

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL No. 1665/2023

Mudasir Khan..... (Appellant)

VERSUS

Inspector General of Police, KP& Others.....(Respondents)

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Respondents

Through

Said Alam
Said Alam DSP (Legal),
Mohmand

CNIC# 21407-4697246-1

CELL NO: 03459160916

31-1-2024
Peshawar

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. 1665/2023

Mudasir Khan..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkwa, Peshawar & Others.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO 1,2 & 3

Khyber Pakhtunkhwa
Service Tribunal

RESPECTFULLY SHEWETH:

Diary No. 10869

Dated 30-1-2024

Preliminary Objections:-

1. That the instant service appeal is not maintainable under the law.
2. That the appeal is not based on facts.
3. That the appellant has got no cause of action and locus standi.
4. That the appellant has concealed the real facts from the honorable Tribunal.
5. That the appellant is estopped to file the service appeal by his own conduct.
6. That the appeal is barred by law & limitation.

REPLY ON FACTS:-

1. Pertains to personal information of appellant, hence no comments.
2. Incorrect, the appellant was charged in a criminal case vide FIR No. 66 dated 13.09.2021 U/S 9D CNSA Police Station Excise Hazara Region Abbotabad as 2610 grams Chars recovered from his possession. On this serious crime, he was proceeded against departmentally, charge sheet along with summary of allegations (Annexure 'A') issued to the appellant. Inspector Shakir Khan was appointed as enquiry officer with direction to conduct departmental enquiry in accordance with law/ rules. The enquiry officer conducted the enquiry in accordance with law/ rules and submitted findings of enquiry (Annexure 'B') wherein, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. As Police Station Excise Hazara Region Abbotabad arrested the appellant red handed and recovered narcotics i.e 2610 grams of Chars. During the course of enquiry proceedings, nexus of the appellant with the commission of offence was established. Moreover, the involvement of appellant in a criminal case which comes within the purview of moral turpitude, is clearly a stigma on his conduct. On receipt of the enquiry findings, the appellant was served with final show cause notice (Annexure 'C') upon which he replied but the same was not found satisfactory hence, the appellant was awarded major punishment of dismissal from service vide OB No 1333 dated 07.03.2022. (Annexure 'D'). while the remaining para is correct to the extent of mentioned judgment of Additional Session Judge- V/ judge Special Court Abbottabad, it is pertinent to mention here that criminal case proceeding and departmental proceeding are distinct in nature and both can run side by side.
3. Incorrect, the appellant was proceeded against departmentally on the basis of his

involvement in a criminal case vide FIR No. 66 dated 13.09.2021 U/S 9D CNSA Police Station Excise Hazara Region Abbotabad as 2610 grams Chars recovered from his possession. As already explained in para No.2 that each and every aspect of departmental enquiry adopted by Competent Authority before issuance of discharge order dated 07.03.2022.

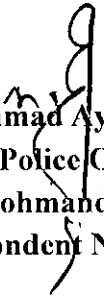
4. Incorrect, the departmental appeal against order dated 07.03.2022 of the appellant was found time barred by 10 months and 13 days without advancing any cogent reason regarding such delay. Hence, the appellate authority rejected the same vide order dated 30.03.2023 (Annexure 'E'). it is worth to mention here that when appeal before the departmental authority is time barred then Service Appeal before the Service Tribunal is incompetent. Reliance is placed on 2017 SCMR965, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 AND 2021 SCMR 144.
5. The revision petition of the appellant was also found time barred hence, rejected on the basis of time barred (Annexure 'F').
6. Incorrect, the involvement of a Police Officer being a disciplined force member into a moral turpitude case wherein narcotics have been smuggled, is a heinous crime unacceptable and a stigma for the entire Police force as well as general society. Hence the instant Service Appeal is not maintainable and is liable to be dismissed on following grounds.

