

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.4341 OF 2013

New Delhi, this the 15<sup>th</sup> day of May, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND**

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

í í í í ..

Dr.Merajul Haque,  
S/o Mr.Mohd. Habeeb,  
R/o A-77, Shaheen Bagh,  
Jamia Nagar,  
New Delhi 25

í í Applicant

(By Advocate: Mrs. Harvinder Oberoi)

Vs.

1. Union of India,  
Through its Secretary,  
Ministry of Health & Family Welfare,  
Department of AYUSH,  
Government of India,  
Ayush Bhawan,  
B-Block, GPO Complex,  
INA, New Delhi.
  2. The Central Council for Research in Unani Medicine,  
Through its Director General,  
Jawaharlal Nehru AYUSH Anushandhan Bhawan,  
61-65, Institutional Area,  
Opp. -DØBlock,  
Janakpuri, New Delhi 110058
- í í . Respondents

(By Advocates: Mr.Ashok Kumar for R-1, and Mr.S.Sunil for R-2)

### **ORDER**

**Per Raj Vir Sharma, Member(J):**

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, there were four applicants, including the present applicant Dr. Merajul Haque, who were working as Research Officers (Unani) under respondent no.2-Central Council for Research in Unani Medicine (CCRUM) on ad hoc basis till further orders or till regularly appointed candidates join the posts, whichever is earlier. They sought the following reliefs:

- õ(i) The respondents may be directed to accommodate the applicants by regularizing their services retrospectively.
- (ii) The respondents may be directed not to appoint candidates the total strength of cadre i.e. 132.
- (iii) The respondents may be directed to extend the benefits of the in-situ promotion scheme as extended to others.
- (iv) All consequential benefits may be granted to the applicants.
- (v) Any other relief, which this Honøble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicants.
- (vi) Cost of the proceedings be awarded in favour of the Applicants and against the Respondents.ö

1.1 During pendency of the O.A., respondent no.2-CCRUM considered the cases of all the four applicants, including the present applicant, for regularization of their services. But, while regularizing the services of three others as Research Officers (Unani) with effect from 26.12.2014, respondent no.2-CCRUM did not regularize the services of the present applicant ostensibly on the ground that the applicant, being overage

as on 10.10.2005, i.e, the closing date for receipt of applications, was ineligible to apply for selection and appointment to the post of Research Officer (Unani) pursuant to the Advertisement No.1/2005, published in the newspapers on 1.10.2005; the applicant's date of birth being 16.02.1970, and the age limit for general category candidates being 35 years as on the closing date for receipt of applications.

1.2 In view of regularization of their services, the other three applicants have withdrawn from the O.A. Accordingly; their names have been deleted from the cause-title of the O.A. Thus, the present O.A. is confined to the grievance as raised by the applicant Dr.Merajul Haque only.

2. We have perused the records and have heard Mrs. Harvinder Oberoi, the learned counsel appearing for the applicant, and Mr.Ashok Kumar and Mr.S.Sunil, the learned counsel appearing for the respondents.

3. Respondent no.2-CCRUM issued the Advertisement No.1/2005 inviting applications from eligible persons for selection and recruitment against vacancies in different posts mentioned at Sl.Nos. 1 to 8. Vide Sl.No.1 of the Advertisement (ibid), applications were invited from eligible persons for selection and recruitment against 4 vacancies (SC-1, ST-1, OBC-1 and Gen-1) in the post of Research Officer (Unani). The Advertisement was published in the employment news/newspapers on 1.10.2005. The closing date for receipt of applications was 10.10.2005. The age limit was 35 years. The Advertisement contained the following instructions:

öApplication forms (Sr.No.01 to 08) may be obtained from the Assistant Director (Admn.), Central Council for Research in Unani Medicine, 61-65, Institutional area, Opp. D Block, Janakpuri, New Delhi 100058 by sending a self addressed envelope (23 x 10 cm) Stamped with Rs.05/- along with the copies of testimonials and certificates.ö

3.1 In response to the Advertisement No.01/2005, the applicant obtained application form from the designated officer of respondent no.2-CCRUM, and applied for and offered his candidature as a General Category candidate for selection and recruitment to the post of Research Officer (Unani).

