. C.J. Borade
12. M.F. Dunbale
13. S.L. Dani
14. R.P. Kononjiya
15. B.S. Choure
16. M.M. Vanjari
17. K.P. Kulkarni
18. B.N. Bhaddive
19. K.D. Deshmukh
20. C.P. Mishra
21. V. Laxminarayanan
22. P.A. Marien
23. S.L. Sonawane
24. S.R. Bhalerao
25. D.M. Survawanshi
26. P.S. Wasnik
27. V.M. Pasbola
28. A.P. Deshmukh
29. R.K. Srivastav
30. K.S. Sinha
31. P.K. Agarwal
32. U.B. Khardekar
33. V.C. Bhalerao
34. R. Rajasekar
35. A.M. Sakorkar
36. A.K. Singh

37. K.G. Khosta
38. V.K. Kulkarni
39. B.M. Gupte
40. N.K. Waghmare
41. S.D. Sadavarte
42. S.D. Hagawane
43. A.N. Kashikar
44. A.L. Patil
45. R.R. Bhate
46. H.G. Bhandare
47. R.B. Kale
48. R.K. Yeola
49. R.R. Hinde
50. P.D. Bhavsar

... **Applicants**

All working as Inspectors
Control in Currency Note
Pres at Nasik.

(By Advocate Shri G.K. Masand)

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. The Joint Secretary
(Currency, Coinage &
Admn. Deptt. Of Economic
Affairs, Ministry of
Finance, New Delhi.
3. The General Manager,
Currency Note Press,
Jail Road, Nasik.

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Respondents

OA No.413/2005

1. Ashok R. Satale
2. Sunil G. Dethe
3. Rajendra M. Kansara
4. Nitin R. Chaudhari
5. Devidas G. Shinde
6. Chandrashekhar M. Iramnai
7. Y.R. Awhad
8. Hemant B. Atram
9. Chandrakant H. Ahire
10. Kishore G. Mundke
11. Ramadas R. Pawar
12. Pramod V. Khandekar
13. Laxmikant H. Pawar
14. Madhukar B. Nikam

All working as Deputy
Works Engineers in India

Security Press/Currency
Note Press at Nasik.

Applicants

(By Advocate Shri G.K. Masand).

Vs.

OA No.294/2005

Shri Arvind Sen
Supervisor in India
Security Press,
Nasik Road.

R/at. D/13/ISP
Estate, Behind
Central Jail,
Nasik Road,
Nasik - 422 101.

Applicant

(By Advocate Shri S.S. Karkera)

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.

2. The General Manager,
India Security Press,
Jail Road, Nasik.

Respondents

OA No.726/2005

1. M.S. Rao
2. B.V. Durgaprasad
3. Rajesh G. Khanna
4. Om Prakash
5. Saumitri Das
6. K.M. Vaidya
7. R.N. Mishra
8. S.K. Mishra
9. S.V. Nirantar
10. P.S.S.N. Durgaprasad
11. S.P. Kadepurkar
12. A. Janagrajan
13. D. Sivaprasad Rao
14. S.C. Puhan
15. R.S. Barge
16. R. Palanisami
17. P.S. Dangale
18. G.S. Junnare
19. K. Gowrinath
20. M.S. Reddy
21. Surender Singh
22. T.R. Joseph

23. S. Mohan
24. A.S. Attli
25. P.V. Taranekar
26. M.Y. Pisolkar
27. Y.V.S. Mahender
28. Jagveer Sheemar
29. S. Ahlawat
30. N.K. Srivasatava
31. V.P. Gore
32. G.M. Tambe
33. N.R. Reddy
34. S.N. Nile
35. G.P.V. Rao
36. P.S. Kulkarni
37. R.V. Gaiwad
38. V.T. Patil
39. K.J.P. Reddy
40. G.S. Rao
41. K. Ramchandran
42. M.K. Shukla
43. Mohan Joseph
44. Gopalkumar B. Tilak
45. Amlesh Kumar
46. Arun Madhavrao Kolhe
47. Nandlal Pa
48. Piyush K. Krate
49. Morsingh A. Awa
50. Pramod P. Awa
51. B.S. Mahale
52. D.L. Gangurde
53. Anil Manohar Miray
54. Rajesh A. Bavale
55. P.P. Kulkarni
56. R.D. Repote
57. Nayakanti Nagesh
58. Padmajakshan K.S.
59. D. Ravikumar
60. Rajesh K. Vaidya
61. Sanku Shankar
62. Shyamkumar Pariyangat
63. U. Sambasiva Rao
64. P. Sivaram Prasad Rao
65. H.M. Ramtekkar
66. U.M. Bhalerao
67. P.D. Raya
68. V.H. Shejwal

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Applicants

All working in the post of
Jr. Supervisor in India
Security Press/Currency
Note Press at Nasik.

(By Advocate Shri G.K. Masand).

O.A No.379/2006

1. S.R. Pagar
2. K.M. Kharde

3. B.K. Fulzele
4. Yogesh Disawal
5. S.V. Sarwate
6. P.S. Kawishwar
7. R.A. Shirsat
8. D.T. Telangi
9. D.L. Satbhai

... Applicants

All working as Deputy
Works Engineer in India
Security Press/Currency
Note Press at Nasik.

(By Advocate Shri G.K. Masand).

OA No.428/2005

1. Vijay D. Kasbe
2. Vikas S. Dighe
3. Debanjan Chakraborty
4. Kanhirakkuzhi Sugunan
5. Homi Bobby Patel
6. Manohar Singh Thakur
7. Mahendra N. Piprikar
8. Shrawan P. Atram
9. Suhas P. Kordé
10. Monoranjan Padhi
11. Prasanna Kumar Mansingh
12. Abhijit Sengupta
13. Vangari Haribhau
14. Sajjansingh Rajpurohit
15. Narinder Nath Kumar
16. Sanjay L. Bhandare
17. Nitin M. Budhale
18. Arun Kumar Ghoshal
19. Hemant N. Kamlaskar
20. Ashim Kumar Dhar
21. Sunil Kumar Tiwari
22. Bharat E. Patil
23. Sanjay R. Pawar
24. Nitin B. Kshatriya

... Applicants

All working as Supervisors
with the ISP/CNP,
Jail Road, Nahik Road,
C/o. Vijay D. Kasbe,
Quarter No. D-4. ISP,
Estate, Nashik Road.

(By Advocate Mrs. Seema Sarnaik with Shri
Chetan Agarwal)

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.

2. The Joint Secretary
(Currency, Coinage &
Admn. Deptt. Of Economic
Affairs, Ministry of
Finance, North Block,
New Delhi.
3. The General Manager,
India Security Press,
Jail Road, Nasik.
4. The General Manager,
Currency Note Press,
Jail Road, Nasik.

... Respondents in
OA.413/05, 726/05, 379/06
& 428/05.

OA No.688/2005

Rajkumar L. Sonkar
Supervisor,
ISP/CNP, Jail Road,
Nashik Road.
C/o. 9, Sangam Apartment,
OM Nagar, Jail Road,
Nashik Road.

... Applicant

(By Advocate Mrs.Seema Sarnaik with Shri
Chetan Agarwal)

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. The Joint Secretary
(Currency, Coinage &
Admn. Deptt. Of Economic
Affairs, Ministry of
Finance, North Block,
New Delhi.
3. The General Manager,
Currency Note Press,
Jail Road, Nasik.

.... Respondents

OA No.1352/1995

1. Shri C. Ravindran
Assistant Works Manager
2. Shri S.C. Naik
Assistant Works Manager
3. Shri N.D. Rajpathak

Selection Gr. Eng.

4. Shri Y.V. Patil
Selection Gr. Eng.
5. Shri A.B. Jadhav
Selection Gr. Eng.
6. Shri P.S. Homkar
Selection Gr. Eng./Melder
7. Shri A.A. Sernaik
Eng./Melt,
8. Shri N.D. Natu
Eng./Melt,
9. Shri Shrinivasan
Eng./Melt
10. Shri J.N. Khandekar
Eng./Melt
11. Shri S.L. Ghadge
Eng./Melt

All the applicants in
India Govt. Mint,
Fort, Mumbai - 01.

