

PETITIONER:
BURMAH SHELL OIL STORAGE & DISTRIBUTION COOP INDIA

Vs.

RESPONDENT:
BURMAH SHELL MANAGEMENT STAFF ASSOCIATION& ORS.

DATE OF JUDGMENT:
12/11/1970

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
SIKRI, S.M.
DUA, I.D.

CITATION:
1971 AIR 922 1971 SCR (2) 758
1970 SCC (3) 378
CITATOR INFO :
RF 1988 SC 329 (6)
R 1991 SC2294 (3)

ACT:
Industrial Disputes Act, 1947-Section
2(s)--'Workman', tests for determining who is.

HEADNOTE:
The members of the Burmah Shell Management Staff Association, designated as junior management staff raised an industrial dispute. The Government referred the dispute to the Industrial Tribunal. The reference was confined to the members of the junior management staff working in the Maharashtra region. At the time of reference the lowest basic salary drawn by a member of the Association was Rs. 535/-. On behalf of the company a preliminary objection was raised that none of the members of the association was a workman. The Tribunal gave an interim award. The members of the association were classified into various categories. Out of these, members of six categories were held to be workmen, namely (1) Transport Engineer (2) District Engineers (3) Foreman (Chemicals), (4)- Fueling Superintendents (5) Chemists and (6) Sales Engineering Representatives. Members belonging to four categories were held not to be workmen, namely, (1) Blending Supervisors (2) Foremen (3) Depot Superintendents and (4) District Sales Representatives. The Company challenged the decision of the Tribunal in respect of the six categories held to be workmen and the Association challenged the decision in respect of the four categories held not to be workmen. The Association contended that whenever a technical man was employed in an industry it had to be held he was employed to do technical work respective of the manner in which and the occasions on which the technical knowledge of that person was actually brought into use and to hold otherwise would result in making the word 'technical' redundant in the definition of workman' in section 2(s) of the Industrial Disputes Act, 1947 as amended by Act 36 of 1956.
HELD : Of the members of six categories held to be workmen (1) Transport Engineer (2) District Engineer (3) Foreman

(chemicals) and (4) Sales Engineering Representative must be held not to be workmen; and of the members of four categories held not to be workmen, the tribunal erred with respect to Blending Supervisors working in the Wadilube plant.

A workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other types of work. Therefore, in determining which of the employees in the various categories are covered by the definition of 'workman, one has to see what is the main or substantial work which they are employed to do. [766 C]

May & Baker (India) Ltd. v. Their Workmen, [1961] II L.L.J. 94, South Indian Bank Ltd. v. A.R. Chacko, [1964] 5 S.C.R. 625, Analnda Bazar Patrika (P) Ltd. v. Its Workmen, [1969] II L.L.J. 670, Re. Dairyman's Foremen & Re. Tailors' Cutters, (1911-12) 28 T.L.R. 587, Reid v. 75 9

British and Irish Stean Packet Co. Ltd., [1921] 2 K.B.D. 219, Jaques v. Owners of Steam Tug Alexendra, [1921] 2 A.C. 339, J. & F. Stone Lighting & Radio Ltd. v. Haygarth, [1968] A.C. Pt. 3, 157, referred to.

(i)The major part of the work done by a Transport Engineer is that of supervision of the work of repair, maintenance, servicing and fabrication which is actually carried on by mechanics, fitters and other skilled or unskilled-workmen working under him. Even if the Transport Engineer uses his technical knowledge it is used primarily for the purpose of supervising the work done by the skilled manual labourers. If a person is merely employed in supervising the work of others the fact that for the purpose of proper supervision he is required to have technical knowledge will not convert his supervisory work into technical work; the work of giving advice and guidance cannot be held to be, an employment to do technical work.

(ii)The principal work for which a District Engineer is employed is to supervise work done by others instead of doing the work himself. His duties consist of assessing suitability of sites for depots from the point of view of technical and-engineering aspects, suggesting lay-out for constructing depots or service stations, seeing that the estimates prepared by the draughtsman are correct from the technical point of view, scrutinising tenders for construction, checking the construction work given to the contractor, certifying bills submitted by contractors for the work done by them and preparing estimates for maintenance in respect of depots. Even though he has to use his technical knowledge for the purpose of properly carrying on supervision, it cannot be held that a District Engineer is employed to do technical work.

(iii)The duties which are performed by Foreman (Chemicals) are primarily and substantially those of a supervisory nature. His own manual work is only incidental and forms a small part of his duties. In dealing with this case, the Tribunal erred in taking into account the duties of chemists.

(iv)The main and substantial work which a Fuelling Superintendent does is not that of supervising the work done by the few workmen who assist him, but is his own manual work which he carries out at the depot as well as when delivering oil to the aircraft. The fact that a Fuelling Superintendent is a leader of the team which carries out the work of fuelling cannot convert his work into that of a supervisory nature. The tribunal was, therefore, correct in holding that a Fuelling Superintendent was a workman.

(v) The Chemists, no doubt, ensure that the workman assisting them do their work Properly; but that small amount of supervision is only incidental to their own technical work of 'testing and giving the results of the tests to the company. the guidance and direction to the laboratory attendant and analysts is only ancillary to 'the main work, which is done by the Chemists themselves. The Chemists have therefore been rightly held to be workmen.

(vi) The main work performed by the Sales Engineering Representative is promotion of sales which are canvassed primarily by District Sales Representative. This the Sales Engineering Representative does by giving technical advice, holding demonstrations and suggesting methods for making best use of the products sold He is not employed on clerical or manual work and the amount of technical work he does is all ancillary to his chief duty of promoting sales and giving advice.

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(vii) The Blending Supervisor who works in the Wadilube plant is a person employed on manual work and have to be held to be workman. His 'supervisory work is a very minor part of his duties. The major part of his duties consists in himself operating various parts of the machinery and ensuring that oils are blended properly. The decision of the Tribunal in respect of such blending supervisor is therefore, incorrect.

(a) The principal work of another set of Blending Supervisors who are employed at a stage where the blending of oils has already been completed and the oils have been transferred to the settling tanks is that of seeing that the barrels and other containers are properly filled up by the larger number of workmen placed under their charge who actually carry out the physical work for that purpose. Their duties are thus, primarily supervisory, and the tribunal's decision that Blending Supervisors doing the work of this nature are not workmen is correct.

(b) the work done by the third type of blending supervisors described as supervisors (Small Packages Filling) is primarily supervisory and consequently the decision of the Tribunal in respect of them is also correct.

(viii) Of the three types of duties performed by the Foreman (Tank Farm and Pump House), viz., Technical, skilled manual and supervisory, his supervisory duties are the main and substantial part of his work while other duties are only incidental. The Tribunal was, therefore, right in holding these Foremen not to be workmen.

(ix) The other class of Foreman (Tank Lorry Loading Tank Wagon Loading and Tank Wagon Unloading) are no doubt responsible for proper loading and unloading; but this 'duty is discharged by supervising the work of manual labourers who actually perform the work of loading and unloading. The Tribunal's decision therefore, that these Foremen are not workmen is correct.

(x) On the facts found by the tribunal it is clear that the principal duties of Depot Superintendents are of supervising and managerial while the clerical duties are only incidental. Consequently the decision given by the Tribunal that Depot Superintendents are employed on managerial or supervisory work and are not workmen is correct.

Burmah Shell Oil Storage, & Distributing Co. of India, Madras

v. Their Employees, [1954] 1 L.L.J. 21 and Burmah Shell Oil Storage & Distributing Co. of India Ltd., Madras V. Labour Appellate Tribunal of India and two Ors. [1954] 2 L.L.J. 155 (Madras H.C.), held inapplicable.

Burmah Shell Oil Storage & Distributing Co. of India Ltd., Madras and Hyderabad Branches v. Their Workmen, [1955] 2 L.L.J. 153 (L.A.T.) and Burmah Shell Oil Storage & Distributing Co. of India Ltd., Madras Branch, Mysore & Travancore Cochin States v. Their Workmen, [1955] 2 L.L.J. 228 (L.A.T.), referred to.