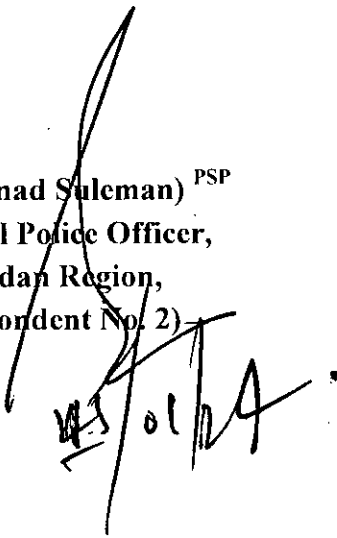
REPLY ON GROUNDS:-

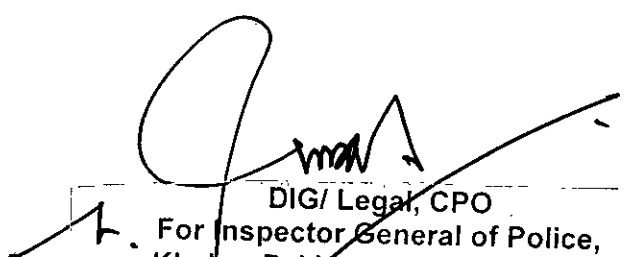
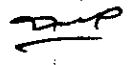
- A. Incorrect, the dismissal order dated 07.03.2022 and appellate order dated 30.03.2023 are legal in accordance with facts and are maintainable hence, no need to be set aside.
- B. Incorrect, the appellant has been treated in accordance to law/rules and Answering Respondents did not violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect, as already explained above, proper departmental enquiry was conducted against the delinquent official in accordance with law/ rules and order dated 07.03.2022 and appellate order dated 30.03.2023 are legal in accordance with facts and are maintainable.
- D. Incorrect, the appellant has been provided ample opportunity but he badly failed to advance any plausible grounds in his self defence.
- E. Incorrect, as already explained above, proper departmental enquiry was conducted against the delinquent official in accordance with law/ rules.
- F. Incorrect, the enquiry officer conducted the enquiry in accordance with law/ rules. The appellant has been rightly dismissal in accordance with law/rules and is not entitled to be reinstated in service.
- G. Incorrect, the orders of the authorities have full backing of law/ rules hence, no violation exist on part of respondents.
- H. Incorrect, as already explained above, proper departmental enquiry was conducted against the delinquent official in accordance with law/ rules and the judgments referred by the appellant has no nexus with the instant matter.
- I. The respondents department also seeks permission to raise additional grounds at the time of arguments.

PRAYERS:

Keeping in view the above stated facts it is humbly prayed that the appeal being not maintainable, barred by law/ limitation may kindly be dismissed with costs, please.


(Muhammad Ayaz) ^{PSP}
District Police Officer,
Mohmand
(Respondent No. 3)

(Muhammad Suleman) ^{PSP}
Regional Police Officer,
Mardan Region,
(Respondent No. 2)



DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent


4



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL No. 1665/2023

Mudasir Khan..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar &
Others.....(Respondents)


AFFIDAVIT

I, Muhammad Ayaz (PSP), District Police Officer, Mohmand (Respondent No. 3), do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondents No. 1, 2 & 3 are correct to the best of my knowledge and belief. Nothing has been concealed from this Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

DEPONENT



30 JAN 2024


(Muhammad Ayaz)^{PSP}
District Police Officer,
Mohmand
(Respondent No. 3)

5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. 1665/2023

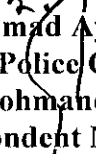
Mudasir Khan..... (Appellant)

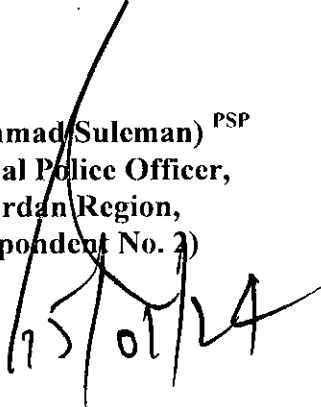
VERSUS

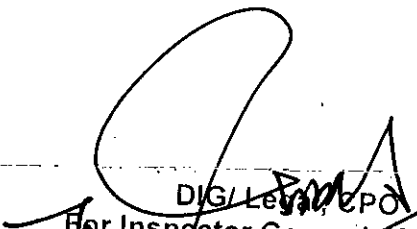
Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & Others.....(Respondents)