... Applicants

Vs.

1. The Union of India
Through Secretary
Ministry of Finance
Deptt. Of Economic
Affairs, North Block,
New Delhi - 110 001.

2. The Governor
India Govt. Mint
Fort, Mumbai - 01.

... Respondents

OA No.769/1996

Shri N.R. Chaudhary
Deputy Works Engineer,
Currency Note Press,
Nashik Road.
R/at. 5-Shramik Society,
Lokmanya-Nagar,
Bitco Factory Road,
Nashik Road - 422 101.

... Applicant

Vs.

1. Union of India

through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. The General Manager,
Currency Note Press,
Nashik Road - 422 101.

... Respondents

OA No.354/1996

Shri Yasha Guru Swamy
Inspector, Departmental
Security Orgn.
R/at. House No.408
Vill. Sansari, P.O.
Devlali Camp,
Dist: Nashik.

Applicant

(By Advocate Shri D.V. Gangal in OA.Nos.
1352/95, 769/96 & 354/96)

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Department of
Economic Affairs,
New Delhi - 110 001.

2. The General Manager,
Indian Security Press,
Nashik Road - 422 101.

... Respondents

(By Advocate Shri V.S. Masurkar in all
the matters)

O R D E R

Per : Shri Sudhakar Mishra, Member (A).

A brief introduction of the applicants in these
OAs is given below:-

Tr.A.1/1995

In this matter there were 8 original petitioners
before the Hon'ble High Court in Writ Petition
No.3150/1988. At the relevant time they worked as
Supervisor, Works Engineers, AMO, Sister in charge, Jr.A.O.

and a Sectional Officer, all of them working in the Currency Note Press, Nashik (herein after CNP).

O.A.411/2005

In this O.A. there are 50 applicants, all working as Inspector (Control) in CNP.

O.A.413/2005

In this O.A. there are 14 applicants and they are working as Works Engineer or as Dy. Works Engineer in the India Security Press (herein after ISP) and CNP.

O.A.294/2005

The lone applicant in this O.A. is working as Supervisor in ISP.

O.A.726/2005

In this O.A. there are 68 applicants and all are working as Jr. Supervisors in ISP/CNP.

O.A.379/2006

In this O.A. there are 9 applicants and all are working as Dy. Works Engineer in ISP/CNP.

O.A.428/2005

In this O.A. there are 24 applicants and all are working as Supervisors in ISP/CNP.

O.A.688/2005

The only applicant in this O.A. is working as Supervisor with ISP/CNP.

O.A.769/1996

The only applicant in this O.A. is working as Dy. Works Engineer in CNP.

O.A.354/1996

The only applicant in this O.A. is working as

Inspector of Departmental Security in ISP.

O.A.1352/1995

In this O.A. there are 11 applicants who are working as Asstt. Works Manager/Engineers at various grades, in India Government Mint.

2. As can be seen from the above, excepting for the applicants in O.A.1352/1995 all other applicants are employees in the ISP/CNP. The common grievance of applicants in all the OAs is that they have been illegally denied Double Overtime Allowance (herein after DOTA) to which they are legally entitled. A common legal point being involved and the respondents, excepting for in one O.A., being common the OAs were taken up together for hearing. They are also disposed of through this common order for the sake of convenience.

3. Context:

Tr.A.1/1995

The applicants in this O.A. had originally filed Writ Petition No.3150/1988 before the Hon'ble High Court of Bombay. As per order dated 10.02.1995 of the High Court, the Writ Petition was transferred to this Tribunal for hearing and disposal in accordance with law. It was consequently numbered as Tr.A.No.1/1995. This application alongwith a few other OAs involving common grievance, was disposed of as per order dated 25.7.1997 of the Tribunal. The OAs were dismissed on the reasoning that the Tribunal has no jurisdiction to deal with the applications airing grievances as to overtime allowance under the Factories Act. Against the Tribunal's decision only one of the

original applicants viz. Shri P. Mahadevayya of Tr.A.1/1995 alongwith another, Shri O.P. Khanna, who was the sole applicant in O.A.108/1997 which was one of the OAs disposed of through the said order dated 25.7.1997, had approached the Hon'ble High Court of Bombay by filing Writ Petition No.932/1999, which was disposed of as per judgment and order dated 01.03.2007 of the High Court. Following their earlier decision dated 31.01.2006 in Writ Petition No.4917/2001 involving similar issue, wherein the Hon'ble High Court had remanded the matter back to the Tribunal for reconsideration, the matter was remanded to the Tribunal for reconsideration. The learned counsel for applicants Shri K.R. Yelwe has submitted that the cases of only these two petitioners; namely, Shri Mahadevayya of Tr.A.No.1/1995 and Shri Khanna of O.A.108/1997 be considered at this stage.

3.1 We, however, find that actual wordings of the Hon'ble High Court's order dated 01.03.2007 allows us to consider the grievances of all the applicants in Tr.A.No.1/1995 and not of the applicant in O.A.No.108/1997. The relevant portion of the High Court's order is reproduced below:-

"....., the impugned order dated 25.7.1997 in Tr.A.No.1 of 1995 is set aside and the matter is remanded back to the Tribunal for reconsideration and disposed on merits."

Accordingly, we are obliged to consider the grievances of all the applicants in Tr.A.No.1/1995 and not of the applicant in O.A.No.108/1997. However, for the reasons subsequently given in this order it is the claim of Shri Mahadevayya which only will be considered.

4.

O.A.294/2005

It was originally disposed of as per order dated 29.9.2005. The Tribunal followed its earlier order dated 04.04.2005 in O.A.26/2000 filed by one Shri A.K. Biswas and others. The Tribunal held that the applicant was entitled to DOTA whenever he performed duty in excess of 48 hours per week, in accordance with the provisions of Section 59 (1) of the Factories Act. The Tribunal gave certain other directions as to payment of arrears, recoveries etc.

4.1 The Respondents challenged the Tribunal's order dated 29.9.2005 by filing Writ Petition No.9227/2005 before the Hon'ble High Court of Bombay. As per its judgment and order dated 06.11.2006 the Hon'ble High Court quashed and set aside the Tribunal's order and restored the matter to the Tribunal for being decided afresh in terms of directions given by the Hon'ble High Court in Writ Petition No.5956/2005, details of which are subsequently given in this order.

5.

O.A.769/1996, 354/96 & 1352/1996

These 3 OAs were originally disposed of as per order dated 14.01.1998 of the Tribunal. The Tribunal had dismissed the OAs on the reasoning that they were not maintainable since the relief claimed was grant of overtime allowance under the Factories Act. The applicants challenged the Tribunal's order by filing Writ Petition No.3113/1998 before the Hon'ble High Court of Bombay. The High Court as per its judgment and order dated 22.01.2008 set aside the Tribunal's order and have remanded the applications to the Tribunal for being heard afresh. In

doing so the Hon'ble High Court have followed their own decision dated 27.01.2005 in Writ Petition No.4917/2001, referred supra, under paragraph 3.

6. Rest of the OAs; i.e.411/2005, 413/2005, 726/2005, 379/2006, 428/2005 and 688/2005 have come up for disposal for the first time.