(xi) The case of District Sales Representative is clearly that of a person who cannot fall within any of the four classes mentioned in S. 2(s) because his work cannot be held to be either manual, clerical, technical or supervisory. The work 'of investigating and promoting sales cannot be included in any of these four classifications. He is, therefore, not a workman.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1477 & 1478 of 1970.

Appeals by special leave from the Award dated January 9, 1970 of the Industrial Tribunal, Maharashtra, Bombay in Ref. (IT) No. 378 of 1967.

S. D. Vimadlal, F. N. Kaka and I. N. Shroc, for the appellant (in C.A. No. 1477 of 1970) and respondent No. 1 (in C.A. No. 1478 of 1970).

A. S. R. Chari, H. K. Sowani, K. Rajendra Chaudhuri" and Pratap Singh, respondent No. I (in C.A. No. 1477 of 1970).

The Judgment of the Court was delivered by Rharpva, J. These two connected appeals by special leave are directed against an interim award of the Industrial Tribunal, s allow bonus for the year 1965-66, between the employers, Messrs Burmah Shell Oil Storage and Distributing Company of India Ltd., Bombay (hereinafter referred to as "the Company") and a set of employees who were designated as junior management staff and were members of the Burmah Shell Management Staff Association registered as a trade union. The reference was confined to the members of the junior management staff long in Maharashtra region. The main business of the Company is marketing of petroleum products and oils and the Marketing Area is the whole of India which is divided into four areas, viz., Bombay, Calcutta, Madras and Delhi. The reference related to the Bombay area. The Organisation and management of each area is divided into four function, Marketing, Distribution, Personnel and Finance. Each one of the four Areas is itself divided into several Marketing Divisions and each Division is further subdivided into five or seven sales districts, as the case may be. For the sale of commodities, in which the Company deals, 'there are various outlets, such as petrol pumps, storage depots, etc. The Company also undertakes the work of fuelling of aircraft at the Airfields which work is done by the Airfield Service Stations. For purposes of storage and distribution of products handled by the Company, the Company maintains port installations as well as upcountry depots. The staff concerned in this reference is employed at the installations or the, depots in the Maharashtra region.

Though the members of the Association are described as junior management staff, they claimed that they were work,-

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Maharashtra, Bombay, in a dispute referred by the Government, relating to the revision of scales and grade of pay, dearness allowance, overtime payment, duty allowance, other allowances, and

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men as defined in the Industrial Disputes Act No. 14 of 1947 (hereinafter referred to as "the Act") and, on that basis, raised an industrial dispute relating to salary, etc., as mentioned above. The Association served a charter of demands on the Company on 29th November, 1966. The Government referred the dispute to the Industrial Tribunal on 28th October, 1967. On 2nd December, 1967, the Association put forward its statement of claim before the Tribunal. On behalf of the Company, a preliminary written statement was filed on 15th January, 1968, contending that none of the members of the Association was a work-man, so that the reference was incompetent. In this written statement, it was stated that the Company would request the Tribunal to decide this question as a preliminary issue and that a written statement on merits would only be filed subsequently, if it is held that all or any of members of the Association are workmen within the Act. A rejoinder statement was filed on behalf of the Association on 27th March, 1968. The Tribunal gave its finding on the preliminary issue as an interim award on 9th January, 1970. The members of the Association were classified into various categories of whom we need mention only 10 which are involved in these two appeals. Out of these 10, members of 6 categories were held to be workmen and these are

- (1) Transport Engineer
- (2) District Engineers
- (3) Foreman (Chemicals)
- (4) Fuelling Superintendents,
- (5) Chemists
- (6) Sales Engineering Representatives.

Members belonging to 4 categories were held not to be workmen. These categories are

- (1) Blending Supervisors (2) Foremen
- (3) Depot Superintendents
- (4) District Sales Representatives.

Civil Appeal No. 1477 of 1970 has been brought up by the company challenging the decision of the Tribunal in respect of the 6 categories held to be workmen, while Civil Appeal No. 1478/1970 has been filed by the Association challenging the correctness of the decision of the Tribunal in respect of the 4 categories held not to be workmen.

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Some general features with regard to the members of the Association involved in these appeals may be stated. At the time of the reference, the lowest basic salary drawn by the member of the Association was Rs. 535/- per mensem, while the highest was Rs. 1500/- per mensem. In addition, the members of the Association are paid dearness allowance equal to 30 per cent of basic salary, House-rent allowance, leave fare assistance, and bonus.. Medical benefits are also provided for them and their families. The Company contributes to the Provident Fund of the members at 10 per cent of basic salary and these members on retirement are also entitled to pension which varies between per cent and 50 percent and 50 per cent of basic salary. The number of persons involved in the reference in the Maharashtra region is 140. The effect of 7 the decision of the Tribunal is that 98 employees belonging to 4 categories have been held not to be workmen, whips 42 employees belonging to 6 cate-

gories have been held to be workmen. The decision in these appeals can, however, have wider repercussions because, in the whole of India, the total number of persons belonging to these categories would be 648. If the Tribunal's decision is upheld 154 of them would be workmen and 494 would, be non-workmen. It may also be noticed that the majority of the persons concerned in this reference originally started at a salary of Rs. 100/- to Rs. 200/- per mensem and it is only as a result of promotions, revision of salaries and length of service that they are now drawing basic pay at the rates mentioned above. All persons appointed to the posts now held by them were originally described as Supervisors or field staff; but, in the year 1962, they came to be designated as junior management staff. The Association got itself registered under the name "Burmah Shell Management Staff Association".

In order to decide whether the decision of the Tribunal with respect to the various categories is correct, it is necessary to consider the definition of "workman" in the Act as amended by Industrial Disputes Amendment Act 36 of 1956. That definition is reproduced below

"2. (s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any Proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or
(ii) who is employed in the police service or as an officer or other employee of a prison or
(iii) who is employed mainly in a managerial or administrative capacity; or
(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

For an employee in an industry to be workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. Mr. Chari on behalf of the Association, however, put forward the argument that this definition is all comprehensive and contemplates that all persons employed in an industry must necessarily fall in one or the other of the four classes mentioned above and, consequently, the Court should proceed on the assumption that every person is a workman; but he may be taken out of the definition of 'workman' under the four exceptions contained in the definition. The two exceptions with which we are primarily concerned are exceptions (iii) and (iv). Under exception (iii), even a workman, who is employed mainly in a managerial or administrative capacity, goes out of the definition of workman while under exception

(iv), persons, who are employed in a supervisory capacity, 'go' out of the definition, provided they either draw wages exceeding Rs. 5001- per mensem or exercise, by the nature of the duties attached to the office or by reason of the powers vested in them, functions mainly of a managerial nature.

We are unable to accept, this submission. In the case of May and Baker(India) Ltd.v.Their Workmen(1),this Court had to consider the correctness of a decision of a Tribunal which had held that one, Mukerjee, an employee in an industry, was a work-

(1) [1961] 11 L.L.J. 94.

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man under the Act because he was not employed in a supervisory capacity. The Court held :-

"The Tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement."

In that case, the Court thus held Mukerjee not to be a workman on the ground that his work was neither clerical nor manual which was the nature of the work envisage in the definition to make an employee, a workman. It is true that decision was given on the definition of "workman" as it stood before the Amendment of 1956 where the words "supervisor by" and "technical" did not occur in the definition. Mr. Chari's submission is that the amendments in 1956 introduced the words "supervisory" and "technical" with the object of making the definition all-comprehensive" but, on the face of it, it cannot be so. If every employee of an industry was to be a workman except those mentioned in the four exceptions, these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions. The specification of the four types of work obviously is intended to lay down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word "workman" having to resort to the exceptions. An example, which appears to be very clear, will be that of a person employed in canvassing sales for an industry. He may be required to do any paper work, nor may he required to have any technical knowledge. He may be doing any skilled or unskilled manual work. He would still be an employee of the industry and, obviously; such an employee would not be a workman, because the work, for which he is employed, is not covered by the four types mentioned in the definition and not because he would be taken out of the definition under one of the exceptions.