AUTHORITY LETTER

Mr. Said Alam working as DSP (Legal) is hereby authorized for submission of legal documents, comments and affidavit before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of Respondents No. 1, 2 & 3 in above mentioned Service Appeal.


(Muhammad Ayaz) PSP
District Police Officer,
Mohmand
(Respondent No. 3)


(Muhammad Suleman) PSP
Regional Police Officer,
Mardan Region,
(Respondent No. 2)


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

(6)

Annex "A"

CHARGE SHEET


1). I, Salah-Ud-Din, District Police Officer, Mohmand Tribal District, as Competent Authority, hereby charge you FC Mudasir 792 as follows:-

I) That you FC Mudasir NO. 792 of this district Police was charged and arrested in case FIR No. 66/21, dated 13-09-2021 u/s 9DCNSA by PS Excise Hazara Region Abbotabad. A total of 2610gram of Chars recovered from your possession setting in front seat adjacent to Driver in a black motorcar bearing No. BRS-552. Your such act is highly objectionable, against norms of discipline force and earning bad name for the department.

II) Being a part of a uniform force this act shows gross misconduct on your part.

By reason of the above, you appear to be guilty of misconduct under Police Disciplinary Rules 1975 with amendments 2014 and have rendered yourself liable to all or any of the penalties specified in the Rules:-

- 2) You are, therefore required to submit your written defense within 07 days of the receipt of this Charge Sheet to the Enquiry Officer as the case may be.
- 3) Your written defense, if any, should reach to the Enquiry Officer within the specified period failing which it shall be presumed that you have no defense to put in and in that case, ex-parte action will be taken against you.
- 4) You are also at liberty, if you wish to be heard in person.
- 5) Statement of allegation is enclosed.


District Police Officer,
Mohmand Tribal District

Assisted
Dey

(7)

SUMMARY OF ALLEGATION.

1). I, Salah-Ud -Din, District Police Officer, Mohmand Tribal District, am of the opinion that FC Mudasir 792 of the district has rendered himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of Police Disciplinary Rules, 1975 read with Amendments 2014.

STATEMENT OF ALLEGATIONS.

I) That FC Mudasir NO. 792 of this district Police was charged and arrested in case FIR No. 66/21, dated 13-09-2021 u/s 9DCNSA by PS Excise Hazara Region Abbotabad. A total of 2610gram of Chars recovered from his possession setting in front seat adjacent to Driver in a black motorcar bearing No. BRS-552. His such act is highly objectionable, against norms of discipline force and earning bad name for the department.

II) Being a part of a uniform force this act shows gross misconduct on this part.

2). For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Inv Inspector Shabir Khan is appointed as Enquiry Officer, to conduct enquiry under the Rules.

3). The Enquiry Officer shall, in accordance with the provision of the Police Disciplinary Rules, 1975 read with Amendments 2014 provide reasonable opportunity of hearing to the accused record its findings and make within 15 days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.


District Police Officer,
Mohmand Tribal District

No. 2204-07/PA

Dated Mohmand the: 30/09/2021

Cc:

- The Regional Police Officer, Mardan for favor of information.
- Enquiry Officer of the District Mohmand Inspector Shabir Khan is directed to initiate departmental proceedings against the accused under the Police Disciplinary Rules, 1975 read with Amendments 2014.
- FC Mudasir 792 to appear before the Enquiry Officer on the date, time & Place fixed by the Enquiry Officer for the purpose of enquiry proceedings.

Attest.
D. Am

انکوائری رپورٹ

جناب عالی!