7. The Writ Petition No.4917/2001, which has been referred to by their Lordships of Bombay High Court in their above mentioned decision dated 22.01.2008 on Writ Petition No.3113/1998 and decision dated 01.03.2007 in W.P.No.932/1999, was filed by one Shri A.K. Biswas and 20 others against the order dated 19.1.2001 of the Tribunal dismissing the O.A.No.26/2000 filed by Shri Biswas and 20 others claiming DOTA. The Tribunal had dismissed the O.A. on the ground that the dispute raised was a matter to be dealt with under the Factories Act and hence was outside the jurisdiction of the Tribunal in view of the provisions of Section 28 (b) of the Administrative Tribunal's Act, 1985. In taking that decision the Tribunal had relied on the judgment of the Hon'ble Supreme Court in the case of Krishan Prasad Gupta vs. Controller Printing & Stationary [(1996) 1 SCC 69]. The Hon'ble High Court reversed the Tribunal's decision by holding thus:-

".....Undisputedly, there is no authority under the Factories Act for preferring a claim for overtime wages. Such a claim can be filed before the Labour Court constituted under the Industrial Disputes Act by a workman as defined under Section 2(s) of the Industrial Disputes Act. Therefore, although the Factories Act may be a corresponding law, there is no authority under that Act set up for claiming overtime wages. A person who is not a workman under the Industrial Disputes Act would,

therefore, have no recourse to the Labour Court constituted under the Industrial Disputes Act for claiming overtime wages payable under the Factories Act. Obviously, therefore, the jurisdiction of the Administrative Tribunal is not excluded as there is no authority under the corresponding law that is the Factories Act."

Accordingly, the Hon'ble High Court set aside the Tribunal's order in that case and remanded the matter back to the Tribunal for fresh consideration.

8. On remand the Tribunal allowed the application as per its order dated 04.04.2005. That order was challenged by the respondents before the Hon'ble High Court of Bombay through Writ Petition No.5956/2005. While dealing with that Writ Petition the Bombay High Court noticed the judgment and order dated 08.10.1992 of the Hon'ble Supreme Court in SLP No.866/92 in the case of General Manager, India Security Press Vs. Dr.H.M. Datar and others wherein the Hon'ble Supreme Court had made the following observation:-

"It is also relevant to mention that such liability for overtime has ceased with the amendment, of Section 70 of the Bombay Shops and Establishment Act, 1948, with effect from 26.6.1986 as the amendment has the effect of deleting the non-obstante clause in Section 70, as it stood earlier."

Thereupon the Hon'ble High Court made the following observation while disposing the aforesaid Writ Petition No.5956/2005:-

"Under the pre-amended provisions, Supreme Court had held that the non-obstante clause in Section 70 of the Bombay Shops and Establishments Act, 1948 had the effect of overriding even the exemption provisions viz., Section 64 of theread with Rule.....judgment of the

Tribunal overlooks the effect of the amendment to the governing legislative provisions.

The exemption that has been provided in Rule 100 of the Maharashtra Factories Rules, 1963 inter alia applies to supervisors by virtue of clause (x) of sub-rule (1). Sub-rule (1) defines persons who shall be defined to hold positions of supervision or management provided they are not required to perform manual labour or clerical work as a regular part of their duties. Therefore, the question as to whether the exemption would apply to the Respondents - who are supervisors would depend upon whether the nature of their duties is such that they are not required to perform manual labour or clerical-work as a regular part of their duties. This is a factual issue upon which the primary determination would have to be made by the Central Administrative Tribunal". (emphasis supplied).

9. In that Writ Petition (No.5956/2005) filed by the Union of India, the respondents were Shri A.K. Biswas and others who are Supervisors in the Technical Section of ISP and CNP. As a prelude to the judgment in that case their Lordships of the Hon'ble High Court have stated thus under paragraph 2 of the order:-

"2. The Central Administrative Tribunal has allowed the claim preferred before it by the twenty one Respondents for the payment of Overtime Allowance at 'double the rate' whenever duties have been performed in excess of 48 hours per week in accordance with the provisions of Section 59 (1) of the Factories Act, 1948. Arrears have been directed to be paid for a period of one year prior to the date of the institution of the application before the Tribunal. The Union of India has petitioned. For the reasons we indicate now, we have concluded that the Tribunal has overlooked a crucial change in legislative position. We remand the proceedings for fresh determination."

10. The Hon'ble High Court noticed the judgment dated 31.3.1984 of the Hon'ble Supreme Court of India in the case

of Union of India Vs. G.M. Kokil [Civil Appeal No.2736(NL) of 1972] wherein the claim to DOTA of several categories of employees engaged in ISP was under consideration. Having regard to the provisions of Section 70 of the Bombay Shops and Establishments Act, 1948, the Hon'ble High Court upheld the decision of the Labour Court that the exemption provisions of Section 64(1) read with Rule 100 of the Maharashtra Factory Rules 1963 would not apply and that the respondents in that case were entitled to claim DOTA under Section 59 of the Factories Act, read with Section 70 of the Bombay Shops and Establishments Act. The High Court noted that Section 70 of the Bombay Shops and Establishments Act, 1948 was amended with effect from 21.10.1986 and as a result of the amendment expanded applicability of the provisions of Factories Act to all persons employed in a Factory was no more permissible under Section 70 of the Bombay Shops and Establishments Act.

11. The Hon'ble High Court also noted that in a judgment dated 08.10.1992 of 3 Hon'ble Judges of the Hon'ble Supreme Court in SLP No.866/1992 in the case of General Manager, ISP Vs. Dr.H.M. Datar, the Hon'ble Supreme Court have referred to the amendment of the said Section 70 of the Bombay Shops and Establishments Act and have observed that liability for overtime has ceased with that amendment. Analysing these decisions the Hon'ble High Court have held that the eligibility of the respondents in W.P.No.5956/2005 to the benefit under Section 59(1) of the Factories Act, 1948 can be considered only after examining the factual position as to the provisions of the said Rule

100 of the Maharashtra Factory Rules which exempts, inter alia, Supervisors from the benefits under the Chapter 6 of the Factories Act, which includes the benefit of DOTA.

12. As per Rule 100 of the Maharashtra Factories Rules the categories of persons as named therein shall be deemed to hold positions of supervision or management within the meaning of sub-Section (1) of Section 4 (of the Factories Act) provided they are not required to perform manual labour or clerical work as a regular part of their duties. (emphasis provided). One of the categories mentioned therein is Supervisor. Having noted the above mentioned judgments and provisions of law, the Hon'ble High Court had decided in the following manner:-

"16. In these circumstances, we are of the view that it would be only appropriate and proper that the impugned decision of the Tribunal is set aside and the matter is remanded back for fresh consideration in the light of this decision. We order accordingly. We, however, clarify that it would be open to the Respondents to move an application for amendment of their pleadings, if they are so advised, to place before the Tribunal all the relevant material having a bearing on the question as to whether the Respondents are or are not required to perform manual labour or clerical work as a regular part of their duties. It would be open to the Petitioners, should such an application be allowed by the Tribunal, to file a reply on merits as well. The impugned judgment of the Tribunal is quashed and set aside and OA.26 of 2000 is restored to the file of the Central Administrative Tribunal, Mumbai for fresh determination....."

13. The Tribunal looked into the merit of the claim for DOTA and came to the conclusion that the applicants in that O.A. were not entitled to get it. The operative part of the order is reproduced hereunder:-

"7. In view of the discussion and our clear-cut finding that applicants are neither performing nor are required to perform manual labour or clerical work as a regular part of their duties, we have no hesitation in holding that they are not entitled to get OTA at double the rates as a workman. Accordingly, the O.A. is dismissed. No order as to costs."

Aggrieved by the aforesaid order dated 15.9.2006 of the Tribunal the applicants in that O.A.; namely, Shri A.K. Biswas and others; have filed the Writ Petition No.2603/2007 before the Hon'ble High Court of Bombay, which is pending consideration.

14. Submissions:

14.1 Before us arguments on behalf of the applicants were mainly advanced by learned counsel Shri G.K. Masand and Smt.Seema Sarnaik, supplemented by learned counsel Shri D.V. Gangal.

15. Shri G.K. Masand has submitted that the applicants in O.A.411/2005, 413/2005, 726/2006 and 376/2006 were being paid DOTA whenever they performed duty in excess of 48 hours in a week, as per the provisions of Section 59(1) of the Factories Act. But when their pay reached at Rs.5900/- the DOTA was stopped and a meagre sum of Rs.600/- was paid to them as special allowance. The learned counsel has contended that since the applicants performed manual work as a part and parcel of their duty, DOTA is payable to them even after their pay crossed Rs.5900/-. The nature of their duty remained the same and hence the artificial distinction in denying DOTA is illegal.