The next aspect that has to be taken notice of is that, in practice, quite a large number of employees are employed in industries to do work of more than one of the kinds mentioned in the definition. In cases where an employee is employed to

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do purely skilled or unskilled manual , work, or supervisory work, or technical work, or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work.. He may be doing manual work as well as supervisory work, or he may be doing clerical work as well as supervisory work. He may be doing technical work as well as clerical work. He may be doing technical work as well as supervisory work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exceptions. The principle is now well-settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work. In the case of May & Baker (India) Ltd,(1), the Court, in the quotation cited above, noticed the fact that Mukerjee's duties were mainly neither clerical nor manual. The significance attaches to the word " mainly", because Mukerjee's duties did involve some clerical and manual work; yet, he was held not to be a workman. In South Indian Bank Ltd. v. A. R. Chacko (2), the Court applied a similar test when it held

"We can find no mistake in the approach of the Labour Court to the question nor can we see any justification for interfering with its conclusion on the evidence in the case. All the relevant documents produced have been duly considered by the Labour Court in the light of the oral evidence given; and on such consideration it has come to the conclusion that though on paper certain rights and powers were assigned to him and occasionally he acted in the place of the Agent when the Agent was absent, such duties did not form part of his principal and main duties."

The Court, thus,, approved of the test of finding out which duties were the principal and main duties.

In Ananda Bazar Patrika (Private) Ltd. V. Its Workmen(1), this Court clearly enunciated the principle by stating.

"The principle which should be followed in deciding the question whether a person is employed in a supervisory capacity or on clerical work is that if a person is mainly doing supervisory work but incidentally or for a

(1) [1961] II L.L.J. 94 (2) (1964) 5 S.C.R. 625.

(3) [1969] 11 L.L.J. 670.
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fraction of the time also does some clerical work, it would have to be held that he is employed in supervisory capacity, and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."

Dealing with the facts of that case, the Court found that Gupta, the employee concerned, was employed on clerical work and not in supervisory capacity. The principal work that Gupta was doing was that of maintaining and writing the

cash-book and of preparing various returns. Being the senior most clerk, he was put in charge of the provident fund section 'and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them, to permit them to leave during office hours, and to recommend their leave applications. These few minor duties of a supervisory nature could not convert his office of senior clerk in charge into that of a supervisor.

Assistance in this matter is also available from decisions by Courts in England where, in connection' with the applicability of the Factories Act, and other Acts, the Courts had to decide whether an employee was employed on manual labour or not. The earliest case is *Re Dairmen's Foremen and Re Tailors' Cutters*(1). After referring to decisions on the Employers and Workmen's and Compensation Acts, *Swinfen Eady, J.*, held that those cases really afforded assistance in determining the true meaning of this statute. In his opinion, although they might perform manual labour, the question was whether that was the real substantial employment for which they were engaged or whether it was not incidental or necessary to it. Applying this principle to the case of *Tailors' Cutter*, it was held:-

"The actual labour of cutting out cloth might be manual labour, but the position be really occupied was a manager of a business department. His duties therefore substantially were not those involving manual labour and he was not within the Act."

In *Reid v. British and Irish Steam Packet Company Limited*(2), reference was made to an earlier decision by that very Court in *Jaques v. Owners of the Tug Alexandra*(3) which decision was rendered on November 18, 1920, and in which the Court adopted the definition which was given by the late Master of the Rolls sitting as a Judge of first instance, of the meaning of "employed otherwise

(1) [1911-1212]Times Law Report587.

(2) [1921] 2K.B.D.319.

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than by way of manual labour." That meaning was approved by saying:-

"What that learned judge said was,, that the question whether a person is employed otherwise than by way of manual labour within the meaning of that section is to be determined by considering whether any manual labour that he may do in the, course of his service is the real substantial work for which he is engaged, or whether it is only incidental or accessory thereto; if it be the latter, the employment is not manual labour."

This principle was also later approved by the House of Lords in the appeal, which came before it against the decision in the case of *Jaques v. Owners of Steam Tug Alexandra*, decided on July 4 1921 (1), where Lord Buckmaster in his speech said :

"The difficulty that arises in the construction of the statute is due to the number of employments in which it is impossible to assert that the employment is solely manual labour or is solely exclusive of manual labour, and it has been held in a series of cases approved in the present instance by the Court of Appeal that in these circumstances the real test is the substantial

nature of the employment. if that be manual labour the fact that there are other duties performed that could not be so described does not take the employee outside the benefit of the statute. If, on the other hand, the substantial part of the employment cannot be described as "manual" labour, the fact that manual work has to be performed does not bring him within. This test, which in my opinion is the only reasonable one that can be applied to the statute is, I think, the one that was accepted by the learned county court judge, and if that be so, unless the proved facts are of such a character that it was not open to him to hold that by their proper application the deceased was excluded from the Act, his finding is conclusive and cannot be questioned."

A similar principle was indicated by Lord Wrenbury in the following words :-

"The question to be answered I think is this : When the employer offered and the man accepted the employment, was it substantially an offer of manual labour although it involved some other work, or was it an
(1) [1921]2A.C.339.

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offer of other work although there was attached to it an obligation to do some manual labour ? To put this particular case : Was the employment that of master of the tug with the duties and responsibilities attaching to that office but coupled with an obligation to take part with the crew in the manual work, or was the employment that of a manual labourer who was to be responsible for the tug as a senior man among the crew

In J. & F. Stone Lighting & Radio Ltd. v. Havgarth(1), the same test of the substantial nature of the employment was applied in interpreting the words "employed in manual labour" in the Factories Act. Thus, in the present case also, in determining which of the employees in the various categories are covered by the definition of "workman" we have to see what is the main or substantial work which they are employed to do ? If it is supervisory work, it would be held that they were employed to do supervisory work even though they may also be doing some technical, clerical or manual work. If on the other hand, the supervisory work be incidental to the main or substantial work of any other type, viz., clerical, 'manual or technical, the employment would not be in a supervisory capacity. It is in the light of these principles that we shall now proceed to, examine the correctness of the decision of the Tribunal in respect of various categories of workmen involved in this reference. We shall take them up in the order in which they were discussed by the counsel for parties in the course of their arguments.

1. Transport Engineer:

The Transport Engineer works in the Central Garage at Sewree Installations which is maintained, for the purpose of repairs and maintenance of all motor vehicles owned by the Company as well as for fabrication of bodies of lorries. The Tribunal in its award has mentioned various duties carried on by the Transport Engineer, after considering the evidence given by Mathai who is working as a Transport

Engineer and was examined as a witness, by the Association, as well as the evidence of Varkie, the witness examined on behalf of the Company, and who was in charge of the Sewree Installations as a whole. It appears that Mathai obtained some technical qualifications by working as an apprentice in the Bombay Garage at Santa Cruz for a period of four years and, thus, gaining knowledge as an automobile mechanic. He worked as Fitter, Mechanic, and, later, Assistant Foreman in the Bombay Garage. After that, he worked in the Bombay Electric Supply and Transport Undertaking as a Foreman. He was appointed as Transport Engineer

(1) [1968] A-C. Pt. 3,157.

