

Service Appeal No. 2046/2023

Muhammad Ibrahim S/O Abdul Ahad

Abbottabad.

----- Appellant


Versus

1. The Govt. of Khyber Pakhtunkhwa through Secretary PHED Peshawar.
2. Chief Engineer (East), PHED, Hayatabad Phase-V Peshawar.
3. Chief Engineer PHE Division Abbottabad.
4. S.E PHE, Abbottabad.
5. XEN (PHE) Water & m Supply Department, Abbottabad.

----- Respondents

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Deponent
Khayam Haseeb Khan
CNIC No.17301-1500534-1

Cell# 0333-6661969

A. Abad
22-07-24

BEFORE CHAIRMAN KHYBER PAKHTUNKHWA A SERVICE TRIBUNAL
PESHAWAR

Service Appeal No: 2046/2023

Muhammad Ibrahim S/O Abdul Ahad R/O Village Samwala P.O Chando Maira Tehsil & District
Abbottabad

Khyber Pakhtunkhwa
Tribunal

...APPELLANT

Dist. No. 14378

Versus

Dated 19-07-2024

Government of KPK through Secretary Public Health Eng: Department Peshawar and Others.

...RESPONDENTS

Respectfully Sheweth

Preliminary Objections

- 1- That the appellant has got no cause of action/ locus stand to file instant appeal.
- 2- That appellant has not come to this Honorable court with clean hands.
- 3- That this Honorable tribunal has got no jurisdiction to adjudicate upon the matter.
- 4- That the appellant has deliberately concealed material facts from this honorable tribunal.
- 5- That the instant appeal is barred by law and time.
- 6- That the instant appeal is bad in its present form. Hence not maintenance and liable to be dismissed with special cost throughout.

ON FACT:-

- 1- That the appellant was employee of Public Health Engineering Department division Abbottabad since 01/07/2007 wherein the department issued many a show cause notices on the complaint of inhabitants of scheme Samwala U/C Mujuhan R/O Village Samwala P.O Chando Maira Tehsil & District Abbottabad due to his French leave for a long from 06-07-2022 to 05-01-2023 (Annexure-A).
- 2- That para No.2 pertains to record.
- 3- That para No.2 pertains to record.
- 4- That the appellant was removed from the service after many a show cause notices (on dated 25-07-2022, 23-10-2022, 02-11-2022, 07-12-2022) issued by the department; and the department followed prescribed procedure laid down in KP E&D rules 2011 such that according to rule-9 the competent authority shall issue notice through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within a stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice. However, the notice is received by the plaintiff's niece named Ejaz ul Haq S/O Muhammad Ishaq having CNIC 113101-0386843-1 (Copy Attached). So for, as per rule the department is not bound to publish notice in two leading news papers as notice is delivered and received (Annexure-B).
- 5- That the sentence five is true to the extent of launching department appeal however he was terminated from his service after receiving final notices signed by Sub-Divisional Officer on dated 02-11-2022 and Executive Engineer dated 07-12-2022 (Annexure-C).

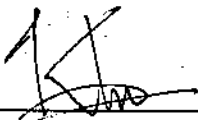
Grounds:

- a. That the termination is not arbitrary and illicit but according to the KPK E&D rules 2011.
- b. That the termination is occurred after following proper procedure, therefore it is maintainable.
- c. That the Department terminated the employee after providing him due time for his defense.
- d. That the Para is incorrect.
- e. That the termination followed the prescribed procedure of KP E&D Rules-2011.
- f. Incorrect.
- g. Incorrect.
- h. Incorrect.
- i. Incorrect.

PRAYERS

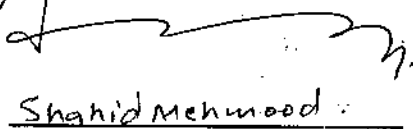
On acceptance of the instant Para-wise comments the appeal of the appellant may kindly be dismissed.

Date _____/2024



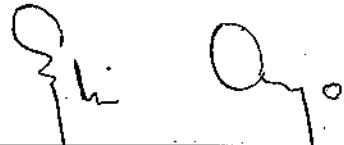
Khayam Hasan Khan
RESPONDENT NO: 1

Secretary Public Health Eng: Department
KPK Peshawar



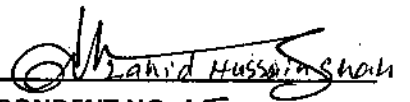
Shahid Mehmood
RESPONDENT NO: 3 and 4

Superintendent Engineer Public Health
Eng: Department Circle Abbottabad



Sohail Alizai
RESPONDENT NO: 2

Chief Engineer (EAST) Public Health Eng:
Department KPK Peshawar



Mahid Hussain Shah
RESPONDENT NO: 5

Executive Engineer Public Health Eng:
Department Division Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 2046/2023

Muhammad Ibrahim S/O Abdul Ahad

Abbottabad.

