

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW ~~XXXXXX~~ BOMBAY

O.A. No. 226/86

198

~~XXXXXX~~DATE OF DECISION 4-1-88Dr. Vithal Laxman Shinde PetitionerShri P.B. Abhale Advocate for the Petitioner(s)

Versus

Union of India and Others RespondentMr. S.R. Atre (for Mr. P.M. Pradhan) Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. S.P. Mukerji, Member(A)

The Hon'ble Mr. M.B. Mujumdar, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

*Mr. J.*  
                      
 4/1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.226/86

Dr.Vithal Laxman Shinde,  
Medical Officer,  
R/a.Cottage Hospital,  
Silvassa,  
Dadra & Nagar Haveli(U.T.),  
via Vapi - 396 230.

...Applicant

vs.

1. Union of India
2. The Administrator,  
Dadra & Nagar Haveli,  
Silvassa.
3. Collector  
Dadra & Nagar Haveli,  
at Silvassa.

...Respondents

Coram: Hon'ble Member(A)S.P.Mukerji

Hon'ble Member(J)M.B.Mujumdar

Appearances:

1. Shri B.P.Abhale  
Advocate for the  
applicant.
2. Shri S.R.Atre(for  
Shri P.M.Pradhan)  
for the Respondents.

JUDGMENT

Date: 4-1-88

(Per S.P.Mukerji, Member(A))

The applicant Dr.Shinde who has been working as a Medical Officer in the Union Territory of Dadra and Nagar Haveli has moved this application under Section 19 of the Administrative Tribunals Act challenging the impugned order dtd. 23-6-1986 passed by the Secretary to the Administrator reverting him from the post of Senior Medical Officer(Group'A') to the post of Medical Officer with immediate effect. The brief relevant facts are as follows:

The applicant has been in service of the Union Territory's Administration since 7th January, 1974. He was finally regularised in the post of Medical Officer, Class II, in October, 1977 in the scale of Rs. 650 - 1200. He was promoted as Deputy Chief Medical Officer in the scale of Rs. 1100 - 1600 on purely ad hoc basis against a vacant post. It was clearly stated in the order of promotion dtd. 8-12-83 (Exhibit 'H' to the application) that "this appointment will not carry any right for regular appointment to the grade as also for seniority in the cadre etc." He had been working in the post for 2½ years when the impugned order dtd. 23-6-1986 was passed reverting him to the post of Medical Officer and the charge of the post was taken from him. Whereas the applicant is alleging that the reversion was ordered due to the vindictive attitude of the Chief Medical Officer the respondents have stated that the post was included in the Central Health Services Cadre by the Govt. of India in consultation with the Union Public Service Commission on 27th May, 1986 and the applicant was reverted because of this inclusion. The applicant's plea is that even as an ad hoc employee having worked in the post for about 2½ years, his reversion without a show cause notice is violative of Article 311, 14 and 16 of the Constitution.

We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have admitted that the post of Deputy Chief Medical Officer from

which the applicant was reverted is still lying vacant and the reversion is solely on the ground that the post was included in the Central Health Services Cadre. The applicant has also appended a copy of the order dtd. 25-6-1986(Exhibit 'I' to the application) in accordance with which even after his reversion the applicant has been ordered "to continue his supervision work of PHCs/ Dispensaries/Sub-Centres etc. which he was doing previously, till further order". During the course of arguments the learned counsel for the applicant showed us another order dated 6-11-1986 passed by the Chief Medical Officer(after this application was admitted on 4-8-1986 and the respondents entered appearance on 18.9.1986) withdrawing the supervisory work from the applicant. In any case the reversion of the applicant was merely on the ostensible ground of inclusion of the post in the CHS cadre even though substantially he had been asked to continue with supervisory work even after his reversion. Even though an ad hoc appointee has no right to the post we feel that unless there are valid grounds of public interest or unsuitability or arrival of the regular incumbent, even an ad hoc appointee cannot be reduced in rank arbitrarily and without a valid reason. In the instant case though the order of reversion is an order simpliciter, in actual fact the applicant has been reverted on paper though obliged to discharge the supervisory duties attached to the higher post. If he was unsuitable he could not have been expected to continue the supervisory work. This to our mind is worse than a reversion simpliciter because apart from the adverse consequence of loss in rank and monetary suffering, the applicant is being obliged to discharge higher duties at lower pay. The withdrawal of the supervisory work after this application was

admitted does not change the basic features of the case. We are not impressed by the argument of the respondents that the reversion had to be made because of the inclusion of the post in the Central Health Service Cadre. Such an inclusion does not automatically warrant reversion of an officer who has been holding the post albeit on an ad hoc basis for 2½ years. Medical profession provide an essential service to the public in the interest of which the ad hoc appointment of the applicant had been made and continued for 2½ years. The fact that even after his reversion the applicant has been asked to continue with the supervisory work of the higher post shows that the public interest warrants his holding of the post even on an ad hoc basis till a regular appointment is made and the regular appointee takes over the charge. The respondents have not given us any reason to believe that there was any compelling reason or public interest to revert the applicant in such a summary and peremptory manner. There was not even a direction from the Govt. of India shown to us that the applicant should be reverted because of the inclusion of the post in the CHS. We feel that the respondents rather over-reacted to the communication of the Govt. of India dtd. 27-5-86 to the effect that the post has been included in the CHS. It is not as if that the inclusion surfaced suddenly on that very day. Final decision to include the post must have been reached by previous correspondence between the Administration and the Govt. of India. In spite of this, the applicant had been allowed to continue in the post and even afterwards directed to discharge the supervisory work of the post. If this application had not been filed perhaps he would have been discharging the supervisory work even now. No regular appointment has been made to the post till today. In the circumstances we see

no reason why the applicant should have been reverted so suddenly and summarily.

We are not however, prepared to accept the contentions of the applicant that the order of reversion was a sequel to the **vindictive** action of the Chief Medical Officer. He had not made any **grievance** of this prior to the filing of this application. Though warning memos issued against him and his wife who was a staff nurse may appear to be more than a mere coincidence, we refrain from delving into the allegations of malice any further as even without the same we find considerable merit in the applicant's claim. The respondents have not alleged unsuitability of the applicant in support of his reversion.

In the facts and circumstances we allow the application, set aside the order of reversion dtd. 23-6-1986 and direct the respondents to reinstate the applicant as Deputy Chief Medical Officer/Senior Medical Officer <sup>on an ad hoc basis</sup> with effect from the date of his reversion with all consequential benefits of pay and allowances for the period he discharged the supervisory functions during the period between 23-6-86 and 6-11-86 and the period from the date of passing of this order till a regular appointment is made. The applicant should also be considered for regular appointment in accordance with the relevant rules. <sup>^ R</sup> This order should be implemented within <sup>two months from the date of this order. R</sup> 82

There will be, however, no order as to costs.

*S.P. Mukerji* 4.1.88  
(S.P. MUKERJI)  
Member(A)

*M.B. Mujumdar*  
(M.B. MUJUMDAR)  
Member(J)