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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA NO.1761/2002  
MA NO.1406/2002 &  
OA No.3382/2002 ✓  
MA No.2915/2002

New Delhi, this the 30<sup>th</sup> day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.NAIK, MEMBER (A)

(1). OA 1761/2002

1. Smt. Anita Devi  
W/o Mr. Ashok Kumar  
R/o 14/35  
Tughlakabad Extension  
New Delhi.
2. Smt. Usha Tomar  
W/o Shri Virender Kumar  
R/o B-A  
Jawahar Park, Khanpur  
New Delhi-6.
3. Smt. Anita Devi  
W/o Shri Chaman Prakash  
Village & P.O. Dundahera  
Gurgaon, Haryana
4. Smt. Pushpa Gulhar  
W/o Late H.K. Gulhar  
R/o 323/324, Sect. 3  
Pocket E-18, Rohini  
New Delhi.
5. Smt. Pusha Rani  
W/o H. Vijay Pal  
R/o H.No. J-6  
Model Town  
Police Line Colony  
Delhi.
6. Smt. Bindu  
W/o Sh. P.G. Satheesan  
R/o DG-947  
Sarojini Nagar  
New Delhi.
7. Smt. Bindu K.T.  
D/o Sh. Thakappan K.  
R/o D.D.A. Flat 137  
South Enclave  
Ambedkar Nagar  
Sect. V. New Delhi.
8. Smt. Premwati  
W/o Sh. Rajesh Katri  
R/o H.No. 1000/15/6  
Vill. & P.O. Jatwara, Sonipat

9. Smt. Vidya Devi  
W/o Sh. Mahendra Singh  
R/o P.O. Kheri Dankam  
Sonapat, Haryana.
  10. Smt. Anita Devi  
W/o Sh. Ram Kanwar  
R/o 36A Lal Quarter  
West Avenue Road  
Punjabi Bagh  
New Delhi.
  11. Smt. Nirmala Khalko  
W/o E. Kuzur  
R/o 2689, Baljeet Nagar  
Gali No. 22, New Delhi.
  12. Smt. Satyavavanti  
W/o Sh. Devender Kumar  
Gali No. 1-R 1326  
Swatantra Nagar, Narela
  13. Smt. Rekha Rani  
D/o Late Sh. Nathu Ram  
House No. 10037  
West Gorakhpark  
Gali No. 3-J  
Shahadara, Delhi-32.
  14. Smt. Parmila Kumari  
W/o Sh. Kumar Sanjay  
House No. 111/112  
5 Block, West Sagarpur  
New Delhi.
  15. Smt. Santosh Kumari  
W/o Shri Krishan  
R/o H.No. 870/3-  
Vikash Nagar  
Sonapat, Haryana.
  16. Smt. Suman Devi  
W/o Shri Surender Singh  
WZ-303  
C/o  
SHRI Ram Chadershakurpur  
Delhi.
  17. Smt. Phoolwati  
W/o Late Ramesh Chand  
H.No. 98, V & P.O.  
Malikpur  
Delhi-110 073.
  18. Smt. Geeta Devi  
W/o Shri Surender Singh  
H.No. RX 152  
Patel Garden, Kakrola Mode  
New Delhi.
- ..... Applicants
- (By Shri S.K. Sinha, Advocate)

vs.

1. Lt. Governor of N.C.T. of Delhi  
Raj Niwas  
New Delhi.
  2. Chief Secretary  
Govt. of N.C.T. of Delhi  
Indraprastha Sachivalaya  
New Delhi.
  3. Secretary (Medical)  
Govt. of N.C.T. of Delhi  
Indraprastha Sachivalaya  
New Delhi.
  4. Director of Family Welfare  
Govt. of N.C.T. of Delhi  
Directorate of Family Welfare  
Malkaganj  
Delhi-110 007.
  5. C.M.O.  
Standing Committee on  
Voluntary Action  
Directorate of Family Welfare  
Malkaganj  
Delhi-110 007.
- ... Respondents

(By Ms. Renu George, Advocate)