بحوالہ ڈائری نمبری 2204/PA مورخہ 30/09/2021 برخلاف کنسٹیبل مدثر نمبر 792 معروض خدمت ہوں۔ کہ کنسٹیبل مدثر نمبر 792 کو تھانہ ایکسائز ہزارہ ریجن ایبٹ آباد نے بحوالہ مقدمہ علت 66/21 مورخہ 13.09.2021 بجرم 9C-D-CNSA گرفتار کر کے جو موٹر کار نمبری 552-BRS برنگ کالا کے فرنٹ سیٹ میں بیٹھا تھا۔ کے قبضہ 1 گود سے 2610 گرام چرس برآمد کی گئی ہے۔ جناب DPO صاحب ضلع مہمند نے کنسٹیبل مذکورہ کو معطل کر کے اور حکمانہ کارروائی کیلئے تحریر کیا ہے۔ انکوائری ہذا سن انسپکٹر کو حوالہ ہو کر ذیل کارروائی عمل میں لائی گئی ہے۔

دوران انکوائری کاغزات ملاحظہ کر کے قبل ازیں انکوائری ہذا انسپکٹر شا کر اللہ کو حوالہ ہو کر جس کا تبادلہ ضلع چارسدہ ہو کر انکوائری بعدہ جناب SP صاحب انوسٹی گیشن ضلع مہمند نے سن انسپکٹر کو حوالہ کر کے جلد از جلد مکمل کرنے اور اصل حقائق منظر عام پر لانے کے ہدایات جاری کئے۔ سن انسپکٹر نے تھانہ ایکسائز ہزارہ ریجن ضلع ایبٹ آباد سے نقول FIR بحوالہ مقدمہ علت 66/21 مورخہ 13.09.2021 بجرم 9C-D-CNSA فرود متبوسگی۔ نقل مراسلہ اور نقشہ موقع حاصل کر کے مطالعہ کرنے پر پایا گیا۔ کہ نسیم خان SI تھانہ ایکسائز ہزارہ ریجن ایبٹ آباد نے ملزم مدثر ولد جانیر خان سکند شغالی بالا پشاور کے قبضہ سے 2610 گرام چرس برآمد کر کے جو موٹر کار نمبری 552-BRS برنگ سیاہ میں پشاور سے ایبٹ آباد جا رہا تھا۔ دوران انکوائری یہ بھی معلوم ہوا۔ کہ کنسٹیبل مدثر نمبر 792 کا تبادلہ بحوالہ OB نمبری 613 مورخہ 04/08/2021 نازی بیگ ہسپتال سے DC ہاؤس گارڈ ہو کر کنسٹیبل مذکورہ نے DC ہاؤس میں حاضری نہیں کی تھی۔ دوران انکوائری کنسٹیبل مدثر نمبر 792 کا ضمانت ہو کر حسب طلبی دفتر ہذا آ کر جس کا بیان لیا جا کر لف انکوائری ہذا ہے۔

سن انکوائری آفس نے غیر جانبدارانہ انکوائری کر کے حالات واقعات یوں پائے گئے۔ کہ کنسٹیبل مدثر نمبر 792 کے قبضہ سے نسیم خان SI تھانہ ایکسائز ہزارہ ریجن ایبٹ آباد نے چرس وزن 2610 گرام برآمد کر کے جس کے خلاف مقدمہ علت 66/21 مورخہ 13.09.2021 بجرم 9C-D-CNSA درج رجسٹرڈ کیا ہے۔ انکوائری سے کنسٹیبل مذکورہ گنہگار ٹھہرایا گیا۔ لہذا کنسٹیبل مدثر نمبر 792 کے خلاف تین سزا دینے کی سفارش کی جاتی ہے۔ انکوائری رپورٹ مرتب ہو کر گزارش ہے۔

محمد زمان انسپکٹر انوسٹی گیشن ضلع مہمند

تاریخ
13/12/21

Sir,
Forwarded Pl,
13/12/2021

Attested
@

9

Annex "C"