94Sup.Cl/71

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in the Company in 1951. Previously, there used to be three Transport Engineers in the Central Garage with about 115 workmen under them. Since a period of six months preceding the order of reference, Mathai was the sole Transport Engineer posted in the Central Garage and he admitted that he was the senior most Officer in it. According to him, the Transport Engineer is responsible for the entire work of repairing, servicing and maintenance of vehicles as well as for the work of modification and fabrication of motor lorries. In that connection, he himself checks the vehicles that are brought to the Central Garage for repairs, has to locate faults by actually driving the vehicle for a road test, and then explains the manner in which the fault is to be removed or repaired to the workmen working under him. He has to see that the work of repair, servicing and maintenance is properly carried out by the mechanics, fitters, etc. After the work is completed, he has himself to inspect and check the vehicle and there after certify its road-worthiness. Originally, when there were three Transport Engineers in the Central Garage, they had 115 workmen carrying on the work of repair, servicing and maintenance and fabrication, etc. From the time that Mathai has been the sole Transport Engineer, the persons working under him are 58 in number. Amongst these 58 workmen are 13 Mechanics, 22 Fitters in three different grades, 3 Turners, 2 Welders, 5 Auto-electricians, 2 Carpenters, 3 Painters and remaining 8 are semiskilled or unskilled Mazdoors. All these men work as direct subordinates of Mathai. Mathai admits that he has to guide them as to how the job is to be done, though he adds that, in fact, he works with them. He gives them directions as to how the work is to be done if it is not being carried out properly. He allocates the job to the workmen and also reallocates the jobs when necessary. Ever day, there are roughly 15 to 20 jobs to be carried out. He goes round to see how the jobs are being done by the workmen. The work of dismantling, repairing, etc. is generally done by skilled or highly skilled workmen and it is only when the work is of a special technical character that he himself has to attend to it. Varkie's evidence, as reproduced by the Tribunal in the award, shows that Mathai supervises the work of the mechanics, fitters, etc. and ensures that repair schedules are adhered to by them. Varkie also stated that Mathai instructs and guides the workmen in diagnosing the defects as and when necessary, so that he partly contradicts Mathai who stated that defects in all vehicles are first diagnosed by him. Varkie also stated that the Transport Engineer maintains discipline in his department, initiates disciplinary action as and when necessary, ensures that operations in the Garage are carried out efficiently, reports on the performance of the workmen working under him, and sanctions leave in the case of labour

staff working under him,

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while, in some other cases, he recommends leave to be granted to a workman. The statement of Varkie that Mathai sanctions leave is denied by Mathai in his evidence. The Tribunal has not recorded a clear finding accepting the version of one witness or the other. Some documentary evidence, was produced to show that, in cases where the leave asked for did not exceed 1 days, the chits were signed by Mathai as In-charge Department which, according to Mathai, indicated that he was recommending leave and not sanctioning leave. In this connection, our attention was also drawn to Rule 19(b) of the Standing Orders of the Company under which only 'the Manager was authorised to grant leave; except in cases where he may delegate his authority to some other officer. Varkie stated that he had delegated his authorities by to Foreman working under him and equated a Transport Engineer with a Foreman; but no written authority was produced. We shall, therefore, proceed on the basis that, in the matter of leave, all that is established is that Mathai had to recommend leave applications and, 'as admitted by him, his recommendations were almost invariably accepted. It is not necessary to give further details of other minor duties carried on by Mathai; but the above facts relied upon by the Tribunal show that the major part of the work done by, Mathai is that of supervision of the work of repair, maintenance, servicing and fabrication which is actually carried on by, mechanics, fitters another skilled or unskilled workmen working under him. His own personal work comes in at the first stage when he may have to diagnose the defect by actually driving a vehicle, if necessary, and, again, when he himself tests the vehicle after the work on it has been completed and certifies it as road-worthy. As many as 15 to 20 jobs are carried on in a day simultaneously and it is obvious that he could not himself perform those jobs personally.. In respect of these jobs, all he could do was to supervise the, work being done by the skilled and unskilled workmen to ensure that the jobs were properly done. On the face of it, the major part of his duties, thus, consists of supervisory work rather than his own personal technical work which is only incidental to the main work of repair servicing maintenance and fabrication inasmuch as, in his supervisory capacity, he diagnoses the defects and later on inspects the work done, makes his personal test and certifies that it has been properly carried out.

Despite these facts, the Tribunal held the Transport Engineer to be a workman on the ground that he was employed because of his technical knowledge and, even in supervision-the work of the workmen, he is required to make use of his technical knowledge, and, consequently, rejected the plea of the Company that the Transport Engineer cannot be said. to be employed to do supervisory work. It appears to us that, in giving this

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decision, the Tribunal misdirected itself. Even if the Transport Engineer uses his technical knowledge, it is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete the fabrication. The other supervisory duties, mentioned above, have been ignored by the Tribunal on the ground that, in the matter of allocation of work, the Transport Engineer does it on equitable basis, that it is his duty to get the job done in a proper manner, that in distributing or allocating or

reallocating the work, the main consideration which weighs with the Transport Engineer is whether the work is executed efficiently from a technical point of view. These appear to us to be no grounds for holding that work being done by the Transport Engineer character.

In this connection, we may take the main and substantial is not, supervisory in' notice of the argument advanced by Mr. Chari on behalf of the Association that, whenever a technical man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the, occasions on which the technical knowledge of that person is actually brought into use. The general proposition put forward by him was that, if a technical employee even gives advice or guides other workmen, it must be held that he is doing technical work and not supervisory work. He elaborated this submission by urging that, if we hold the supervisory work done by a technician as not amounting to his being employed to do technical work, the result would be that only those persons would be held to be employed on technical work who actually do manual work themselves. According to him, this would result in making the word "technical" redundant in the definition of 'workman' even though it was later introduced to amplify the scope of the definition. We are unable to accept these submissions. The argument that, if we hold that supervisory work done by a technical man is not employment to do technical work, it would result in only manual work being held to be technical work, is not at all correct. There is a clear distinction between technical work and manual work. Similarly there is a distinction between employments which are substantially for manual duties, and employments where the principal duties' are supervisory or other type, though incidentally involving some manual work. Even though the law in India is different from that in England, the views expressed by Branson, J., in Appeal of Gardner: In re Maschek: In re Tyrrell(1) are helpful, because, there also, the nature of the work had to be examined to see whether it was manual work. As examples of duties dif-

(1) [1938] 1 All E.R. 20.

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ferent from manual labour, though incidentally involving manual work, he mentioned cases where a worker (a) is mainly occupied in clerical or accounting work, or (b) is mainly occupied in supervising the work of others, or (c) is mainly occupied in managing a business or a department, or (d) is mainly engaged in salesmanship, or (e) if the successful execution of his work depends mainly upon the display of taste or imagination or the exercise of some special mental or artistic faculty or the application of scientific knowledge as distinguished from manual dexterity. Another helpful illustration given by him of the contrast between the two types of cases was in the following words

"If one finds a man employed because he has the artistic faculties which will enable him to produce something wanted in the shape of a creation of his own, then obviously, although it involves a good deal of manual labour, he is employed in order that the employer may get the benefit of his, creative faculty."

The example (e), given above, very appropriately applies to the case of a person employed to do technical work-. His work depends upon special mental training or scientific or technical knowledge. If the man is employed because he possesses such faculties and they, enable him to

produce something as a creation of his own, he will have to be held to' be employed on technical work, even though, in carrying out that work, he may have to go through a lot of manual labour. If, on the, other hand, he is merely, employed in supervising the work of others, the fact that, for' the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work.

We may, to clarify this aspect, take an example of a qualified technical Engineer who is concerned with manufacture of machines. If he himself creates a machine with the use of his technical knowledge, he will certainly be held to be employed to do technical work. On the, other hand, if the machine is being made by others and all he does is to give advice or guidance, the actual technical work will have to be held to be done by the mechanics carrying on the work, while his duty will only be supervisory. A more clear illustration which may be useful is that of a painter. If a person is employed to paint walls of a house or paint furniture, it would clearly be employment to do manual labour. If, on the other hand, he is an artist who paints works of art as a result of his own creative and imaginative faculty, he would be held to be employed on technical work,

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even though, in creating the work, he will all the time be using his own hands to paint the picture. There can be a third case where a good artist may have pupils working under him who paint artistic pictures and he only guides their work. He may, on occasions, even make some improvements by retouching the work done 'by the pupils. On the face of it, such a person cannot be held to be employed to do technical work; he would be a technical supervisor. These examples clearly indicate that, in the case of the Transport Engineer, whose principal duties are to see that the work is properly done by the skilled and unskilled workmen working under him he is really employed to do supervisory work and not technical work.

