

07. It is very strange to note that complainant of FIR has not charged anybody in the FIR, however, on the back of the daily diary report No. 4 dated 15.07.2020 in which report was recorded by one Ijaz Khan, ASI had written that in supplementary statement the complainant had charged the appellant and others. Inquiry was conducted which too very astonishingly shows that neither the complainant of the FIR was examined nor ASI, Ijaz was examined during the departmental proceedings. In view of the aforementioned situation the inquiry report has lost its efficacy. Besides, the criminal case is allegedly pending before the competent court of jurisdiction. Before us the important papers which do not prove the allegations against the appellant in the departmental proceedings, atleast the identification documents as aforesaid, nobody i.e. complainant of the FIR or the scribe of the daily diary namely Ijaz, ASI was not examined during the inquiry proceedings. Therefore, on acceptance of the instant appeal we set aside the impugned orders and reinstate the appellant into service. The period which the appellant remained out of service shall be treated as leave of the kind due. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 27<sup>th</sup> of May, 2024.*



(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad



(Muhammad Akbar Khan)  
Member (E)  
Camp Court Abbottabad

appellant, thus deprived the appellant of the opportunity to cross-examine such witnesses; that the appellant was condemned unheard and no opportunity of personal hearing was afforded to the appellant; that no show cause notice was served upon the appellant and the appellant was dismissed from service, hence the impugned order have no legal value in the eye of law;

05. Learned Deputy District Attorney on the other hand contended that the appellant while posted at PS Bagnotar was found involved in a criminal case vide FIR No. 454 U/s 362/506/511/ 337-A-I PPC PS Nawanshehr dated 15.07.2020; that on the same charges, the appellant was proceeded against departmentally and proper charge sheet/statement of allegation was served upon the appellant; that final show cause notice was served upon the appellant to which he responded, but his reply was not found satisfactory; that after observing all the codal formalities, the appellant was awarded with major punishment of dismissal from service .

06. Perusal of record reveals that the appellant was dismissed from service on his alleged involvement in FIR No. 454 dated 15.07.2020 U/s 362/506/511/ 337-A-I PPC PS Nawanshehr, District Abbottabad. The allegations in the FIR show that one Muhammad Faisal S/o Taj Muhammad reported to the police that he at about 1230 hours after closing his shop was going to his house at Jharian. When he reached the graveyard near Usmania Masjid around 12:45 am, a motorcycle, on which three people having muffled faces, arrived nearby, one of whom grabbed him, another kept hand at his mouth and the other took out pistol and hit him at different parts of his body and then he was also hit with something made up of iron due to which he felt pain in his body and became unconscious at the spot.

*appellant.”*

02. Brief facts of the case are that the appellant was serving as Constable in Police Department. During the course of his service, an FIR U/s 362/506/511/ 337-A-I PPC PS Nawanshehr dated 15.07.2020 was registered against the appellant by the respondents, but the appellant was granted bail by the competent court of law. Simultaneously, the appellant was proceeded against departmentally and was ultimately dismissed from service vide order dated 29.09.2020. Feeling aggrieved, the appellant filed departmental appeal which was rejected vide order 26.03.2020, hence preferred the instant service appeal on 27.05.2021

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution have badly been violated; that upon registration of FIR against the appellant, the respondents were required to suspend the appellant till the decision of the trial court pending against him, but the respondent did not wait for the decision of the trial court, rather initiated disciplinary proceedings at the back of the appellant; that the appellant was nominated in the FIR but there is no evidence against the appellant with respect to allegations mentioned in FIR dated 15.07.2020; that no regular inquiry was conducted, nor statement of witnesses were recorded in presence of the

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**AT CAMP COURT ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN ... MEMBER (E)**

*Service Appeal No. 5730/2021*

Date of presentation of Appeal.....07.05.2021  
Date of Hearing.....27.05.2024  
Date of Decision.....27.05.2024

Aqib Khan S/o Faridon Khan R/o Nawansher Tehsil and District  
Abbottabad.....(Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Interior Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region Abbottabad.
3. District Police Officer, Abbottabad.....(Respondents)

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MUHAMMAD AMJID ABBASI,  
Advocate

--- For appellant.

ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For official respondents

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E)**:-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of instant service appeal the order No. 6071/PA dated 26.03.2021 passed by the respondent No. 2 and order No. 8062-62 dated 29.09.2020 passed by the respondent No. 3 be set aside and appellant be reinstated in service with all back benefits. Any other relief which this Hon'ble Tribunal deem appropriate in the circumstances of the case may also be granted to the*

*M.A. Khan*

RECORDED