OFFICE OF THE
DISTRICT POLICE OFFICER,
MOHMAND TRIBAL DISTRICT GHALLANAI

Email: dponmohmand@gmail.com
Ph: 0924-290179 Fax: 0924-290056

FINAL SHOW CAUSE NOTICE

No. 3577 /PA, dated Mohmand the: 28 /12/2021

WHEREAS, You FC Mudasir No. 792 of this District Police was found guilty as under -
That you was charged vide FIR No. 792, dated 13.09.2021 u/s 9DKPCNSA by Police Station Excise Hazara Region Abbotabad. A total of 2610gram of Chars recovered from your possession while setting in front seat adjacent to Driver in a black motorcar bearing No. BRS-552. Your such act was highly objectionable and against the norms of discipline force.


To substantiate the allegation leveled in the Fact/Finding inquiry you were charge sheeted together with statement of allegation and Inspector Shakir Khan was appointed as an inquiry officer to conduct inquiry under the rule.

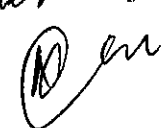
WHEREAS, Enquiry Officer in findings of the enquiry report has found you at fault in the performing your official duties in the matter under reference, therefore, he has recommended you for awarding Major punishment.

AND WHEREAS, I am satisfied that you had committed misconduct and guilty which stand proved and rendered you liable.

Now Therefore, I Salah-ud-Din, District Police Officer, Mohmand as Competent Authority has tentatively decided to imposed upon you, any one or more penalties including the penalty of dismissal from service under KPK Police Rules 1975.

You are therefore, required to submit reply of this Final Show Cause within 07 days of the receipt of this notice, as to why the aforesaid penalty or any other should not be imposed upon you, failing which it shall be presumed that you have no defense to offer and an ex-parte action shall be taken against you. Meanwhile you also intimate that whether you desire to be heard in person or otherwise.


District Police Officer,
Mohmand Tribal District

Attested -




OFFICE OF THE DISTRICT POLICE OFFICER,
MOHMAND TRIBAL DISTRICT AT HQ GHALLANAI

Email: dpomohmand@gmail.com
Ph: 0924-290179 Fax: 0924-290056

BETTER COPY of
Page 9"

FINAL SHOW CAUSE NOTICE

No. 3517 /PA, dated Mohmand the:28/12/2021

WHEREAS, You FC Mudasir No. 792 of this District Police was found guilty as under-

That you was charged vide FIR No. 792, dated 13.09.2021 u/s 9DKPCNSA by Police Station Excise Hazara Region Abbotabad. A total of 2610gram of Chars recovered from your possession while setting in front seat adjacent to Driver in a black motorcar bearing No. BRS-552. Your such act was highly objectionable and against the norms of discipline force.

To substantiate the allegation leveled in the Fact/Finding inquiry you were charge sheeted together with statement of allegation and Inspector Shakir Khan was appointed as an inquiry officer to conduct inquiry under the rule.

WHEREAS, Enquiry Officer in findings of the enquiry report has found you at fault while performing your official duties in the matter under reference, therefore, he has recommended you for awarding Major punishment.

AND WHEREAS, I am satisfied that you had committed misconduct and guilty which stand proved and rendered you liable.

Now Therefore, I Salah-ud-Din, District Police Officer, Mohmand as Competent Authority has tentatively decided to imposed upon you, any one or more penalties including the penalty of dismissal from service under KPK Police Rules, 1975.

You are therefore, required to submit reply of this Final Show Cause within 07 days of the receipt of this notice, as to why the aforesaid penalty or any other should not be imposed upon you failing which it shall be presumed that you have no defense offer and an ex parte action shall be taken against you. Meanwhile you also intimate that whether you desire to be heard in person or otherwise.

-----SD-----

District Police Officer,
Mohmand Tribal District.