----- Appellant

Versus

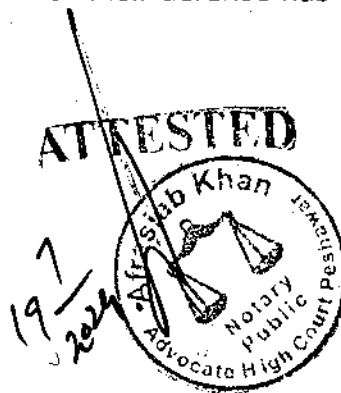
1. The Govt. of Khyber Pakhtunkhwa through Secretary PHED Peshawar.
2. Chief Engineer (East), PHED, Hayatabad Phase-V Peshawar.
3. Chief Engineer PHE Division Abbottabad.
4. S.E PHE, Abbottabad.
5. XEN (PHE) Water & m Supply Department, Abbottabad.

----- Respondents

AFFIDAVIT

I, Mr. Khayam Hasan Khan, Secretary, Government of Khyber Pakhtunkhwa Public Health Engineering Department Peshawar do hereby affirm and declare on oath that the contents of the comments in Service Appeal No. 2046/2023 titled "Muhammad Ibrahim" Versus Government of Khyber Pakhtunkhwa & Others" are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Service Tribunal Peshawar.

It is further stated on oath that in this appeal the answering respondents neither been placed ex-parte nor their defense has been struck off / cost.



Khayam Hasan Khan
 DEPONENT
 Khayam Hasan Khan
 CNIC No.17301-1500534-1
 Cell # 0333-6661969

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GOVT. OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

AUTHORITY LETTER.

No.SO(LIT)PHED/ST/40-110/2023. Mr. Zahid Shah Executive Engineer, PHE Division Abbottabad is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal (Camp Court, Abbottabad) in S.A No.2046/2023 titled "Muhammad Ibrahim Vs: Govt of KPK through Secretary PHE Department and others" on behalf of the Secretary Public Health Engineering Department.



SECRETARY
PHE DEPARTMENT
KHYBER PAKHTUKHWA

جناب عالی :- SDO II - 6

گزارش صیغہ P/5 البراجیم وائرسٹیڈی کے حوالہ
کوہ گزشتہ مورخہ 07/07/2022 سے ایسی ڈپٹی
سے فرہار ہے جس کے حوالے سے ایسی نوٹس

NOE-3/02 مورخہ 22/7/22 کی مہینہ کیا

کے نام پر وہ دفتر میں آیا
لہذا اس کے ساتھ مختلف قانونی کارروائی کیجات

*SDA
Call the official to resume
his duty.*

لہذا اس کے ساتھ

محکمہ سیکرٹریٹ
PABD ڈپٹی سیکرٹری

[Signature]

Section Officer (Lit)
PHE Department
Peshawar.

[Signature]

خدمت جناب XEN صاحب: PHED: ایسٹ آباد

جناب عالی

Page
5

گزارش حکیم سائل محمد ابراہیم، واٹر سپلائی سکیم

(سموالہ) پر بطور میپ ایریڈیوٹی سرانجام دے رہے ہیں

کچھ عرصہ غیر حاضر ہونے کی وجہ سے محکمہ نے نوکری سے فارغ

کر دیا۔ سائل زبانی طور پر پریشان تھا۔

لہذا آپ سے التماس کی جاتی ہے کہ مجھے ڈس مس آڈر

کی مہربانی فرمائیں۔

آپ کے عزیزوں کو شکریہ

العارض

H/C
For N.91 copy of
Dismiss order by
Provide

XEN
PH. Engr. Divn
Abdullahabad

13/9/23

Section Officer (Lit)
PHE Department
Peshawar.

نام: محمد ابراہیم ولد عبدالعزیز محمد

مورث = 2-09-2023



**OFFICE OF SUB DIVISIONAL OFFICER,
PUBLIC HEALTH ENGG. SUB DIVISION NO. II
ABBOTTABAD**

No. B-3102

Dated A. Abad the 25 /07/2022.

Muhammad Ibrahim,
Pump Operator, WSS Samwala

SUBJECT: ABSENCE FROM GOVT. DUTY

You were assigned official duty by the undersigned on WSS Samwala as Pump Operator however, it has come into the notice of undersigned through the inhabitant of Samwala (Copy Attached) that you are not performing your duties on the scheme and your whereabouts are unknown since last ten days. You are hereby directed to immediately report in the office of undersigned after receipt of this letter and explain your position for absence without intimation.

In case of non compliance, your case will be recommended for initiation of disciplinary proceedings under E&D Rules to high ups for favor of further necessary action.