Reference may be made in this connection to a decision of a learned single Judge of the Madras High Court in *Murugalli Eslate, Hardypet v. Industrial Tribunal Madras* and *Another(1)*. In that case, he was considering the question whether one Dr. Srinivasan, a medical attendant employed in an industry, was a workman. The learned Judge held :-

"In my opinion, this view overlooks the fact that Dr. Srinivasan was charged with particular duties of supervisory character, because of his technical qualification and level of his ability and skill. It is that qualification which the management recognized as enabling the doctor to be in charge of the supervisory work of the nature mentioned above. That being the purpose of the employment, merely-because, being a

technical

man Dr. Srinivasan was called upon to attend to patients, it could not be stated that he did any the less supervisory work. It may be that if the duties are measured by time, he spent more time in attending to patients. But that, I consider, cannot be regarded as determining the main functions of Dr. Srinivasan. The main function for which he was appointed may not occupy as much time as

the medical attendance on patients. All the same, the fact that it is a technical employment for a particular purpose, because of particular qualifications, they should not be lost sight of in determining the character of the employment. The test to be applied, to my mind, to cases of technical employment, such as in this case, should be the purpose for which the employment is made, irrespective of whether the performance of the duties may or may not occupy the entire time of the employee. That is because the employment is made on the basis of the particular level of professional efficiency and technical qualifications. If

(1) [1964] 2 L.L.J. 164.

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an employee is found suitable, for supervisory work, because of those reasons, it cannot be said that his functions are mainly those- of a medical attendant, as, on account of his professional qualification, he happened to be engaged in that capacity as well."

This case, thus, recognises that a person with technical qualifications, can on that account, be employed in a supervisory capacity and, in such a case, he will be held to be employed to do supervisory work, so that, in order to be, a workman, he must not be exempted under exception (IV). The First Labour Court, West Bengal, in *Indamer Company (Private) Ltd. v. Barin De and Another*' (1), applied the same test in determining whether an Aircraft Maintenance Engineer (A.M.E.) is a workman or not. The Court found that the Aircraft Company was employing 5 A.M.E.s. and they had 30/35 skilled and unskilled mechanics working under them. The daily maintenance of an aircraft was a considerable task and the work had to be done at recurring intervals. The A.M.Es. could not physically undertake all the task and that was why the Company had a larger staff of qualified mechanics who actually did the job under the supervision of the A.M.Es. After the actual servicing work of the aircraft was done, the A.M.E. was to inspect that the various jobs had been completed to his satisfaction, and he then certified the "air-craft as air-worthy. For this purpose, he proceeded to the various machines, gave advice to the mechanics, so that the job was completed, visually inspected the job-i-nstallation or repair, and gave a certificate if it was found to be to his satisfaction. He signed the log book entries. On these facts, the Labour Court held that the A.M.Es. were employed to do supervisory work and, since they were, drawing a salary in excess of Rs. 500 per mensem, they were not workmen. That Labour Court distinguished the decision given by the National Industrial Tribunal, Lucknow, in the case of *The Indian Airlines Corporation v. The Air Corporation Employees' Union, Bombay and Others* which Award is printed in the Gazette of India Extraordinary Part 11-section 3-Sub-section (ii) dated March 20, 1958. That case was distinguished on the ground that the duties of the A.M.Es. were not specified in the Award and there was, furthermore, an admission in that case that certain parts of checking work had to be done by the A.M.Es. themselves. We have been taken through the Award of the National Industrial Tribunal, Lucknow, and we are unable to hold that, decision can be of any assistance in determining the general question whether a person, possessing technical qualifications, employed on super-

(1) [1958]2L.L.J.556.

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visory duties, must be held to be employed to do technical work and not supervisory work.

In determining the nature of employment of Mathai, and in holding that he is employed to do supervisory work, we have taken into account not only the work of supervision which he carries on in ensuring that the skilled and unskilled manual workmen employed under him are properly doing the work of repairs, maintenance, servicing and fabrication, etc., but also the fact that the workmen function under his control and directions, that he allocates and reallocates work to , that he initiates, disciplinary proceedings, etc. The exercise of such powers is--'clearly a part of his supervisory duty. That such functions indicate that the employment is of supervisory character was laid down by this Court in All India Reserve Bank Employees Association v. Reserve Bank of India(1) where Hidayatullah, J., as he then was, expressed the view of the Court 'the following words

"These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties-which are supervisory and not merely clerical."

Thus, in the' case of a Transport Engineer, there is a combination of supervisory duties of two types. The Transport Engineer actually supervises the work of repairs, maintenance, servicing and fabrication which is carried on in the Central Garage by the skilled mechanics, fitters, and other workmen, and, at the same time, he has the supervision over, those men in the matter of giving directions, recommending leave, initiating disciplinary proceedings, etc. In this view, the decision of the Tribunal holding that the Transport Engineer is a workman has to be set aside, because, admittedly, the Transport :Engineer is drawing salary in excess of Rs. 500 per mensem and ceases to be a workman under exception (iv) of the definition.

2. District Engineers

In the case of District Engineers, the Tribunal had to consider the evidence of the Association's witness, Sirdesai, one of the District Engineers employed by the Company, and the evidence of the Company's witness, Manoharlal Chopra. The duties, which the District Engineer performs, consist of assessing suitability, of the sites for depots from the point of view of the technical and engineering aspects, suggesting layout for construction of depots or service stations, seeing that the estimates prepared by the draughtsman are correct from the technical point of view, scrutinising tenders for construction, checking the construction work given to the contractor, certifying bills submitted

(1) [1966] 1 S.C.R. 25.

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by contractors for the work done by them, and preparing estimates for maintenance work in respect of depots. He also gives certificate as required by the Inspector of Explosive after satisfying himself about the technical fitness of the installation facilities. On the other hand, it appears that the principal work, for which he is employed, is that of supervision inasmuch as his required to supervise work done by others instead of doing the work himself. The estimates are prepared by draughts man and he only checks them. The scrutiny of tenders given by the contractors as well as checking the construction work done by the contractors is in the nature of supervision, so as also

certification of bills. He himself admitted that he controlled and directed construction and maintenance and looked after construction and maintenance work of the company-owned depots in his district. He had to look after filling and servicing stations and company's office and staff quarters. He controlled and directed the work of draughts men, fitters and painters throughout the district. He also kept contact with Electric Supply Undertakings, Public Works Department and Municipality in connection with the construction work. He has one draughtsman and eight fitters working under him. In view of these admissions made by him, a question was put to him at the end of his cross-examination as follows:-

" I put it to you that you are employed principally to supervise, control and coordinate the activities of the contractors and the company's men in the district for all the construction and maintenance work ?"

His answer was:-

"Yes, that is true."

The Tribunal took notice of the admission made by Sirdesai that he was employed principally to supervise control and coordinate the activities of the contractors and the company's men in the district for all construction and maintenance work, but added that the nature of supervision and control was essentially technical, and, so far as fitters and draughtsman were concerned, the guidance and instructions given by the District Engineer to them were also of technical character. Holding that there was no supervision in the sense of any administrative control or powers: exercised over them, the Tribunal concluded that the District Engineer was employed to do technical work and not supervisory work. On the face of it, the decision is incorrect. The principles that we have explained above, in dealing with the case of Transport Engineer, manifestly show that a District Engineer is also principally employed to do work which is of a supervisory character and, even though he has to use his technical know--

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ledge for the purpose of properly carrying on supervision, it cannot be held that he is employed to do technical work. A District Engineer also draws a salary in excess of Rs. 500 per mensem and, consequently, he cannot be held to be a workman. The decision of the Tribunal is, therefore, set aside in respect of the District Engineers also.

