

Determining Supervisory capacity in an Establishment

Blog Series – 24 **March 14 2020** **Statutory other than PoSH – Vol.12**

Any organization broadly, will have three categories of Employees:

- a) Worker
- b) Supervisor
- c) Manager

Currently the Supervisor category exists only in manufacturing industries and retail industries, where the same was replaced with a different nomenclature – Team Lead – in Service industry and other establishments.

In this Blog, why we are discussing who is a Supervisor, in any establishment?

Reason:

- A Supervisor by designation is a workman
- A Supervisor by capacity is not a workman

Workman under few Statutory legislations have some privileges, whereas such privileges are not available for those who have Supervisory or Administrative or Managerial CAPACITY.

What is the difference between a Supervisor by designation or a Supervisor by capacity?

Section 2(s) of The Industrial Disputes Act defines workman as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be express or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. It excludes persons employed in army/Navy/Air Force/Police and those employed in *mainly managerial or administrative, supervisory capacity* and drawing wages of more than INR 15,000.

- » Any individual who is working in purely managerial and/or supervisory capacity does not fall within the definition of workman under the Industrial Disputes Act.

- » Where a person performs diverse functions, the nature of the main function performed by such individual must be considered to determine whether the individual is a "workman or not".
- » Mere designation of an individual does not determine the nature of work. Even if a person is designated as supervisor, the employer must prove that his work and his duties were in nature of a supervisor.

The Hon'ble Bombay High Court, in Union Carbide India Ltd vs Samuel case, summarized the tests laid down by the Hon'ble Supreme Court in various decisions as follows.

".... The Principle, therefore, is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor..."

The Hon'ble Supreme Court proceeded thereafter to observe,

In broad sense, one having authority over others, to superintend and direct. The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine of clerical nature, but requires the use of independent judgment

In so far as the Apex Court is concerned, some of the tests laid down are:

- 1. Designation is not material but what is important is the nature of work**
- 2. Find out the dominant purpose of employment and not any additional duties the employee may be performing**
- 3. Can he bind the company/employer to some kind of decisions on behalf, of the company/employer?**
- 4. Has the employee power to direct or oversee the work of his subordinates**
- 5. Has he power to sanction leave or recommend it, and**
- 6. Has he the power to appoint, terminate or take disciplinary action against workmen.**

The emphasis is laid on the nature of duties and powers conferred on an employee rather than the designation.

Anandan S

Feature Writer, Skill Enhancer & Webinar Specialist