[Signature]
SUB DIVISIONAL OFFICER,
PUBLIC HEALTH ENGG. SUB DIVN:
NO. II ABBOTTABAD

[Signature]
Section Officer (Lit)
PHE Department
Peshawar

Copy to:

1. Executive Engineer PHE Division Abbottabad for information please.
2. Sub Engineer Incharge for information and with the direction to submit his report/recommendation regarding performance of duty of the mentioned official.

[Signature]
SUB DIVISIONAL OFFICER,
PUBLIC HEALTH ENGG. SUB DIVN:
NO. II ABBOTTABAD



OFFICE OF THE SUB DIVISIONAL OFFICER PUBLIC HEALTH
ENGINEERING SUB DIVISION NO. II ABBOTTAABAD.

Page 3

No.E-4 /06

Dated Abbottabad the

23 /10/2022

To

Page 8


Muhammad Ibrahim
Pump Operator,
WSS Samwala

SUBJECT: - ABSENT FROM GOVT: DUTY.

Ref: This Office letter No. E-3/02 Dated: 25/07/2022

You are once again directed to resume your duty & report to under signed
Within 03 days positively. Failing which your case will recommended to higher ups for termination
from Govt service as per rule & policy.

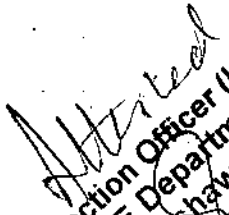
Matter is most important.


SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD

Copy to:

1. The Executive Engineer PHE Division Abbottabad for information & necessary please.
2. Work Superintending & Concerned Sub Engineer to provide updates from site.

SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD


Section Officer (Lit)
PHE Department
Peshawar.



No.E-4/02

Dated Abbottabad the 02/11/2022

(FINNAL NOTICE)

To

Muhammad Ibrahim
Pump Operator,
WSS Samwala

Page File
9
~~ANNEXURE-C~~

SUBJECT: - ABSENT FROM GOVT: DUTY.

Ref: This Office Letter No. E-3/02 Dated: 25/07/2022
--do-- E-4/06 Dated: 23/10/2022

It is brought in to the notice of undersigned that you are remain absent from govt. duty & peoples are facing great difficulties.

You are once again directed to resume your duties & report to undersigned within week time positivity. Failing which action will be recommended against you as per service rule.

SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD

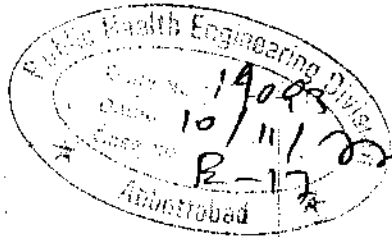
Copy to:

1. The Executive Engineer PHE Division Abbottabad for information & neccessary please.
2. Work Superintenting you are directive to visit the site & report to undersigned .

SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD

HK
Noted N-9

XEN
P.H. Engr: Divn
Abbottabad
7-11-22



Section Officer (Liaison)
HE Department
Peshawar.

~~Annexure~~

**OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION ABBOTTABAD**



xenphedabbottabad@gmail.com



0992-9311046



NO. E-17/02

the Abbottabad dated 07/19/2022

To,

Muhammad Ibrahim S/O Abdul Ahad,
Pump Operator,
Village Samwala P.O Chando Maira
Tehsil & District Abbottabad.

(Through Register)

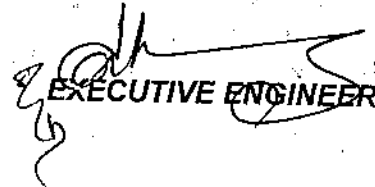
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Subject: - **FINAL NOTICE ABSENT FROM GOVT: DUTY.**

Reference:- PHE Sub Division No.II Abbottabad letter No.E-4/02 dated 02-11-2022.


Refer to the subject cited above, as per report of the Sub Divisional officer with reference to his letter quoted above. You are failed to resume your duty within prescribed time limit given in the final notice from the SDO.

Your act is against the service rules and may lead you toward disciplinary action under E&D rules-2011. Now it is once again finally directed to resume your duty within 07 days after issuance of this notice. Otherwise strict disciplinary action taken against you and your service will be terminated.


EXECUTIVE ENGINEER

Copy to:-

1. Superintending Engineer, PHE Circle Abbottabad for information please.
2. Sub Divisional Officer PHE Sub Division No.II Abbottabad for information w/r his letter quoted above.


EXECUTIVE ENGINEER


Section Officer (Lit)
PHE Department
Peshawar.

Service Rules

GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT AND
ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

Page
11

NO.SO(REG-VI) E&AD/2-6/2010.-In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

(a) "accused" means a person in Government service against whom action is initiated under these rules;

(b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;

(c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;

(d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

(e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;

(f) "competent authority" means-

(i) the respective appointing authority;

(ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

(g) "corruption" means-

(i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or

(ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or

(iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or

(iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf.