3. Foreman (Chemicals)

The Foreman (Chemicals) examined is M. D. Daniel. The claim of the Association was that he was employed essentially to do technical and manual work. In his evidence, he first described the work done by a Chemist, which was a post held by him earlier. Giving the duties of the Foreman (Chemicals), he stated that the main part of his duties as Foreman is to be responsible for the blending of the chemicals. He admitted that the work of packing, capping and filling is done by labourers under his supervision. He himself makes only random checks in order to ensure that the labourers are doing the work properly. He admitted that he allots the work to the workmen under him who are 20 in number. Further, he had another 20 workmen under him for lorry filling of furnace oil. Though he denied that he was responsible for their discipline, he admitted that he makes reports to the officer-in-charge, chemicals, whenever an occasion arises. He signs gate passes and material vouchers. He recommends promotions of the men working under him and he is entitled to select a person for acting in a

higher capacity for the day when the person occupying the higher job is absent. It is his duty to ensure maximum utilisation of man-power. Like Mathai, he has also signed chits for leave not exceeding 18 days as I/C., Department; but he has also pleaded that his signature was made in token of recommendation and not sanction. The 20 workmen working under him in the, chemical department include checkers, general workmen, packers and chemical mixers. These duties, which are performed by Daniel, oil the face of it, are primarily and substantially those of a supervisory nature. His own manual work is only incidental and forms a small part of his duties. In dealing with his case, the Tribunal got slightly mixed up inasmuch the facts relating to duties of Chemists were also taken into account. Daniel, who is now Foreman (Chemicals), was earlier a Chemist. The work performed by a Chemist should not, therefore, have been taken into account when determining what work Daniel is employed to do. The duties, mentioned above 'clearly show that his principal duties are of a supervisory nature and the manual work done by him personally is only incidental. Since he also draws a salary in excess of Rs. 500 per mensem, the must be held not to be a workman under exception (iv).

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4. Fuelling Superintendents

The duties of a Fuelling Superintendent were given to the Tribunal in the affidavit and evidence of V. M. Nabar who has been working as such since 1953. These duties can be broadly divided into two parts. Some duties he has to carry on at the depot where he personally takes charge and checks and counts the packed stocks that is, cans, barrels, full and empty, and he maintains the packed stocks register. He dips every storage tank for quantity, quality and water. He himself carries to every storage tank equipment like manhole cover, dip tape, water finding paper and other articles. He takes the dip with the tape and notes down the reading. He checks the condition of the water finding paper by gently rubbing a finger on it. He removes water traces from the tank by swabbing, if necessary. He conducts continuity tests of discharge hoses. He calculates the quantity according to the dip from the calibration tables and completes the paper showing the dips and quantities for all the storage tanks. He makes similar entire in every tank book, and enters the loss or gain in the same book. He also carries out checks of static facilities, and maintains a book called quality control register. He himself notes down the time of arrival of the tank lorry on log sheet and carries out checks in accordance with the details of consignment forms. In the other Part of the work, whenever oil is required to be delivered to an aircraft the Fuelling Superintendent himself drives the tractor on which are loaded oil pourers and a ladder, to the aircraft. It is he who takes the oil tank to the aircraft and then ensures the delivery of that oil to the aircraft in the required quantity. In this work, of courts, he is assisted by some other workmen who actually do the work of connecting the oil tank to the tank of the aircraft or disconnecting it. Similar other minor manual work is done by the workmen who function under his control and direction. It is, however, clear that the main and substantial work which he does is not that of supervising the work done by the few workmen who assist him, but is his manual work which he carries out at the depot as well as when delivering oil to the aircraft. The Company's witness in respect of the Fuelling Superintendent is Des Rai Bhatia who tried to indicate that, the

manual or clerical work carried on by the Fuelling Superintendent is incidental or in emergent situations, while the Fuelling Superintendent is employed primarily to take over, responsibility for all matters connected with the fuelling and oiling of aircraft with the use of oil dispensers, fuellers, and/or hydrant fuelling equipment. He compared the position of a Fuelling Superintendent to that of a playing captain of a hockey or football team and says that,

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while he himself has to work along with other members of the team, he is also required to assume Over 'all responsibility for all operations prior to,' during and after the delivery of fuel/oil to aircraft including the observance of a time schedule, safety and quality control. The fact that a Fuelling Superintendent is the leader of the team which carries out the work of fuelling, cannot convert his work into that of a supervisory nature. In fact, the admission that he is a member of the team implies that his principal work would be to do his own personal manual work as such member and, incidentally, he has also to be in charge of seeing that others, whose work has to be, coordinated with his, do their work properly. The Tribunal was, therefore, correct in holding that a Fuelling Superintendent is not employed mainly or substantially to do supervisory work. II On the other hand, his duties are mainly manual. Exception (iv) does not, therefore, apply to a Fuelling Superintendent and, even though the salary exceeds Rs. 500 per mensem, a Fuelling Superintendent must be held to be a workman.

5. Chemists

On the question of the duties parried out by a Chemist, the Association examined three witnesses. One of them is M. D. Daniel who had once worked as a Chemist and is now Foreman (Chemicals). The other two are A. N. Dalai and P. N. Marolia who are both working as Chemists. They have given their qualifications and nature of work done by them. There are, no doubt, Assistants who assist the Chemists in the laboratory where their work is carried on; but all the Chemists do their own work which is of technical nature. The Chemists have to personally test the various products receive 1 and also test the products as they are altered in the installations at various stages. All the tests are carried out by the Chemists personally and there are only a few Assistants who do mere routine work in order to assist the Chemists. The Chemists, no doubt, ensure that the workmen assisting them do their for properly; but that small amount of supervision is only incidental to their own technical 'work of testing and giving the results of tests to the Company. Even the Compuserve's witness Harding Bhargava admitted that the Chemists do a large part of the work themselves, though he added that the Chemists do guide and direct the Analysts and Laboratory Attendant so as to ensure that the work in the laboratory is performed efficiently and properly. Even his evidence does not show that this guidance and direction to the laboratory attendant and, analysts is the principal or substantial work for which a Chemist is employed. In fact, that work is ancillary to the main work which is done by the Chemists' themselves. The decision of the Tribunal,, consequently, in respect of the Chemists, holding them

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to be employed on technical work and not in supervisory capacity, must be upheld. They have rightly been held to be workmen.

6. Sales Engineering Representatives

The witness on behalf of the Association is K. V. Rajan who filed an affidavit and was also cross-examined. He holds a Diploma in Mechanical and Electrical Engineering and has worked as a Sales Engineering Representative since 1955 at various planes. In giving the duties of the Sales Engineering Representing, he first mentioned items of work that the Representative has to do himself. According to him, he has to guide the industrial concerns in use of different grades of fuels and lubricants, and has to give demonstrations and trials of Company's fuels and lubricants in major industrial concerns which are the customers. He says that the manual labour by him consists of demonstrating the method and manner in which the fuels and lubricants should be used and applied. He explains all details with regard to application of fuels and lubricants to the staff of the customer concerns, and he also attends to the difficulties experienced by the customers in the use of Company's products. He writes to the Divisional Office which, in turn, instructs the Sales Engineering Representative to attend to such complaints of the customers. He also gives technical advice to eliminate the complaints of the customers, and writes down the survey reports and submits them to the Divisional Office. He has to maintain files up-to-date regarding lubrication recommendation sheets sent by the Head office to his Division. Then, in cross-examination, he admitted that the work that he does is for promoting the sales of lubricants and fuel oils, though he added that, in doing so, he uses his technical knowledge.

Manmohan Singh, Marketing Services and Planning Manager of the Company, explained that a Sales Engineering Representative is employed primarily to support the sales efforts by providing after sales service and advice to the customers on optimum utilisation of fuels and lubricants. According to him, the principal duty of a Sales Engineering Representative is to provide such service and to guide and supervise the workers employed in customers' plants to ensure efficient use of fuels and lubricants. His duties have been described as complementary to the duties of the District Sales Representative. He, however, did admit that the Sales Engineering Representative has to give demonstrations regarding use of fuels and lubricants, and such demonstrations are conducted by him, though part of the work in the demonstration is done by the workers of the customer concerns. It is true that there is no subordinate personnel attached to him.