15.1 It has been further submitted that although as per record the applicants are to be in charge of a "Section",

such "section" in reality is a huge composite machine which is put under the respective applicant.

15.2 In spite of modernization done, the work content of the applicants has not changed inasmuch as whatever duties they used to perform entirely by themselves, they are still doing it but by taking the help of gadgets. The applicants are to work on the shop floor along with workers. It is their duty to ensure that the machines under their charge have trouble free and continuous operation. For that purpose the applicants and similarly placed employees have to take specialized training. During the course of manufacturing process they have to keep constant watch and have to do trouble shooting themselves so as to eliminate any aberration arising during the course of printing.

15.3 The learned counsel for applicants has further submitted that it is only in the matter of A.K. Biswas and others in O.A.26/2000 that the applicants are not getting double DOTA due to the decision dated 15.09.2006 of this Tribunal. But that decision is subjudice before the Hon'ble High Court. On the other hand, in many cases the Tribunal has passed orders granting DOTA. The learned counsel for applicant has particularly referred to the decision dated 20.06.1994 of the Tribunal in O.A.No.1312/1993, the SLP against which was dismissed by the Hon'ble Supreme Court on 16.10.1994. Besides, decision dated 20.06.1994 in O.A.202/1994 and decision dated 25.06.1994 in O.A.29/1996 have been referred to.

16. Learned counsel Smt.Seema Sarmaik has referred to Section 59(1) of the Factories Act which provides as under:-

"59. Extra wages for overtime.-(1) 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."

Further reference is made by the learned counsel to the definition of 'worker' as given under Section 2(1) of the Factories Act. The same is reproduced hereunder:-

"(1) "worker" means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not,] in any manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, [but does not includes any member of the armed forces of the Union;]"

16.1 Referring to the above provisions the learned

counsel has submitted that the applicants in her cases

(OA.428/2005 and 688/2005) are employed in the

manufacturing process and besides doing hands on

performance on the machines they also do several other

kinds of work incidental to and connected with the

manufacturing process. Therefore, there cannot be any

doubt that the applicants are workers entitled to DOTA as

per the provisions of Section 59(1) of the Factories Act.

16.2 The learned counsel has further submitted that

ordinarily the provisions of Section 64(1) of the Factories

Act and Rule 100 of Maharashtra Factories Rules would of

course be applicable. But, then, the actual work content

of the supervisors have to be seen. In this connection she

has referred to Exhibit A-4 annexed to the O.A.428/2005

wherein duties of Supervisors have been listed. Pointing

at several items in that list the learned counsel has

argued that such duties necessarily involve hands-on working of the Supervisors on the machines as a regular part of their duties. The respondents have not raised any objection against the duty list as given by the applicants. Under the circumstances mere nomenclature as Supervisor conceals actual work content, which includes manual work on machines.

16.3 Referring to the list of duties of Supervisors as given by the respondents in O.A.428/2005 at pages 138 and 139, the learned counsel has pointed out several items which require hands-on-working by the Supervisors on the machines allocated to them. Since the applicants actually perform manual labour as required by their duties, learned counsel has submitted that their claim for OTA does not get hit by the Rule 100 of the Maharashtra Factories Rules.

16.4 The learned counsel has reiterated that there is unreasonable discrimination in denying DOTA to the applicants. So many similarly placed workers are being paid DOTA just because those fortunate ones have the benefit of judgments in their favour; including the judgment of the Hon'ble Supreme Court. The respondents as ideal employer cannot deny similar benefit to the applicants.

16.5 Briefly referring to the judgment dated 31.01.2006 in Writ Petition No.5956/2005 the learned counsel has submitted that the applicants do not claim any benefit under the Bombay Shops and Establishments Act. Therefore, the provisions of that Act are in no way applicable. The benefit is claimed under the Factories Act and that claim

should be adjudged as such.

16.6 The learned counsel has submitted that the applicants claim support from several earlier decisions with which the subsequent decision dated 15.09.2006 of this Tribunal in the case of A.K. Biswas and others differs, in violation of the well recognized principles of judicial precedence and hence the decision in that case has to be regarded as per incuriam. In any case, the decision in A.K. Biswas's case has been challenged before the Hon'ble High Court wherein even the factual finding of the Tribunal are under challenge. Under the circumstances, the legal pronouncements in A.K. Biswas's case cannot be regarded as valid precedent.

16.7 The learned counsel has referred to the decision dated 06.01.1993 of this Tribunal in the case of A.P. Padwal and others. Referring to Para 3 thereof the learned counsel has submitted that the Tribunal had taken into account the rejoinder affidavit filed on behalf of the applicants wherein details were given to demonstrate that the applicants in that case are really performing work of manual nature. It may be stated that the applicants in Padwal's case worked as Supervisors in the CNP alike many of the applicants in the matters presently under consideration. Having regard to those details on record the Tribunal held that the conclusion is inescapable that the applicants in that case even though were Supervisors they were also performing manual work. After due consideration of the provisions of Section 64(1) of the Factories Act read with Rule 100 of the Maharashtra

Factories Rules, the Tribunal held that the applicants in that case were entitled to DOTA as per the provisions of Section 59(1) of the Factories Act. The learned counsel has pointed out that the SLP against that decision of the Tribunal was dismissed by the Hon'ble Supreme Court of India after the undertaking given on behalf of the respondents (original applicants before the Tribunal) that upon payment of DOTA they would not claim and would not be entitled to the special allowance as separately ordered to be given to them. The learned counsel has pointed at several other decisions of this Tribunal granting DOTA to similarly placed employees.

16.8 Learned counsel Smt. Seema Sarnaik has also relied upon the decision of a Single Judge Bench of the Hon'ble High Court of Bombay in the case of Union of India & Another Vs. Arun Vithal Bonde & others. The decision in that case has been rendered on 03.03.2010 while disposing of Writ Petition No.3061/1997. The applicants therein were working in the Hospital established by the India Security Press for the purpose of rendering medical assistance to the employees, staff and officers of ISP. The question was whether they were entitled to DOTA. The Hon'ble High Court decided in favour of the respondents.

17. Learned counsel Shri D.V. Gangal representing the applicants in O.A.No.1352/1995, 354/1996 and 769/1996 has submitted that the ISP/CNP and the Mint carry on manufacturing process and hence are Factories. The applicants being employed in the Factory, Section 59(1) of the Factories Act becomes operative in their favour.

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 Rules and, consequently, ~~have~~ to be satisfied with the 'special allowance' that they are getting as per the decision of the respondents.

18.1 Referring to the description of duties as mentioned by some of the applicants in the resume given by them in their ACRs, the learned counsel has submitted that the applicants themselves admit that they are put in over all charge and have over all responsibility of functioning of a section. In the course of discharging the duties of their job they may be occasionally doing some tinkering with the machines but by no stretch of imagination that can be taken to be manual labour. In fact each of the Supervisor and the Engineer presently before the Tribunal have several subordinates under them who actually carry out manual work. The learned counsel has submitted that similarly placed technical Supervisors; namely Shri B.A. Vaishampayan and 15 others; had filed application under the Industrial Disputes Act, 1947 before the CGIT claiming DOTA on the basis of this Tribunal's decision in O.A.1312/1993

which was upheld by the Hon'ble Supreme Court as per their order dated 26.01.1994 (Exhibit 4). The applicants before the CGIT had also claimed support from the decision of this Tribunal in Padwal's case (supra). However, the CGIT turned down the claim of the applicants in that case by giving the finding that the applicants were not workmen within the meaning of the Section 2(s) of the Industrial Disputes Act, 1947 and hence not entitled to relief.