(2). OA 3382/2002

1. Smt. Rajni  
W/o Shri Satish Kumar  
179, Indra Vihar  
Kingsway Camp  
Delhi-9.
2. Smt. Satish Kumari  
W/o Shri D.S. Rana  
B-413, Timarpur  
Teacher's colony  
New Delhi.
3. Smt. Kusum Lata  
W/o Shri Anil Rana  
H.No. 528, Gali No. 12  
Swatantra Nagar  
Narela, New Delhi-40.
4. Smt. Asha Rani  
W/o Sh. Anil Kumar  
H.No. 1961, Railway Road  
Narela, New Delhi-40.
5. Smt. Rekha Rani  
W/o Shri Parvesh Kumar Kaushik  
B-58, Raghubir Enclave  
Najafgarh, New Delhi-43.

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6. Km. Krishna  
D/o Shri Ram Kumar  
B-17, AR Complex  
Sector 13, R.K. Puram  
New Delhi-66

7. Smt. Kamlesh  
W/o Sh. Dalbir Singh  
39, Extension 4  
Nagli, New Delhi.

.... Applicants

(By Advocate Shri S.K. Sinha)

vs.

1. Lt. Governor of N.C.T. of Delhi  
Raj Niwas  
New Delhi.

2. Chief Secretary  
Govt. of N.C.T. of Delhi  
Indraprastha Sachivalya  
New Delhi.

3. Secretary (Medical)  
Govt. of N.C.T. of Delhi  
Indraprastha Sachivalya  
New Delhi.

4. Director of Family Welfare  
Govt. of N.C.T. of Delhi  
Directorate of Family Welfare  
Malkaganj  
Delhi-110 007.

5. C.M.O.  
Standing Committee on  
Voluntary Action  
Directorate of Family Welfare  
Malkaganj  
Delhi-110 007.

... Respondents

(By Ms. Renu George, Advocate)

## O R D E R

Justice V.S. Aggarwal:MA Nos. 1406/2002 and MA No. 2915/2002

MA No. 1406/2002 and MA No. 2915/2002 for

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joining together in OA Nos.1761/2002 and 3382/2002 respectively are allowed.

OA Nos.1761/2002 and 3382/2002

2. By this common order, we propose to dispose OA Nos.1761/2002 and 3382/2002 together since they involve common questions. However for the sake of convenience, we are taking the facts from OA No.1761/2002.

3. The applicants are working as Auxiliary Nurse and Midwife (for short, ANM). The offer of appointment in the case of Smt. Usha Tomar applicant (representative order) dated 21.12.1999 is as under:-

"Sub:- Application for the post of ANMs under RCH.

Madam,

I am directed to inform you that your have been shortlisted for the post of A.N.M. under R.C.H. Programme.

You are requested to kindly collect the letter of invitation alongwith all the forms from RCH. Second floor of this Office on any working day between 11.00 A.M. to 4.00 P.M.

Appointment letter will be issued only on receipt of the above said forms duly completed by you."

Thereafter, on 28.3.2000, an order was issued to



the said applicant which reads as under:-

"To

Smt. Usha Tomar @ Munni Devi  
B-141-a Jawahar Park  
Khanpur Devli Road  
New Delhi-62.

Sub:- Appointment letter

Refer your application for the post of A.N.M on contract basis initially for one year, at the rate of Rs.4000 D.A. at the prevalent rates per month. Competent Authority has approved your appointment. Consequent upon agreeing to the terms and conditions and signing the agreement to that effect you are directed to report to the Medical Officer Incharge.

Allopathic dispensary JJ Colony, Khanpur

For further duty. You will be governed by the terms and conditions the aforned overleaf. You will perform duties annexed with the appointed letter.

Dr. (Mrs.) S.Chadah)"

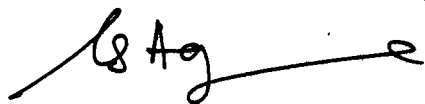
It is relevant to mention that the Director Family Welfare had addressed a letter dated 20.8.2001 to the Medical Officer In-charge, Delhi Administration Dispensary/MCW Centre/Maternity Homes appointing ANMs under the Reproductive and Child Health Care Project (for short "RCH Project") prescribing the duties of the ANMs under the RCH Project. The relevant portion of the same is:-

- "1. Each ANM will prepare a map showing all the important landmarks of the area allotted to her and attach it to her eligible couple register.