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The Tribunal itself held that the main work to be performed by Sales Engineering Representative is promotion of sales which are canvassed primarily by District Sales Representatives. This the Sales Engineering Representative does by giving technical advice, holding demonstrations and suggesting methods for making best use of the products sold. On these facts, the Tribunal, in our opinion, rightly held that the Sales Engineering Representative, is not employed on supervisory work; but the Tribunal did not proceed further to examine whether he was employed on any other work of such a type that lie could be brought within the definition of a workman. There is no suggestion at all that he was employed on clerical work or manual work. Reliance was placed on the word "technical" used in the definition of a workman. The amount of technical work that a Sales Engineering Representative does is all ancillary to his chief duty of promoting sales and giving advice. As we have held earlier the mere fact that he is required to have

technical knowledge for such a purpose does not make his work technical work. The work of advisors. Harish Bhargava, the Manager of the Installations, has, described all Blending Supervisors as Foreman Blending Supervisor. As we have said, earlier, the mere description is,, however, immaterial. What we have to see is the actual work done by them' and to determine whether the work, which they are employed to do, makes them workmen or not.

V. V. Lele is the witness in respect of one set of Supervisors whose cases have been brought up by the Association in', Civil Appeal No. 1478/1970. Mr. Chari on behalf of the appellant in this appeal did not argue all the cases 'of the four categories mentioned above. We, therefore, proceed to deal with only those categories of members of the Association whose cases have been argued before us by him.

1. Blending Supervisors:

It appears that there are two sets of persons working at the Wadilube Installations who are all designated as Blending Supervisors. Harish Bhargava, the manager of the installation, has described all Blending Supervisors as Foreman-Blending supervisors. As we have said earlier, the mere description is, however,' immaterial. What we have to see is the actual work done by them? and to determine whether the work, which they are employed to do, makes them workmen or not.

V. V. Lele is the witness in respect of one set of Supervisors who work in the blending section of Wadilube plant. He works in the blending pump house and in the plant where the actual blending takes place. According to Lele, in connection with the duties to be performed by him, he received a daily blending' programme from the Operations Officer, and the blending has to be done in accordance with that programme and in conformity

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with the formulations supplied by the laboratory. For that purpose, he receives a test note from the laboratory before he starts the work of blending. He has himself to test the tank in order to find out whether it is clean or not. He personally connects by means of a hose pipe the blending tank to the pump line coming from the pump house on the ground floor. He then advises the pump house Foreman to start the pump, while he himself has to be constantly vigilant at the tank to ensure that the required quality is taken up in the tank. As soon as the required quantity is received, he stops the pump by means of a remote control. He changes the hose pipe and puts it on to another line and keeps on this process as each tank is filled up. While receipt of the oil in the tank is going on, he himself' operates steam and air valves in order to keep the oil at the required temperature and also maintains air agitation for mixing different basic oils. After the blending in the tank is over, he takes out samples personally, labels them properly and sends them to the laboratory for test purposes. On receipt of the test reports from the laboratory, he fills in the blending test notes quantity of different oils taken and sends them back to the laboratory. There are about 25 blending tanks which have to be attended to in this manner by two Blending Supervisors. After the blending is over, the Supervisor advises the barrel filling section and, if the blended oil is needed in that section, he sends the blended oil to that section; if that section does not require it, he transfers the blended oil to, the settling tank. For these purposes, he again operates different line valves, so that the blends may drop into the particular

settling tank. There are 20 such settling tanks. He has also to note the readings of the levels of the blending tanks as well as the settling tanks. He has to take stock personally of the barrels and other packages used and left unused in his section and writes down the same in the prescribed form. It is true that he has two persons working under him as Mazdoors and a Clerk, comes to assist him only at the time of monthly checking. The Mazdoors, according to him, 'do only incidental work in aid of the main process of blending, such as moving empty tins, cleaning them, etc. He also does some work at the Port when a tanker arrives with oil from a foreign country and has to discharge it at the Port. At that stage, no doubt, he supervises the work of discharge of the oil from the tanker and receipt in the tanks at the Port. This supervisory work, it is clear, is, a very minor part of his duties. The major part of his duties, consists in himself operating various as of the machinery and ensuring that oils are blended properly., Mr. Chari, in these circumstances, rightly claimed that a person employed' as Blending Supervisor in the type of work done by Lele is employed to do manual work and not supervisory work. The supervisory work is a minor part of his duties' and, to some extent, incidental to

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the main work which is manual in character. Blending Supervisors, who work at the Plant in the manner indicated by Lele, are, therefore, persons employed on manual work and have to be held to be workmen. The decision of the Tribunal in respect of them is incorrect and is set aside.

Another set of persons are employed as Blending Supervisors at a different stage of the opera cons. The witness, who has come to give the duties of such Blending Supervisors, is M. C. Gomes. The Tribunal, in dealing with the work done by Gomes, appears to have got mixed up when it held that his duties are similar to the duties mentioned by Lele. Consequently, we were taken through the relevant evidence of Gomes and of Harish Bhargava on this point. It appears that, though Gomes is described as a Blending Supervisor, his employment is at a stage where the blending of oils has already been completed and the oil has been transferred to the settling tanks. According to Gomorrah, the Operations Officer gives him the programme for filling different oils in different packages, and he has to carry out that programme. He has first, to see that oiling the settling tank is transferred to the small package tank by operating a pump. At this stage, he himself operates the pump by starting it, watching the gauge and stopping the running of the pump when the small package tank is full. Then, the oil is transferred from the small package tank to the filling machines. The fillers at the filling machines are then operated by other workmen to transfer the oil into the small package containers. Gomes has to see that this work of transferring the oil from the small package tank to the filling machines and from the filling machines into the containers is properly carried out by the persons working under him. All the work of bringing the barrels to the filling machines, of actually seeing that the barrels are filled up properly, and of sealing and labelling them properly, is physically done not by Gomes himself, but by men working under him whose work he supervises. No doubt, as a Supervisor, he has to set the weights on the machines and has to take samples of the products and send them to the laboratory; but the principal work entrusted to him is that of seeing that the barrels and other containers are properly filled up by the large number of workmen placed

under his charge who actually carry out the physical work for that purpose. His duties are, thus, primarily supervisory; and the Tribunal's decision that Blending Supervisors doing the work of the nature done by Gomes are not workmen because they are all drawing a salary in excess of Rs. 500 per mensem, is correct and is upheld.

It was mentioned that there was a third type of Blending 'Supervisors described as Supervisors (Small Packages Filling).

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Their work is quite similar to the work done by Gomes and, consequently, the decision of the Tribunal in respect of them is also correct and is upheld.

2. Foremen

(i) One class of Foremen, whose case was argued before us by Mr. Chari, are described as Foremen (Tank Farm and Pump House) at the sewree installations. The witness on behalf of the Association is D. M. Telang. In this affidavit and evidence he tried to make out that he has to carry out three types of duties, technical, skilled manual and supervisory: but, on a careful examination of his evidence, the Tribunal has come to the finding that, of the three types of duties, his supervisory duties are themes and substantial part of his work, while other duties are only incidental. We are, unable to find any error in the view taken by the Tribunal. He has about 25 workman under him whose work he supervises. The Tribunal accepted the evidence of Company's witnesses, Harish Bhargava and Varkie for holding that such Foremen are primarily entrusted with the duty of supervising the work of the workmen in the it respective sections. No technical knowledge is involved. Even, when the oils are tested, the dips are not necessarily taken by the Foremen. The dips are usually taken by gaugers. The work of taking the dips, of reading the dips and of temperature readings does not require any technical knowledge. All that is necessary is to push a button. Varkie stated that quality control in Burmah Shell is a simple process which has to be carried out with the object of ensuring a clean product free of impurities. Even the work of draining of water from the tank is done by the gaugers under the supervision of the Foreman. It is the gauger who takes the pressure and, if it is abnormal, he informs the Foreman. Even Telang himself admitted that he was employed in a supervisory capacity, though he insisted that the work done by him was of technical, skilled manual, and supervisory characted. It also appears that he has to supervise the work of as many as 25 workmen. It is for him to decide whether a man, who has asked for leave, can be spared. The Company's case was that in fact, he grants leave to men working under him; but he denied this suggestion Documentary evidence was, however, brought to our notice which shows that he has been actually sanctioning leave to workmen metary evidence was, however, brought to our n otice which subordinate to him, when the leave asked for is earned leave. We looked at the leave applications and found that, in one case at least, he signed as recommending the leaves, but cut out that signature and then signed it again at the place where the officer sanctioning the leave is required to sign. Even other persons, doing the same duty as Telang, were found to be similarly sanctioning leave. There was even one application where the recommendation for leave was

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by some other person, while Telang signed as the sanctioning

,,officer. In a third case, Telang actually recorded reasons for refusing to sanction the leave. It appears that, at least in the case of Foremen (Tank Farm and Pump House). Varkie is right in stating that he had empowered the Foremen to grant leave, and Harish Bhargava is also correct in saying that powers of sanctioning leave are not retained by the Operations Officer. Telang admitted, that he has to maintain discipline and has to report ,cases of indiscipline in his department. He allots work to those who are working under him, and then gets it done by giving guidance. It is his job to see that the man-power is so utilised as to give maximum out put. Considering all these duties, it is quite clear that the Tribunal was right in holding these Foremen not to be workmen, as they are employed in supervisory capacity and are drawing salary in excess of Rs. 500 per mensem.