18.2 The learned counsel has further submitted that the applicants performed the duties of Supervisors and are not actually engaged in physically doing any manual labour. There are groups of workmen working under each of the applicants who actually are engaged in physically doing manual labour.

18.3 The learned counsel has drawn attention to the decision dated 15.09.2006 of this Tribunal in the case of A.K. Biswas and others and has submitted that the said decision is the latest decision of this Tribunal on the issue and constitutes a valid precedent, particularly because it takes into consideration all upto date legal pronouncements on the issue. Referring to the operative part of that decision the learned counsel points out that the applicants in that case who were similarly placed Supervisors, were found to be neither performing nor being required to perform manual labour or clerical work as a regular part of their duties.

18.4 Further referring to the judgment in Vazifdar's case (supra) the learned counsel has submitted that the decision in that case has no application in the matters

under consideration as that case involved the case of a group 'D' employee who in any case does only manual work.

18.5 Arguing that the decision dated 15.09.2006 of this Tribunal in the case of A.K. Biswas and others constitutes valid prejudicial precedent, the learned counsel for respondents has referred to the decision of the Hon'ble Supreme Court in the case of State of Bihar Vs. Kalika Kuer and others [(2003) 5 SCC 448] wherein their Lordships of the Hon'ble Supreme Court after referring to several judgments of the Hon'ble Supreme Court have observed as under:-

".....In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, in the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits....."

Shri Masurkar has submitted that this Tribunal has given the finding that the Supervisors who were applicants in O.A.26/2000 did not perform manual work as a regular part of their duties and as such were not entitled to DOTA.

19. Decision

19.1 Having perused the pleadings and other materials on record and having considered the submissions made before

us on behalf of the parties, we find that the following is the only question common to all the applications under consideration, which needs to be addressed by this Tribunal. That is, "whether the applicants are entitled to double overtime allowance as per the provisions of Section 59(1) of the Factories Act". It is not in dispute that the respondents ISP, CNP and India Government Mint constitute factories within the meaning of the definition of factory as contained under the Section 2(m) of the Factories Act. It is also not in dispute that the applicants in these OAs are employed in the respondent factories. Those of the applicants who are Technical Supervisors put in charge of Sections or Machines used for manufacturing process come within the definition of 'worker' as given under Section 2 (1) of the Factories Act. The applicant Works Engineers (Electrical) are also engaged in work incidental to or connected with manufacturing process. So also are the Inspectors (Control) or even the Inspector, Security. But for the provisions of 64(1) of the Factories Act read with the provisions of Rule 100 of the Maharashtra Factories Rules, all these applicants would otherwise have been entitled to the benefits of the Section 59(1) of the Factories Act. So the question for consideration of this Tribunal gets modified in the following manner:-

"Whether in the facts and in the circumstances of the cases the applicants in these OAs are entitled to double OTA under Section 59(1) of the Factories Act, even after considering the provisions of Section 64(1) of the Factories Act, 1948 read with the provisions of Rule 100 of Maharashtra Factories Rule, 1963?"

For deciding this question we have to look into the actual

contents of the duties / works performed by these applicants.

20. But while doing so, we cannot be oblivious of the decision of this Tribunal in the case of A.K. Biswas and others, which is now subjudice before the Hon'ble High Court of Bombay. That will be the additional issue to be addressed.

21. At this stage the requirement as per the provisions of Rule 100 of the Maharashtra Factories Rules may be analysed. As has been discussed earlier, the supervisory or management personnel as listed under said Rule 100 would not be entitled to DOTA if they are not required to perform "manual labour or clerical work as a regular part of their duties". It is to be noticed that the words "manual labour" and "clerical work" have been arranged in sequence by putting the conjunctive "or" in between. The conjunctive "or" is used to state alternatives. Therefore, the requirement is that it may be manual labour or clerical work, either of the two, not both.

21.1 The words 'manual labour' and 'clerical work' have not been defined in the Maharashtra Factories Rules, 1963. A good guide would be dictionary meanings of these words. The Oxford English Dictionary gives the contextual meaning of the word manual as "working with the hands", "operated by the hands". It gives the meaning clerical work as "relating to the work of an office clerk". The meaning of the word 'clerk' as given therein is "a person employed in an office or Bank to keep records or accounts and to undertake other

administrative duties". Further contextual dictionary meaning of the word 'regular' is usual or often.

21.2 The Webster's Online Dictionary defines the adjective "manual" as "doing or requiring physical work, done or made by hand". It defines "clerk" as "an officer or a person employed in an office, public or private for keeping records or accounts. His business is to write or register, in proper form the transaction of the Tribunal or body to which he belongs". It further defines the word "regular" when used in adverb form - it has been so used in Rule 100 of Maharashtra Factories rules - thus; "in a standard or normal manner".

21.3 Therefore, if a worker usually performs manual labour or clerical work in the course of the discharge of his duties, notwithstanding the designation of the post he holds in a factory he shall be entitled to DOTA under Section 59(1) of the Factory Act. Now to analyse the factual position of these OAs.

O.A.294/2005

22. The lone applicant in this O.A. worked as a Supervisor in the ISP/CNP at the relevant time. This O.A. was originally disposed of as per order dated 29.09.2005 of this Tribunal by allowing the O.A. The respondents had challenged that decision by filing Writ Petition No.9227/2005 before the Hon'ble High Court of Bombay. The High Court disposed of the Writ Petition as per order dated 06.11.2006 by restoring the O.A. to the file of the Tribunal for being decided afresh in terms of the directions given by the Hon'ble High Court in its order

dated 31.01.2006 in Writ Petition No.5956/2005. To recapitulate the directions given by the Hon'ble High Court in the said decision dated 31.01.2006, the Hon'ble High Court had remanded the matter for fresh consideration in the light of the discussion made in that case. The Hon'ble High Court had also given liberty to the respondents (original applicants) to move application to amend the pleadings so as to place all the relevant material having a bearing on the question as to whether they are required to do manual labour or clerical work as a part of their duties.

23. In the present case the single applicant Shri Arvind Sen has not moved any such application for amendment of the pleadings for bringing on record details of duties performed by him. Careful perusal of the pleadings shows that the applicant has not furnished such details. The respondents, however, have furnished the details as given by the applicant himself by way of description of duties performed by him, in Part-II of the self-appraisal report of the Annual Confidential Reports (herein after ACRs). The respondents have also submitted the original ACRs of the applicant for two years.

23.1 It is seen that during the period 2000-2001 to 31.03.2001 the applicant was working in the CNP in the capacity of Technical Supervisor. Besides doing supervision he had himself worked in the following manner (relevant portion taken from Exhibit R-4):-

"1) During the year 2000-2001 I have devoted myself to extract full quota of work i.e. worked in the lines to achieve targeted output with required quality.

2) I have also performed key handling work in CNP(I) and CNP(II) apart from my regular

duties whenever situation demanded.

....
4) Preventive maintenance work from my
staff, workmen and from myside was
satisfactory because during the year we were
able to solve the mechanical, Electrical and
computer problems by our own....

(5) Changeover of work was done from myside
in shortest possible time by keeping the
spare numbering box ready for on line
changeover. Regular checking of numbering
wheel magnets, their repairing also helped in
cut shorting the make ready time...."

The Reporting Officer of the applicant under the column "General Assessment", which included report on skill in technical work, has reported in the following manner:-

"He is having good knowledge of numbering machines. He is doing quick changeover as required. He has good attitude to learn new things and techniques."

During the year 01.04.2003 to 31.03.2004 the applicant as reported by him had done the following works in addition to his normal supervision duties:-

"....During the said period i.e. in a year 3 types of travel document were prepared and a achievement is given below. (1) MRP Ordinary Passport- 37,14500 Booklets. (2) MRP Official passport - 13,000 Booklets (3) MRP Diplomatic passport - 2500 Booklets Total passport - 3730000 Booklets. Above mentioned jobs of travel documents were successfully completed by us, even under adverse working environment - due to non availability of proper grades of workmen. We are working in D/s and N/s with lunch hour working without any additional Man power. Under this circumstances we have to do actual practical work alongwith workmen whenever situation demanded.....