3.2 Item no.4 of the said prescribed application form reads thus:

- 4. a) Date of Birth -----**  
**(Based on Matriculation or School leaving certificate.**  
**An attested copy of the certificate must be attached).**  
**b) Age as on 1<sup>st</sup> January of recruitment year:**

Years	Months
-------	--------

3.2.1 In his application form, the applicant clearly mentioned as follows:

- 4. 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 1<sup>st</sup> January of recruitment year:**

Years	Months
34	10.5

3.3 Being called, the applicant appeared in the written test and interview conducted by respondent no.2-CCRUM. On the basis of the recommendation of the Selection Committee, respondent no.2-CCRUM

prepared a panel of candidates, in which the applicant's name appeared at sl.no.1. Thereafter, respondent no.2-CCRUM issued Memorandum dated 15.6.2006 offering appointment to the applicant on the post of Research Officer (Unani) on *ad hoc* basis till further orders or till a regularly appointed candidate joins the post, whichever is earlier. Respondent no.2-CCRUM issued similar Memorandums, dated 10.11.2006, 6.11.2006 and 6.11.2006, to three other candidates whose names appeared at sl.nos. 2, 3 and 4 of the said panel. Accepting the terms and conditions contained in the said Memorandums, the applicant and three others joined as Research Officers (Unani) on *ad hoc* basis. Thus, the applicant and three others worked as Research Officers (Unani) on *ad hoc* basis for more than six years by the date of filing of the present O.A. before this Tribunal seeking the aforesaid reliefs.

4. In the above context, it was submitted by Mrs. Harvinder Oberoi, the learned counsel appearing for the applicant that the prescribed application form, which was required to be submitted by the candidates in terms of the Advertisement No.1/2005, formed part of the Advertisement No.1/2005, and when the said application form clearly stipulated that the crucial date for determination of the age of the candidates shall be as on 1<sup>st</sup> January of recruitment year, and further when the Advertisement No.01/2005 did not stipulate that the crucial date for determining the age of the candidates shall be the closing date for receipt of applications,

respondent no.2-CCRUM has acted arbitrarily in determining the age of the applicant as on 10.10.2005 and in refusing to regularize his services as Research officer (Unani). If at all there was any provision in the recruitment rules that the crucial date for determination of the age of the candidates shall be the closing date for receipt of applications, respondent no.2-CCRUM ought to have so indicated either in the Advertisement No.01/2005 or in the application form which formed part of the Advertisement No.01/2005. Respondent no.2-CCRUM not having done so cannot now be allowed to turn around and say that the crucial date for determination of age of the candidates shall be the closing date for receipt of applications. It was also submitted by Mrs. Harvinder Oberoi that on the basis of selection and appointment made by respondent no.2-CCRUM, the applicant has already worked as Research Officer (Unani) for about a decade by now, and the refusal to regularize his services as Research Officer (Unani) is discriminatory inasmuch as the services of three others, who were placed below the applicant in the select panel, have been regularized with effect from 26.12.2014. It was also submitted by Mrs. Harvinder Oberoi that Rule 9 of the Recruitment Rules stipulates that where the Council is of the opinion that it is necessary and expedient to do so, it may by order for reasons to be recorded in writing and in consultation with the prescribed appointing authority, relax any of the provisions of the rules with respect to any class or category of persons. On the facts and circumstances of the case,

while regularizing the services of three others as Research Officers (Unani) with effect from 26.12.2014, respondent no.2-CCRUM has acted arbitrarily and illegally in not regularizing the services of the applicant as Research Officer (Unani) with effect from 26.12.2014, and, therefore, it is a fit case where the Tribunal should intervene and issue appropriate direction to respondent no.2-CCRUM for regularizing the services of the applicant as Research Officer (Unani) with effect from 26.12.2014.

5. *Per contra*, it was submitted by Mr.S.Sunil, the learned counsel appearing for respondent no.2-CCRUM that the applicant being overage as on the closing date for receipt of applications, i.e., 10.10.2005, there was no infirmity in the decision taken by respondent no.2-CCRUM refusing to regularize his services with effect from 26.12.2014. In support of his submission, Mr.S.Sunil relied on the decision of the Honøble Supreme Court in **Rakesh Kumar Sharma Vs. State (NCT of Delhi) and others**, (2013) 11 SCC 58, wherein it was observed as follows:

õ21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23.2.2002 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the

above, no exception can be taken to the judgment of the High Court.ö

6. After having given our thoughtful consideration to the facts and circumstances of the case and the rival submissions, we have found substantial force in the submissions made by Mrs. Harvinder Oberoi, the learned counsel appearing for the applicant.

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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 ðas on the last date of receipt of applicationö. 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 1<sup>st</sup> 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. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

AN