*Attested
Din*



(10)

Annex "D"

**OFFICE OF THE
DISTRICT POLICE OFFICER
MOHMAND TRIBAL DISTRICT GHALLANAI**
Email: dpomohmand@gmail.com
Ph: 0924-290179 Fax: 0924-290056


ORDER:

This order will dispose-off the inquiry proceeding against **FC Mudasir No. 792** with the allegations that he was charged u/s 9DPCNSA by Police Station Excise Hazara Region Abbotabad and 2610gram Chars recovered from his possession.

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation & inquiry was entrusted to Investigation Officer vide this office letter No. 2204-07/PA, dated 30.09.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found at fault, however, recommended for **Major Punishment**.

In light of findings of the inquiry officer, the undersigned issued final show cause notice to the delinquent officials to which his reply was received, perused and was found unsatisfactory.

Based on the above **I Salah-ud-Din Kundi, District Police Officer, Mohmand** being the competent authority and exercise of power vested in me under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) rules 2011, hereby awarded him **Major Punishment of Dismissal from the service with immediate effect**.


District Police Officer,
Mohmand Tribal District


OB No. 1333

Dated: 07/03/2022

No. 872-75 /PA, dated Mohmand the: 07/03/2022

Copy forwarded to the:

- Regional Police Officer, Mardan for favor of kind information please.
- HC/EC/FMC
- Pay Officer

Attested


(11)

Annex "E"

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Mudasir Khan No. 792 of Mohmand District Police against the order of the then District Police Officer, Mohmand, whereby he was awarded major punishment of dismissal from service vide OB: No. 1333 dated 07.03.2022. The appellant was proceeded against departmentally on the basis of his involvement in a criminal case vide FIR No. 66 dated 13.09.2021 U/S 9D CNSA Police Station Excise Hazara Region Abbotabad as 2610 grams Chars recovered from his possession.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Inspector Shakir Khan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings, wherein he recommended the delinquent Officer for major punishment.

He was issued Final Show Cause Notice by the then District Police Officer, Mohmand to which his reply was received and found unsatisfactory.

Therefore, the then District Police Officer Mohmand awarded him major punishment of dismissal from service in light of recommendations of the enquiry Officer vide OB: No. 1333 dated 07.03.2022.

Feeling aggrieved from the order of the then District Police Officer, Mohmand, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 22.03.2023.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. As Police Station Excise Hazara Region Abbotabad arrested the appellant red handed and recovered narcotics i.e 2610 grams of Chars. During the course of enquiry proceedings, nexus of the appellant with the commission of offence was established. Moreover, the involvement of appellant in a criminal case, which comes within the purview of moral turpitude, is clearly a stigma on his conduct. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force. Moreover, he could not present any cogent justification to warrant interference in the order passed by the competent authority. Besides the above, the appellant approached this forum at a belated stage by filing the instant appeal which is time barred by 10 months and 13 days without advancing any cogent reason regarding such delay.

Attested
Mudasir

12

Keeping in view the above, I, **Muhammad Ali Khan, PSP Regional Police Officer, Mardan**, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit as well as time barred by 10 months and 13 days.

Order Announced.



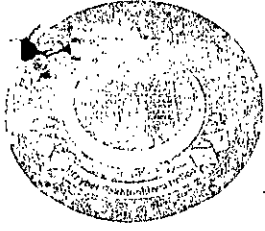
**Regional Police Officer,
Mardan.**

No. 1981 /ES, Dated Mardan the 30 /03 /2023.

Copy forwarded to District Police Officer, Mohmand for information and necessary w/r to his office Memo: No. 224/Legal dated 10.02.2023. His service record is returned herewith.

(*****)

*Attested
Din*



(13)

Annexure "F"
①

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 1360 /23, dated Peshawar the 16/5/2023.

To : The Regional Police Officer,
Mardan.

Subject:- REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Mudassar Khan No. 792 of Mohmand district Police against the punishment of dismissal from service awarded by DPO/Mohmand vide OB No.1333, dated 07.03.2022, being badly time barred.

The applicant may please be informed accordingly.

M. Jan
4615/23
(AFSAR JAN)
Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Attended
Bin