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2. The ANM is to attend one immunization and one ante-natal clinic per week in the dispensary/MCW Centre if there are any such sessions and go to the allotted area for field activities on the rest of the days.
3. The report of the ANM has to be forwarded to the RCH Project Director, Malkaganj Office, after verification by you at the end of the month. The report would contain the field activities carried out by the ANM while the antenatal and immunization performance in the dispensary/MCW Centre will be reported by the Dispensary/MCW Centre in their monthly reports."
4. By the present applications, the applicants seek a direction to the respondents to frame a scheme to regularise them on basis of their work performance and their service record and experience gained and to continue them till their services are so regularised. They also seek all pay and allowances attached to the posts of ANM held by them including Maternity Leave, House Rent Allowance and City Compensatory Allowance.
5. The applications as such are being opposed. According to the respondents, the Ministry of Health and Family Welfare is implementing RCH Project through the different States and the Union Territories. The loan is provided from the IDA. Under the Project, various interventions had been planned to enable the clients to make informed choice, to receive counselling and education for responsible and healthy sexual behaviour, to access user friendly services for preventing unwanted pregnancy and safe abortion, maternity care and child survival and



management of reproductive tract infections (RTI) and sexually transmitted diseases (STDs). Thus the Reproductive and Child Health Programme incorporates the components covered under the child survival and safe motherhood programme and includes two additional components, one relating to STD and other relating to RTI. The main highlights of the Reproductive and Child Health programme are:-

- (1) integration of all interventions of fertility regulation, maternal and child health with reproductive health of man and woman;
- (2) the services under the Reproductive and Child Health will be client centred, demand driven, high quality and based on the needs of the community;
- (3) upgradation of the level of the facilities for providing various interventions and quality of care; and
- (4) improvement of the access of the community to various services commonly required.

6. It has been asserted that for Reproductive and Child Health implementation, the funds are being routed in Delhi through a State Committee On Voluntary Action (SCOVA). It is a society duly

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registered with certain objectives like:-

- (i) framing of policy guide-lines for the implementation of the Reproductive and Child Health in Delhi;
- (ii) supervising the implementation of the RCH Project in Delhi;
- (iii) releasing of grant in aid received from the Government of India/World Bank; and
- (iv) reviewing the performance of the various officials working under the RCH Project.

The said society collects information and scientific knowledge in the form of books, journals etc. It collects and establishes computerized data to assess periodically, the magnitude of the problems of the RCH Project in Delhi. It organizes training programmes, workshops in the field of Reproductive and Child Health care. It appoints or employs any person for the purpose of society and frames rules and regulations etc. The committee is headed by the Principal Secretary (Health), Government of National Capital Territory of Delhi as a Chairman and Director Family Welfare is the Member Secretary. There are seven other Members. They are Director Health Services, Government of

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National Capital Territory of Delhi: Secretary, Red cross: Director SCOVA; Director Health Municipal Corporation of Delhi; Deputy Secretary Finance, Government of National Capital Territory of Delhi etc. The SCOVA has been strengthened with the provision of contractual staff. In the RCH Project, there is a provision for appointment of contractual staff for the duration of the project. It includes 140 ANMs. The project commenced in the year 1997. ANMs under the RCH Project were appointed on purely temporary and contractual basis by the SCOVA in batches through an open advertisement. These ANMs under the RCH Project had never been engaged/appointed by the Government of National Capital Territory of Delhi. The SCOVA society is funded with the support of the World Bank through the Government of India for its existence. Once the World Bank funding for the RCH Project ceases, it will not be possible for the SCOVA to continue with the Project and the SCOVA employees on contractual basis will have to be terminated on automatic expiry of contractual tenure.