I am trying to utilise my experience by giving instruction and guidance to fellow staff members in day to day sectional work, trying to set example in front of them so that good team work is achieved and good work is extracted to maximum, with quality."

O.A.726/2005

Supervisors. The pleadings in this case do not contain the details of duties performed by the applicants. The first applicant in O.A.726/2005 Shri M.S. Rao has not been specific about his own personal involvement in work but his Reporting Officer has noticed that he is hard worker in nature and has good technical knowledge. But the self-appraisal written by his colleague and co-applicant Shri B.V. Durgaprasad and also his Reporting Officer's comments are eloquent. While describing his duties he mentioned, inter alia, that he looks after the allotted machines by exerting physically for sorting printing and numbering machine related problems so as to achieve precision setting as and when required. He also executes "changeover make ready operations" as per requirement of printing and numbering. In his resume of work done during the year 01.04.2004 to 31.03.2005 he writes the following:-

~~"It is my pleasure to work in this Rapida~~
 section, where highly sophisticated machines
 were installed and constant printing
 changeovers carrying. It helps me to work
actively. I have gained knowledge of
 printing of various security documents and
 its specific standards. I have worked
physically exert on machines to ensure
targeted with excellent quality of printing
of all security jobs." (exact
 reproduction).

His Reporting Officer gives the following general assessment:-

"He is hard worker and good technical hand exerts physically on machines for carrying out make ready different security jobs printed on Rapida o/s printing machines equipped with on line NBG system minor settings and machine alignments he carries out skilfully."

24.1 Another co-applicant in O.A.726/2005 Shri S.K.

Misra writes, thus, in his resume for the year 01.04.2004 to 31.03.2005:-

"During the period under report I have worked in SUSI II Section. I was engaged on machine for supervision and attended various key technical setting on machine whenever problem arises. Always try to curtail the down time and maintained the trouble free running of the machine."

In this case also the Reporting Officer of Shri S.K. Misra certifies that he is skillful in technical work.

O.A.428/2005

25. The applicants in this O.A. are working as Technical Supervisor with ISP/CNP. The applicants in this O.A. have brought on record details of duties performed by them by way of Exhibit A-4. Besides quite a few Supervisory functions, the applicants have stated the following as their duty:-

"5. To attend to the operation at different units such as setting right malfunctioning of feeder, side-lay, double-sheet detector, photocell etc. and ensure uninterrupted run.

6. Setting of rollers, replacement of unserviceable rollers and re-setting.

7. Putting on plates and precise registration.

8. Putting on blankets with proper underpacking and trials till printing settles down..

9. Mending punctures on the blankets on intricate sports.

...

...

13. To undertake intricate settings and timings physically such as pressure setting, feeder to machine timing, side-lay timing, gripper setting etc.

...

...

30. In case of plate-making, to physically undertake the various processes by manual work at each stage such as mould-making,

preparation of assembly, degreasing, silvering, electroforming, 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....."

The respondents do not contend that there is any false submission on behalf of the applicants. On the contrary, the respondents refer to the same exhibit to highlight the supervisory duties performed by the applicants.

25.1 Shri Vikas S. Dighe, one of the applicants in this O.A., whose ACR for the year 2003-2004 has been supplied by the respondents, has written that even though the machines put under his charge were old, by his sincere effort he was able to achieve very good results. After giving details of achievement Shri Dighe writes, thus:-

"To achieve all these I have worked physically on machines, to attend all technical problems I shared my knowledge to my subordinates and guided them."

O.A.688/2005

26. Alike in the case of O.A.428/2005, in this case a list of duties of Supervisors has been brought on record which is exactly the same as the list in the other case. The applicant in this case originally worked as Asstt. Supervisor in the Studio Section of CNP and was then promoted as Supervisor. This is what he writes in his resume for the year 2002-2003 while he was working as Asstt. Supervisor.

"I have conducted spare parts trial and

submitted the suitability report with the help of Supervisor. As and when required I have done the minor/major setting of the machine and to reduce the down time of the machine and also I have carried machine's maintenance with the help of workshop personally. Whenever the writing work assigned by AWM and Supervisor I have completed in time."

His Reporting Officer has appreciated his work particularly his clerical skill of writing notes and drafts.

26.1 In the year 2004-2005 when the applicant was transferred and posted in Plate Making Section, his Reporting Officer has also appreciated his technical competence.

27. On application of mind to all the materials brought on record in this regard, we find that the Technical Supervisors do of course conduct supervision work but in addition have also do manual work and also clerical work as a regular part of their duties. Invariably all the Reporting Officers have commented on the noting and drafting skills of the Supervisors, which is ample testimony to a part of their work involving clerical work.

The Supervisors do not work / function away from the Section / machine allocated to them. They work basically on the shop floor, physically attend to technical problems as and when they arise, actually work themselves on the machines so as to minimize idle hours, they themselves make the "changeover / make ready" operations for fresh printing jobs as quickly as possible and even attend to minor repairs, besides doing trials of raw materials to assess their suitability. Considering performance of these duties we have absolutely no doubt in our mind that manual labour

and also clerical work is an integral part of the duties of Technical Supervisors and as such is a regular part of their duties.

28. The applicants in OA Nos.294/2005, 726/2005, 428/2005 and 688/2005 are, therefore, entitled to DOTA as per the provisions of Section 59(1) of the Factories Act.

29. We would be obliged to discuss as to whether it would be appropriate for us to take the above decision in view of the decision dated 15.09.2006 of this Tribunal in the case of A.K. Biswas and Others, which is under challenge before the Hon'ble High Court of Bombay. The respondents would argue that the said decision would constitute judicial precedent and would be binding on this Tribunal for deciding similar matters which, apparently, the above mentioned 4 OAs are. But we are not persuaded by that argument.

29.1 While saying so, we have to acknowledge that a decision of this Tribunal on a particular question of law with the same background facts, would be binding on co-ordinate Benches deciding matters involving similar question of law having similar background facts. The basic justification for judicial precedent is that once a decision of a Court of reference is final, there should be finality to the question of law involved. The same forum should not be speaking in different voices. But in this case this Tribunal's order dated 15.09.2006 is under challenge before the Hon'ble High Court and the very factual findings in that case appear to be under challenge.

29.2 In this connection the learned counsel Smt.Seema

Sarnaik has cited the decision of the Hon'ble Supreme Court of India in the case of Union of India Vs. West Coast Paper Mills Limited [2004 AIR (SC) 1596]. In that case the Hon'ble Supreme Court were considering an appeal against a decision of the Railway Rates Tribunal. Considering relevant submissions their Lordships of the Hon'ble Supreme Court have observed as under:-

"14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy."

29.3 In the case of C.I.T. Vs. Hindustan Housing and Land Development Trust Ltd. [161 ITR 524, SC] the Hon'ble Supreme Court were considering an appeal against a judgment of the Calcutta High Court as to taxability of the particular income in the relevant year. In the facts of that case the Hon'ble Supreme Court approvingly noticed a decision of the Gujarat High Court in the case of Topandas Kundanmal Vs. CIT [(1978) 114 ITR 237]; which in its turn, was based on Hon'ble Supreme Court's opinion in the case of Raja Harish Chandra Raj Singh V. Dy. Law Acquisition Officer (AIR 1961 SC 1500). The Hon'ble Gujarat High Court observed (P.247 of 114 ITR):-

"..... the legal position which emerges is that there is no liability in praesenti to pay an enhanced compensation till it is judicially determined by the final court since the entire question is in flux till the question is set at rest finally, we do not think that any enforceable right to a

particular amount of compensation
arises....."

30. Thus, once there is no finality as to a decision which is under challenge before a Higher judicial forum, even if no stay is in operation against that decision, we would view such a decision as having persuasive value and not having binding force.