(ii) The other class of Foremen are described as Foreman Tank Lorry Loading, Tank Wagon Loading and Tank Wagon Unloading). Mr. Chari claimed 1 that these per sons should be ,held to be workmen as they were employed to do skilled manual work. The facts found by the Tribunal 'clearly show that the actual loading and unloading in all cases is done by other persons and not by the Foremen themselves. The Foremen are. no doubt, responsible for proper loading and unloading; but this duty is discharged by supervising the work of manual labourers 'who actually perform the work of loading and unloading. Of course, when occasions arise, the Foreman may also lend a hand; 'but that would not make him a skilled manual worker. On the findings of fact order by the Tribunal, therefore,, the decision that Foreman (Tank Lorry Loading, Tank Wagon Loading, and Tank Wagon Unloading) are not workmen is correct, as they also all draw a salary in excess of Rs. 500 p.m.

3. Depot Superintendents:

With regard to the classification of Depot Superintendents, reliance was placed by the Association on the evidence of G. B. Athalye, and on some decisions in respect of Depot Superkey ,dents of this very Company in other regions. After considering the evidence of Athalye and the Company's witnesses, the Sir banana, as a fact, held that a Depot Superintendent is in-charge ,of all the stocks at a depot and his principal 'duty is to see that these stocks are properly received, stored and sent out. These stock range in value between Rs. 4 lakhs to Rs. 6 lakhs. The 'Tribunal found that, a Depot Superintendent has a complement of men working under him, the strength of which may vary from depot to depot. On an average, the persons employed are 5 to 7 out of whom 2 would be clerks, 3 to 4 would be workmen and

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one or two drivers. The Depot Superintendent has to get all the jobs done by these men and he guides them in their work. He is the senior-most officer at the Depot, He is not required to have any technical background. He allocates the work to the men working under him and sanctions leave to them. He is empowered to engage casual labour. He takes a review of the position of the strength prevailing and makes reconunendations about the required strength. Within the area which is served by the depot, the Depot Superintendent plans and delivers the necessary supply. He, can take decision regarding overtime work of the staff subordinate to him. He has to maintain discipline and has to report cases of indiscretions to the Head Office. Sometimes, he is empowered to hold inquiry in cases of indiscipline. Cases of minor indiscipline can be dealt- with by him himself. In addition, the Depot Superintendent functions as Factory Ma-

nager under the Factories Act and also under the Shops and Establishments Act. The Depot Superintendent does the meritrating of the clerks working under him.', He also represents the management to some extent before outsiders. He is authorised to spend amounts within prescribed limits on behalf of the Company. He represents 'the- Company and the Depot in dealings with the Railway and Municipal authorities. Of course, while carrying on these duties, he has also to ensure that the stockregisters are properly maintained. Where there is a clerck, the actual work of writing is done by the clerk; but, where there is no clerk, the Depot Superintendent may himself have to do all the writing work. This writing work done by the Depot Superintendent cannot be treated to be the substantial and main duty entrusted to him. On the facts enumerated above, it is quite clear that his principal duties are of a supervisory and managerial nature, while the clerical duties are only incidental.

Reliance was placed on the decision of the Labour Appellate Tribunal in *Burmah Shell Oil Storage and Distributing Company of India,, Ltd., Madras v. Their Employees*(1). In that case, it appears that the Depot Superintendent was found to be comparable with a mere store-keeper. The Depot Superintendent, in most cases, was the only person posted at the, depot and, in very few cases, a clerk was given to assist him. It was found that the Depot Superintendent himself had to maintain the correspondence, and was responsible for stock receipt, storagee and issue. He had to remain busy most of the time with completing company's standard forms and returns, and he had no powers of supervision over other members of the staff. On these facts, the Labour Appellate Tribunal held that his job was substantially

(1) [1954] 1 L.L.J. 21.

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of that of an intelligent and skilled clerk. This decision was upheld by the Madras High Court in *Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Madras v. Labour Appellate Tribunal of India and two others*(1) when the decision of the Labour Appellate Tribunal was challenged by means of a writ. The High Court dismissed the writ petition and upheld the decision of the Labour Appellate Tribunal. These two decisions can be of no help., because the Depot Superintendents, With whom we are concerned, Work under very different conditions. They are in-charge of large depots and have, on an average, 5 to 7 employees working under them. The amount of clerical work don by them is only a minor part of their duties, while the principal duty is that of working as Manager of the depot and of supervise the Work of the subordinate posted there.

As against these cases, there are two decisions of the Labour Appellate Tribunal in *Burtnah-Shell Oil Storage and Distributing Compose of India Ltd., Madras and Hydetiabad Branches V. Their Workmen*(1), and *Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., Madras Branch, Mysore- and Travan Core-Cochin States v. Their Workmen*(3), in which the Labour Appellate Tribunal, after examining the evidence in detail, came to the view that the principal ad substantial work done by a Depot Superintendent was administrative or supervisory and that the clerical work done was merely incidental. The facts of these two cases resemble more the facts found by the Tribunal in the case before us. Consequently. the decision given by the Tribunal that Depot Superintendents are employed on managerial or supervisory work and are not workmen is correct, because

they all also draw a salary in excess of Rs. 500 per mensem.

4. District Sales Representatives :

The case of the last category, viz., District Sales Representatives could not be seriously pressed by Mr. Chaxi before us. He did state that his claim is that they are employed to do clerical work; but the facts make it manifest that District Sales Representative is principally employed for the purpose of promoting sales of the Company. His main work is to do canvassing and obtain orders. In that connection', of course, he has to carry on some correspondence, but that correspondence is incidental to the main work of pushing sales of the Company. In connection with promotion of sales, he has to make recommendations for selection of agents and dealers; extension or curtailment of credit facilities to agents, dealers and customers; investments on capital and revenue, in the shape of facilities at Agent's premises or retail

(1) [1954] 2 L.L.J. 155

(2) [1955]

L.L.J. 153

(3) [1955] 2 L.L.J. 228

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outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new sites. He is, in fact, Company's representative in his district responsible for all matters affecting the Company's interests and, in Particular, the profitable sale of all its products. His case was urged primarily on the basis of the argument advanced by Mr. Chari that the definition of "workman" is now exhaustive and every employee of an industry must be classed amongst one of the four classes described in the Definition of workman. We have already given our reasons for rejecting this submission. The case of District Sales Representative is clearly that of a person who cannot fall within any of the four classes, because his work cannot be held to be either manual, clerical, technical or supervisory. The work of canvassing and promoting sales cannot be included in any of these four classifications. He is, therefore, not a workman at all within the principal part of the definition, and the decision of the Tribunal is correct.

As a result, both the appeals are partly allowed, and the decision of the Tribunal is varied to the extent indicated above. In the circumstances of this case, we direct parties to bear their own costs in both the appeals.

K.B.N.

Appeals allowed

in part.

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