

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

W.P.No.2362-P/2020.

Zeeshan Ahmad Khan.

VERSUS

Chairman KPK PSC and others.

J U D G M E N T

Date of hearing ----- 13/10/2020.

Petitioner by --- Qazi Jawad Ehsanullah, Umair Iqbal &
Malik Akhtar Nawaz, Advocates.

Official Respondents by --- Mr.Moeen-ud-Din Hamayun,
A.A.G alongwith Muhammad Saeed, DD KPPS.

Respondent No.4 by --- M/s Jamal Khan Afridi & Shams
Iqbal Khattak, Advocates.

=====

LAL JAN KHATTAK, J:- Petitioner Zeeshan Ahmad Khan has applied to this court for issuance of a writ declaring him eligible for his appointment against one of the 03 PMS Officer post (the post) reserved for the disabled persons per recommendations of the Khyber Pakhtunkhwa Public Service Commission as notified on 13.02.2020. He has also solicited for a writ to declare as illegal and unlawful the recommendations of the Commission regarding appointment of the respondent No.4 as a PMS Officer

against the post because neither he had applied for it on the ground of his disability nor even had produced his disability certificate before the Commission at the time of his interview.

2. Brief facts of the case are that pursuant to the advertisement splashed in the national dailies, petitioner, hailing from Zone-04, applied for his appointment against the post. He appeared in the prescribed selection process and was provisionally recommended per tentative notice issued by the Commission on 13.02.2002 by securing over all 785 merit position. His grievance started when an application was submitted by the respondent No.4 to the respondent No.1 for his inclusion in the merit position in view of his higher merit position in consequence whereof provisional recommendations of the petitioner was withheld and ultimately his name was dropped from the merit list and instead the respondent No.4 was recommended for the post. Being aggrieved from the above, petitioner has filed the instant petition.

3. Arguments heard and record gone through.

4. No doubt, on 13.02.2020, the petitioner was provisionally recommended by the Commission for his appointment against the post but the recommendation ibid did not confer on him any vested right as not only same was provisional in nature but was subject to cancellation in case any error or discrepancy was found therein.

5. In support of cancellation of the petitioner's recommendation, the Commission's point of view is that undoubtedly the respondent No.4 had applied for his appointment against the post for his being a disabled person and had annexed with his application, an earlier disability certificate dated 23.04.2014 issued by a Standing Medical Board on the basis of which he was provisionally interviewed on 30.01.2020 with a condition to produce disability certificate issued by the Provincial Council for Rehabilitation of Disabled Persons (PCRDP) on or before the closing

date of the interview which he did produce before the target date i.e. 11.02.2020.

6. Not only the respondent No.4 produced his disability certificate prior to the closing date of interview but another noticeable aspect of the case is that he had appeared before the Provincial Council for Rehabilitation of Disabled Persons on 15.01.2020 i.e. much before the target date, and on same date he was examined by the Council and found him disabled for his being blind by one eye. True that on 30.01.2020, when the respondent No.4 was provisionally interviewed by the Commission, he was holding a disability certificate dated 23.04.2014 issued to him by a Standing Medical Board but as on 15.01.2020 the PCRDP had examined him and had declared him as a disabled person on same day, therefore, mere production of the disability certificate on 11.02.2020 by the respondent before the Commission would not go to his detriment as it is well settled that no one shall suffer for the in action and lethargic attitude of the others. Had the respondent

been not examined by the PCRDP on 15.01.2020 or before his interview i.e. 30.01.2020, then the situation for him of course would have been different which is not the case.

7. As the respondent No.4 otherwise has got higher merit position than the petitioner and his disability has undoubtedly been confirmed by the Provincial Council for Rehabilitation of Disabled Persons through its certificate, therefore, the Commission was well within its competence to drop the petitioner's name from the provisional merit list and recommend the respondent No.4 for his appointment against the post in which we do not see any illegality.

8. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed.

SENIOR PUISNE JUDGE

Announced.
Dt.13/10/2020.

J U D G E

HON'BLE MR.JUSTICE QAISER RASHID KHAN &
HON'BLE MR.JUSTICE LAL JAN KHATTAK.

(A-K-KHAN Court Secretary)