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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th December, 2017

+ **W.P.(C) 11407/2017**

CENTRAL COUNCIL FOR RESEARCH IN UNANI
MEDICINE (THROUGH ITS DIRECTOR
GENERAL).

....Petitioner

Through Mr.S. Sunil, Adv. with
Mr.Jagdish N., Adv.

versus

DR. MERAJUL HAQUE AND ANR Respondents

Through Ms.Harvinder Oberoi, Adv. for
R-1.

Ms. Shiva Lakshmi, CGSC with
Mr.Ruchir R. Rai, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J (ORAL)

1. The present petition has been filed by the petitioner/Central Council for Research in Unani Medicine, assailing the judgment dated 15th May, 2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No.4341/2013, filed by the respondent no.1 herein and three others, praying *inter alia* for

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regularisation of their services with retrospective effect with all consequential benefits.

2. We may note that during the pendency of the Original Application, out of the four applicants before the Tribunal, the petitioner had regularised the services of three applicants as Research Officer (Unani) w.e.f. 26th December, 2014, but it had declined to regularise the services of the respondent no.1 (hereinafter referred to as the "respondent") herein on the ground that he was already overage as on 10th October, 2005, which was the closing date for receipt of applications and therefore, was ineligible to apply for selection to the subject post.

3. In the impugned order dated 15th May, 2017, the Tribunal rejected the plea of the petitioner that the respondent was ineligible for appointment to the subject post for the reason that on the closing date for receipt of the applications i.e. on 10th October, 2005, he had already become overage, having crossed 35 years. The Tribunal held that the respondent was entitled to regularization of his services as Research Officer (Unani) w.e.f. 26th December, 2014, i.e. the date on

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which the services of three other similarly placed officers were regularized by the petitioner.

4. Before dealing with the submissions of the learned counsel for the petitioner, we may elucidate the relevant facts. On 1st October, 2005, the petitioner issued Advertisement no.1/2005, inviting applications to the post of Research Officer (Unani). The closing date for receipt of the applications was 10th October, 2005. The age limit prescribed by the petitioner for the subject post in the advertisement was upto 35 years. As the issue before us hinges on the age of the respondent, we may reproduce hereinbelow the relevant portion of para 1 of the Advertisement no.1/2005:-

*"1. Research Officer (Unani): 04 (SC-01, ST-01, OBC-1, Gen-01) Scale of Pay Rs.8000-275-13500
Age upto 35 years"*

5. In response to the aforesaid advertisement for the subject post, a prescribed application form was required to be filled up by the respondent as a general category candidate. A copy of the same has been filed with this petition as Annexure AA-2. The said form contains several columns. In clause 4, the respondent was required to mention his date of birth, which he did in the following manner:-

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“a) Date of Birth 16.02.1970

(Based on Matriculation or School leaving certificate.
An attested copy of the certificate must be attached).

b) Age as on 1st January of recruitment year:

Years	Months
34	10.5

”

6. The respondent participated in the written test and the interview conducted by the petitioner and on the basis of the recommendations made by the Selection Committee, his name appeared at serial no.1 in the panel of the selected candidates prepared by the petitioner. Vide Memorandum dated 15th June, 2006, the petitioner offered an appointment to the respondent on the post of Research Officer (Unani) on an *ad hoc* basis, till further orders or till a regularly appointed candidate joins the post, whichever is earlier. Similar Memorandums were issued by the petitioner to the other three applicants who have later on, been regularised on the subject post during the pendency of the Original Application. The respondent accepted the terms and conditions prescribed in the Memorandum and joined on the post of Research Officer (Unani) on an *ad hoc* basis. He continued on the

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subject position for over six years and finally approached the Tribunal with three others, seeking regularization to the subject post. Counsel for the petitioner contended before the Tribunal that the respondent was already overage on the closing date of receipt of the application i.e. on 10th October, 2005 and he could not be regularised to the subject post for this reason.

7. Per contra, Ms.Oberoi, learned counsel for the respondent no.1 had pointed out that the respondent was working on the subject post for a decade and refusal to regularise his service was discriminatory inasmuch as three other similarly placed officers had been regularised by the petitioner w.e.f. 26th December, 2014. She also stated that the advertisement itself stipulated that the crucial date for determination of the age of the candidate was *'1st January of the recruitment year'* and nowhere did the said advertisement state that the closing date for the receipt of the application, would be taken as the crucial date for determining the eligibility viz. a viz. the age, which plea had been taken by the petitioner as a sheer after thought.