7. Furthermore, a plea has been raised that these ANMs appointed under the RCH Project by the SCOVA are not posted to the dispensaries against any vacant posts. There is no regular or any other post. They are posted in these dispensaries for

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the purpose of implementation of the RCH Project in the fields attached to the dispensaries. They are not substitutes for the posts of Government personnel. The question of regularizing them will not arise. The World Bank funding for the RCH Project to SCOVA was likely to continue upto 31st March, 2003 only. If the funding to the SCOVA society is renewed and the World Bank desires to continue with the Project, then upon satisfactory performance of the SCOVA ANMs under the RCH Project may continue.

8. It has been further pointed that as per the terms of the reference of the appointment of the ANMs under the RCH Project, the duration of the assignment of the contractual staff will be initially for one year. Renewal of contract will depend upon the performance as reviewed by the review committee. The SCOVA as a contractor, in the event of termination of the contractee (ANMs) has to be paid for the services rendered for carrying out the assignment up to the date of termination. The ANMs are paid monthly remuneration of Rs.4000/- plus Dearness Allowance at the prevalent time for the services rendered by them. The question of making the payment of pay and allowances at par with the employees of the Delhi Government, therefore, will not arise.

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8. On behalf of the applicants, it has been urged that they had been appointed under the national policy for providing primary health services to the deprived masses. The work and conduct of the applicants is good. The cheques had been signed by the Chief Medical Officer, Directorate of Family Welfare. This shows that the Drawing and Disbursing Officer of the applicants is the Chief Medical Officer. Therefore, they are under the control of Directorate of Family Welfare. It is insisted that the applicants are the employees of the National Capital Territory of Delhi and, therefore, they are not only entitled to the pay protection but also regularisation.

9. We have carefully considered the said submission. Perusal of the record reveals that the State Committee On Voluntary Action (SCOVA) has been formed and it was pointed that it was a registered society. The society had been formed with particular objectives which we have already referred to above while enumerating the facts and it requires to repetition. It is in pursuance of the objectives for which the society had been formed when the applicants had been engaged. Therefore, the applicants cannot be heard to state that in fact they are the employees of the National Capital Territory of Delhi.

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10. This conclusion gets fortified from the letters that have been reproduced above, namely when the offer of appointment was given and the appointment was made. In the letter of 21.12.1999, one of the applicants, namely Munni Devi @ Usha Tomar which was quoted as a test case had been considered under the RCH Project run by the society rather than by the Government of National Capital Territory of Delhi. Even in the letter of 20.8.2001, the duties of the ANMs where the applicants are working are under the RCH Project. These factors clearly show that the appointments had been made under the RCH Project.

12. The said Project has been explained to be functioning from the funds received from the World Bank. So long as the funds would come, the Project would run and not otherwise. Merely because if some functionaries of the States are involved, it will not create a relationship of the employer and the employee between the State and the applicants. It is not even a permanent feature as pointed above. The applicants have not been able to draw our attention to any other fact to indicate that there is a relationship of the employer and the employee. We have already pointed above that the applicants were appointed under the RCH Project which is not a Government run Project.

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13. Furthermore, there are no posts that are available. No permanent or temporary posts had been created. It is in pursuance of that scheme which is not an ongoing Scheme but subject to availability of funds from the World Bank, the said plea even cannot be accepted.

14. The learned counsel for the applicants has referred us to a decision in the case of Jaipal and Others v. State of Haryana and Others, AIR 1988 SC 1504 where the Supreme Court was basically concerned with the principle of equal pay for equal work. It was held that the doctrine would apply if two classes of persons do same work under the same employer. In the present case, it is not so. We have already referred to in the preceding paragraph that the State is not the employer. Therefore, the decision is distinguishable.

15. A combined reading of the above would show that the applicants cannot be said to holding any civil posts nor there is the relationship of the employer and the employee. Consequently, the present applicants are not entitled to the reliefs claimed.

16. Resultantly, the applications being without any merit must fail and are dismissed. No

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costs.

(S.K. Naik)  
Member (A)

(V.S. Aggarwal)  
Chairman

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