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 DOTA; 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.5956/2005, 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.

34. As has been mentioned earlier, the applicants before us work either in the technical supervisory capacity or are engineers of various grades; a security Inspector, Inspector Control or Works Manager of various grades. All these categories to which the applicants belong fall within some category or other of the categories of personnel mentioned under Rule 100 of the Maharashtra Factories Rules excepting for the security Inspector, as will be discussed later in this order. We have so far analysed the cases of the technical supervisors. Now to analyse the cases of the other applicants.

Tr.A.No.1/1995

35. There are 8 applicants in this matter, all holding different posts. Of them it is only the applicant No.3 Shri P. Mahadevayya, working at the relevant time in the capacity of Works Engineer in the CNP, who has been represented by learned counsel Shri K.R. Yelwe. Although, as already mentioned, the entire matter in Tr.A.1/1995 was remanded to the Tribunal for consideration on merits and disposal it is seen that in one case; i.e. in the case of Applicant No.5 Dr.H.M. Datar, that he alongwith a few others had filed the Writ Petition No.3846/1983 before the Hon'ble High Court of Bombay urging for the same relief and that Writ Petition was allowed as per judgment and order dated 08.07.1991 of the High Court. Special Leave Petition against that order was dismissed on 30.11.1992 by the Hon'ble Supreme Court of India. It is just happenstance that the said separate decisions in the case of Dr.H.M. Datar and others was brought to our notice by way of reference for arguing the matters. But the factual position as to whether other applicants; i.e. the applicants other than Shri P. Mahadevayya whom Shri Yelwe represents; have since sought similar parallel remedy, is not known. Therefore, in the absence of any representation on behalf of the applicants other than Shri Mahadevayya and in particular notice of the fact that alternate remedy has been availed by atleast one of the other applicants, we deem it appropriate to conclude that the applicants other than Shri Mahadevayya are not interested in pursuing the matter. Our decision, therefore, will be confined to Shri Mahadevayya's case.

35.1 Shri Mahadevayya worked at the relevant time in the capacity of Works Engineer at CNP. The actual nature of duties performed by him has not been placed before us.

O.A.769/1996

36. The lone applicant in this O.A. Shri N.R. Chaudhary, worked at the relevant time in the capacity of Dy. Works Engineer in the CNP. The pleadings on record do not include the details of exact nature of duties performed by the applicant. The respondents have furnished the copy of ACR of the applicant for the period 01.04.2003 to 31.03.2004. On perusal of the self appraisal portion of the ACR it is found that besides being engaged in supervision and coordination work in connection with electrical installations the applicant had performed the following duties as described by him under sl.no.6,7 and 8 under the heading Brief Description of Duties:-

"(6) Initialise requisition, quotation scrutinization, suitability etc.

(7) Workmen DPC proposals, rotational transfer...

(8) Carry out daily paper work, correspondence, data recording, welfare works, and works marked by higher ups."

36.1 His Reporting Officer states that his over all ability and skill in noting and drafting is good. The column concerned is "General Assessment" under which the Reporting Officer has to comment, inter alia, on the skill in noting and drafting. The Reviewing Officer was not satisfied with the comments. He felt that the Reporting Officer had under assessed the abilities of the applicant. The Reviewing Officer particularly mentions that the

applicant is 'Very Good' in noting and drafting.

O.A.413/2005

37. All the applicants in this O.A. are working as Dy. Works Engineer in ISP/CNP. The pleadings in this O.A. do not contain details of the exact nature of duties of the applicants. The respondents have furnished the ACR of applicant Shri A.R. Satale for the year 2002-2003 and also for the year 2003-2004. Alike in the case of Shri N.R. Chaudhary, applicant Shri A.R. Satale mentions, inter alia, the following as his duties in the Self Appraisal portion of the ACR for the period 2002-2003.

"(4) Paper work given by higher authority such as scrutinisation of quotations, suitability report of material etc.

(5) maintaining various registers such as requisition book, machine maintenance book, break down register and electrical tool register etc."

Shri Satale's Reporting Officer appreciates his drafting and noting skill as 'Good'. He further mentions that Shri Satale's power of expression is 'Good'. With these general remarks the Reviewing Officer agrees but he has upgraded the ACR to 'Very Good' while the Reporting Officer had graded it as 'Good'.

37.1 In the self appraisal portion of the ACR for the year 2003-2004 Shri Satale mentions about similar paper work and maintenance of registers.

38. It is further seen that the same N.R. Chaudhary who has filed separate O.A.No.769/1996, is also an applicant in this O.A. at Sl.No.4. Thus, during the pendency of this O.A. Shri N.R. Chaudhary has filed a fresh

O.A. claiming the same relief. The O.A.No.769/1996, therefore, has to be merged and dealt with as a part of O.A.413/2005.

38.1 The respondents were asked to furnish the ACRs of a few of the representative applicants. Going by the nature of work done by Shri Satale and Shri Chaudhary, we find that the applicants in this O.A. do not do any manual labour as a regular part of their duties but they do clerical work as a regular part of their duties.

O.A.379/2006

39. All the 9 applicants in this O.A. are working as Dy. Works Engineer in ISP/CNP. The pleadings in this O.A. do not contain details of the exact nature of duties performed by the applicants. The respondents, however, have submitted copies of ACRs of two of the applicants; namely Shri S.R. Pagar and Shri K.M. Kharde, for the reporting period 2004-2005. In his Self Appraisal Report Shri Pagar gives, inter alia, the following description of his duties:-

"(v) To initiate procurement actions for materials/spare parts, job works after framing technical specifications, technical evaluation/scrutiny of offers/quotations, submit inspection and suitability reports of materials thus, received.

(vi) to submit all report/returns and maintain correspondence related to above jurisdictions."

His Reporting Officer comments that the quality of his writing and drafting is 'Very Good'.

39.1 Shri K.M. Kharde writes in his self appraisal that his duties include giving requisitions and reports connected with the various types of technical work

performed/supervised by him. His Reporting Officer, the same one as of Shri Pagar, comments that Shri Kharde's noting and drafting ability is 'Very Good'. In cases of both, the Reporting Officer writes that maintenance of records by them in respect of the works under their supervision and scrutiny of the related files, were timely made. This comment has been made under column 4 requiring comments on proper maintenance of assistant diary, guard file, recording, indexing and weeding of files. These are ample examples of clerical work done by the Works Engineers.

40. Thus, on the basis of details of duties actually performed by the applicant Engineers in ISP/CNP whose ACRs have been furnished by the respondents we find that the Engineers in the said two establishments performed clerical duties as a regular part of their duties. In fact, the ACR proforma prescribed for appreciation of the work of these Engineers requires that their abilities in noting and drafting and maintenance of record and files be judged. We, therefore, are very clear in our mind that these Engineers are entitled to DOTA for not being hit by the exemption as per the provisions of Section 64(1) of the Factories Act.

40.1 Although in the case of applicant Shri P. Mahadevayya (in Tr.A.No.1/1995) the details of his duties have not been separately furnished before us, he being borne on the same cadre of Engineers, we do not find any reason for giving separate treatment to his case.

O.A.411/2005

41. The 50 applicants in this O.A. worked at the

relevant time in the capacity of Inspectors (Control) in CNP. The pleadings in this O.A. do not contain details of duties actually performed by the applicants. The respondents, however, have furnished the ACK dossier of the first applicant i.e. Shri P.R. Gaikwad, which can be taken as representative ACR containing the details of duties performed by the applicants. In description of his duties as given in Self Appraisal section, Shri Gaikwad has not mentioned of any manual labour or clerical work done by him. But his Reporting Officers have commented on his quality of noting and drafting under appropriate columns in all the ACRs. They also mention that he keeps all sectional records in proper manner, while commenting on Shri Gaikwad's ability as to maintenance of assistant diary, guard files, recording, indexing etc. of files. The Reporting Officers also comment on Shri Gaikwad's knowledge of rules, regulations and instructions and, more importantly, of office procedure. Some of the Reporting Officers have commented on his ability at maintenance of control account books and various statements. Someone else comments on his ability at maintenance of records and files in control sections. These are clearly indicative of performance of clerical work by the Inspectors (Control) as a regular part of their duties, thereby making them eligible for DOTA under Section 59(1) of the Factories Act.