8. After considering the submissions made by learned counsel for the parties, the Tribunal allowed the Original Application filed by the respondent in the following terms:-

“7. Admittedly, the Advertisement No.1 of 2005(ibid) did not stipulate that the crucial date for determination of the age of the candidates shall be the closing date for receipt of applications. In terms of the Advertisement No.1 of 2005, the application form had to be obtained from the Assistant Director (Admn.) of respondent no.2-CCRUM. As noted earlier, vide clause 4 of the prescribed application form, the candidate was required to mention his/her date of birth and age as on 1st January of recruitment year. It is, thus, apparent that respondent no.2-CCRUM had consciously taken a decision to determine the age of the candidates as on 1st January of the recruitment year, i.e., 2005. The applicant had correctly mentioned his date of birth as 16.02.1970 and his age as on 1st January of recruitment year, i.e., 2005, as 34 years and 10 ½ months. He had not misrepresented any fact whatsoever. It is not the case of respondent no.2- CCRUM that subsequent to the issuance of the Advertisement No.01/2005, any other addendum/corrigendum was ever issued by them clarifying that the crucial date for determining the age of the candidates shall be the closing date of receipt of applications. Therefore, about a decade after selection and appointment of the applicant and others on ad hoc basis, respondent no.2- CCRUM cannot be allowed to change the position and say that the crucial date for determining the age of the candidates shall be the closing date for receipt of applications. In the application form, enclosed with the Advertisement No.2 of 2012, respondent no.2 also required the candidates to indicate their date of birth and age as on

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1st January of the recruitment year. Respondent no.2-CCRUM only changed the application form when they issued Advertisement No.2 of 2014 and required the candidates to mention therein the date of birth and age "as on the last date of receipt of application". Thus, it is clear that respondent no.2-CCRUM had been following the principle for determination of the age of the candidates as on the 1st January of the recruitment year till 2012. In the above view of the matter, the decision taken by respondent no.2-CCRUM declining regularization of services of the applicant as Research Officer (Unani) with effect from 26.12.2014 is unsustainable in the eyes of law. The decision in Rakesh Kumar Sharma Vs. State (NCT of Delhi) and others (supra), being distinguishable on facts, is of no avail to respondent no.2-CCRUM.

8. In the light of our above discussions, we hold and declare that the applicant is entitled to regularization of his services as Research Officer (Unani) with effect from 26.12.2014, i.e., the date when the services of three other similarly placed persons, namely, Dr.Javed Inam Siddiqui, Dr.Usama Akram and Dr.Mahe Alam, were regularized by respondent no.2-CCRUM. Accordingly, we direct respondent no.2-CCRUM to regularize the services of the applicant as Research Officer (Unani) with effect from 26.12.2014 and grant him all consequential benefits as have been granted to the aforesaid three persons."

9. Aggrieved by the aforesaid judgment, the petitioner has filed the present petition.

10. Mr.Sunil, learned counsel for the petitioner states that the Tribunal has committed a patent error by directing regularisation of

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the respondent no.1 for the subject post, having failed to appreciate the stand of the petitioner that the amended Recruitment Rules for the subject post prescribing a maximum age of 40 years as on 1st January of the Recruitment year, could not be made applicable to the respondent as he was appointed much prior to the amendment of the Recruitment Rules which were notified on 29th August, 2013. He submits that in view of the non-applicability of the Recruitment Rules to the respondent which was duly pointed out to the Tribunal, the impugned order ought not to have been passed.

11. Ms.Oberoi, learned counsel for the respondent no.1, opposes the present petition and states that the amendment to the Recruitment Rules at a later date also shows that the petitioner has always considered the age as on 1st January of the recruitment year and for this reason, Advertisement no.1/2005 did not mention any date on which the criteria of age was to be examined and it only stipulated that the age of the applicant must not be more than 35 years. She further points out that the prescribed form required to be filled up by the applicant pursuant to the advertisement, specifically required the

applicant to indicate the age 'as on 1st January of the Recruitment Year'.

12. We have carefully considered the arguments advanced by learned counsel for the parties, perused the impugned judgment and the documents placed on record and are of the view, that there is no illegality, arbitrariness or infirmity in the impugned order. The Tribunal has rightly held that the petitioner had taken a conscious decision to determine the age of the candidate as on 1st January of the recruitment year i.e. of the year 2005. Once the respondent had correctly mentioned his date of birth as on 1st January of the recruitment year according to which his age was thirty four years and ten and a half months, based whereon he was appointed to the subject post and continued to serve for the ten years, it cannot be stated that he had withheld any material information from the petitioner. The very fact that the petitioner had duly processed the case of the respondent no.1 and appointed him on an *ad hoc* basis, which appointment has continued till date, shows that the petitioner had also always considered the age criteria with reference to 1st January of the recruitment year.

13. In the above facts and circumstances, we are of the opinion that the impugned order does not suffer from any infirmity which would merit any interference in the present petition, which is, accordingly dismissed in *limine*, being devoid of merits.



(HIMA KOHLI)
JUDGE



(REKHA PALLI)
JUDGE

DECEMBER 20, 2017/aa



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