O.A.354/1996

42. The only applicant in this O.A. works as Inspector Departmental Security in ISP. The applicant has stated that the post held by him is not one of the category of

posts which is listed under Rule 100 of the Maharashtra Factories Rules as a position of supervision or management. The applicant has also pointed out that as per Notice No.7 dated 18.6.1994 issued by the General Manager of ISP the Inspector Departmental Security is not one of the persons declared by the Director Industrial Safety and Health, Maharashtra State, Bombay, as a person holding position of supervision or management for the purpose of Rule 100 of the Maharashtra Factories Rules 1963. The learned counsel Shri D.V. Gangal has argued that the applicant being a worker as per the definition of worker given under Section 2(1) of the Factories Act, 1948, he is entitled to DOTA and should be granted the same. The learned counsel has also drawn attention to the duty list of the applicant which include the following:-

"4. Inspector will draw up new plans and proposals which they feel more effective for the tightening of the security of the Press and will submit to Chief Security Officer for his perusal and action.

7. Inspector will scrutinise all office papers and will offer his comments before it is put up to the Chief Security Officer.

14. Inspector takes a round inside the factory to ensure that all the looks, wall, window pans are intact and no infiltration or intrusion have taken place during the closed hours of the Press.

15. Inspector after taking a round inside the factory has to attend the Gate and Check & Control the Workmen/Staff entering the Press.

17. Inspector takes round in and out of the Press to ensure that all Section are opened in time and the Sectional Doors and the Duty posts are manned by the Security Guards, Head Security Guards and Asstt. Sub Inspectors.

20. Inspector has to attend to his office

duties also.

23. Once the Final Search is over, Inspector goes round in the Shop-floor to ensure that Section Safes are closed and locked properly.

27. Inspector offers his own comments and recommendations at all the requests of his subordinates in connection with their welfare, leave and day to day grievances before putting up the matter to the Chief Security Officer. He also endorse his recommendations or view on all reports routed through him before sending it to Chief Security & Fire Officer."

Pointing at the duties performed by the applicant the learned counsel has submitted that the applicant does perform manual labour and clerical work, both. Therefore, he is entitled to DOTA.

43. Rule 100 of the Maharashtra Factories Rules names Security Officers as holding position of supervision or management, whereas the applicant is a Security Inspector. The respondents ISP/CNP, as is seen from the records, do employ Security Officers. Therefore, the applicant cannot be deemed to be a Security Officer. The applicant's post has also not been declared as being one of a position of supervision or management. Besides, as seen from the list of duties performed by the applicant, he is required to perform manual labour as well as clerical work as a regular part of his duties. Therefore, he is entitled to DOTA under Section 59(1) of the Factories Act.

O.A.1352/95

44. The applicants in this O.A. are basically Engineers in various grades in the India Government Mint, two of them having been eventually elevated to the grade of Assistant Works Manager. These are the categories which

are listed under Rule 100 as having positions of supervision or management. The applicants have claimed relief by way of orders for grant of overtime allowance and night duty allowance.

44.1 The respondents have submitted that since the applicants are working in supervisory capacity they are not entitled to the overtime allowance as claimed. The respondents have further pointed out that night duty allowance as per Presidential sanction conveyed through Government of India, Ministry of Finance order dated 23.08.1989 (Exhibit-4 to the additional written statement of the respondents) is not admissible in the case of the employees who were then drawing revised basic pay of more than Rs.2200/- per month. Since the applicants were drawing higher pay they are not entitled to night duty allowance and since the applicants are holding supervisory and management positions they are not entitled to overtime allowance as per the Factories Act.

45. As per Exhibit 3 attached to the said additional reply dated 11.09.1996 filed by the respondents, duties and responsibilities of Works Managers and Engineers under Chapter 19 of the Manual of India Government Mint has been furnished before us. The following, inter alia, have been listed as duties of the Assistant Works Managers:-

".....They keep a constant watch over the requirement/consumption of materials and initiate action well in advance for procurement of materials required. After receipt of tenders, they give their recommendations for buying material. They are authorised to draw, on indents, items of stores directly from the Stores. They are responsible for the day to day administration of their respective sections.

They are also authorised to sanction leave to workmen under their control."

The same chapter also contains details of duties and responsibilities of the Engineers across the board, which include the following:-

"19.4.5 Muster rolls of workmen working under his control are sent to him daily. After satisfying himself that the entries made therein are correct, he signs the muster roll daily and sends it back to the Time Office. He is responsible for the correctness of the muster rolls and the overtime sheets.

19.4.6 Overtime record sheets are maintained by him in the department and these are sent on the dates prescribed to the Time Office for cross checking the record maintained by that Office.

19.4.11 He maintains registers showing the receipt, the consumption and the stock of spares and consumable stores. He submits these registers to the Works Manager in the first week of every month.

19.4.15 He initiates reports relating to the production, plant & machinery, labour matters, accidents, etc.

19.4.19 He does man-power planning and succession planning.

19.4.20 He feeds the necessary information to the Departmental Promotion Committee.

19.4.23 He keeps production books in which percentage figures of rejections are also shown.

19.4.25 He prepares estimates for the jobs to be undertaken.

19.4.26 He maintains register of all orders received and enters therein the details such as the date of receipt of order, the date of completion of the order, amount charged and any other technical information that may serve as a guide to the Department for the future.

19.4.27 He keeps record of plant and machinery of his department.

19.5.3 He prepares the data on new work

and passes scheduling process charges for new work."

46. Perusal of the details of the duties performed by the Assistant Works Managers and Engineers clearly shows that they are not required to do any manual labour but they perform clerical work as a regular part of their duties. Therefore, they are eligible for DOTA under Section 59(1) of the Factories Act.

46.1 But in so far as claim of night duty allowance is concerned, this is a different matter altogether. That is an allowance granted as per Presidential order dated 23.08.1989, referred to supra. Under the terms and conditions of that order the applicants appear ineligible for night duty allowance. It is seen that the said order dated 23.08.1989 has not been impugned in the O.A. The denial of night duty allowance in the individual cases has been made merely by following the said order. Besides, the applicants have not given any explanation as to not challenging the said order dated 23.08.1989 for more than six years. We, therefore, do not find any merit in their claim for grant of night duty allowance.

47. To sum up, we find that all the applicants work in "factory" as defined under Section 2(m) of the Factories Act, 1948. All of them are workers as per the definition of "worker" as given under Section 2(m) of the Factories Act. All of them, except the lone applicant in O.A.No.354/1996, are holding supervisory or management positions. All of them are doing manual and/or clerical work as a regular part of their duties. In fact all of them are doing clerical work as regular part of their

duties; so much so that the prescribed proformae of ACR in the cases of respective cadres of all the applicants require the Reporting Officers to give comments on the noting and drafting ability of the employees reported upon and to base the over all grading on, inter alia, such comments. Therefore, all the applicants before us are entitled to double overtime allowance under Section 59(1) of the Factories Act. The applicants in Q.A.No.1352/1995 who, however, have also claimed night duty allowance are not entitled to it. Accordingly ordered.

48. Although the applicants have claimed DOTA for various periods preceding filing of these applications, we find it appropriate that in fitness of things they be granted DOTA for a period not exceeding two years prior to filing of the respective OAs.

49. As a result, all the OAs excepting O.A.No.769/1996 and the Tr.A.1/1995 are partly allowed. O.A.No.769/1996, as already ordered, gets merged with O.A.413/2005 and accordingly gets disposed of. Effect shall be given to this order within four months of its pronouncement. No order as to costs.

(Sudhakar Mishra)
Member (A)

(Jog Singh)
Member (J).