IMPORTANT

①

Attest
A

Provided that dismissal in these cases shall be with ²[.....] effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. Procedure in case of wilful absence.—Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgment on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. Procedure to be followed by competent authority where inquiry is necessary.—

(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include—

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary.

11. Procedure to be followed by inquiry officer or inquiry committee.—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be

² Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010, Dated 18th July, 2012.

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49

(2)

Attested
X



Page
13

R94441743 Engineer
Public Health Executive
ATO

M. Ibrahim s/o
Abdul Ahad Sumwala
Gobaki

ایجاز الحی ولد محمد اسحاق - سوات

موبائل - 77946-71-0348

کارڈ نمبر - 0386843-1-13102

بمقام
ایجاز الحی

9.12.22

9/12/22

Station Officer (Lit)
PHD Department
Peshawar.

Annexure - B

Page 5

Page

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**OFFICE OF THE SUB DIVISIONAL OFFICER PUBLIC HEALTH
ENGINEERING SUB DIVISION NO. II ABBOTTAABAD.**

No. E-4101

Dated Abbottabad the

29/12/2022

To

Muhammad Ibrahim S/O Abul Ahad
Pump Operator Cum Valveman
Village Samwala P.O Chando Maira
Tehsil Havelian District Abbottabad.

SUBJECT: - ABSENT FORM GOVERNMENT DUTY.

Ref: This Office Letter No.E-3/02 dated 25-07-2022
--- do No.E-4/06 dated 23-10-2022
--- do --- No.E-4/02 dated 02-11-2022
XEN Office letter No.E-17/02 dated 07-12-2022

You was served with several notices to resume your duties but no response was received from your end. A chain of complaints are received through the locals your behavior is showing that you are not interested to hold your job against you was appointed It is therefore decided to terminate your services.

SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD

✓ The Executive Engineer Public Health Engg: Division Abbottabad is requested to terminate the services of above Pump operator Cum Valveman & new appointment may be made to reduce the public grievances.

SUB DIVISIONAL OFFICER
PUBLIC HEALTH ENGG: SUB DIVISION
NO.II ABBOTTABAD

H/c
Note / n.s
[Signature]
XEN
P.H. Engg. Divn.
Abbottabad
28/12/22

Section Officer (Lit)
PHE Department
Peshawar.

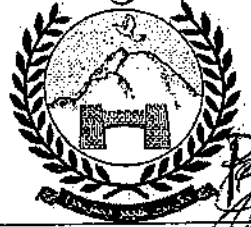
~~ANNEXURE~~
**OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION ABBOTTABAD**



xenphedabbottabad@gmail.com



0992-9311046



OFFICE ORDER

ANNEXURE
'A'

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15

Mr. Muhammad Ibrahim S/O Abdul Ahad Personal# 00379422 Operator Cum Valveman of water supply scheme Samwala U/C Mujuhan R/O Village Samwala P.O Chando Maira Tehsil & District Abbottabad found long absence from Govt. duty since 06-07-2022 upto 05-01-2023. He was served several notices by concerned SDO and also vide this office final notice No.E-17/02 dated 07-12-2022 & recommended by Sub Divisional Officer PHE Sub Division No.II Abbottabad vide his letter No.E-4/01 dated 29-12-2022. The said official failed to respond for within the prescribed period.

Therefore under rule 9 of the Khyber Pakhtunkhwa Govt: Servants E&D rules-2011, the services of the above named official are hereby terminated with immediate effect.

The employee has the opportunity of departmental appeal to Chief Engineer (East) PHED Khyber Pakhtunkhwa within (14) days against this order.



EXECUTIVE ENGINEER,

Endst: No. E-17/03

Dated Abbottabad the 12/01/2023

Copy forwarded to the:-

1. Chief Engineer (East) PHED Khyber Pakhtunkhwa Peshawar for information please.
2. Superintending Engineer PHE Circle Abbottabad for information please.
3. P.S to Secretary PHED Khyber Pakhtunkhwa Peshawar for information please.
4. District Accounts Officer, Abbottabad.
5. Sub Divisional Officer, PHE Sub Division, No.II, Abbottabad for information and necessary action.
6. Divisional Accounts Officer (Local).
7. Mr. Ibrahim S/O Abdul Ahad Samwala U/C Mujuhan R/O Village Samwala P.O Chando Maira Tehsil & District Abbottabad.


Section Officer (Lit)
PHE Department
Peshawar.

EXECUTIVE ENGINEER,

RGL94441743

Attenu
S
Pago
(18)

5 For Insurance Notices see reverse
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due
16 *08* *22*
Date Stamp

Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
16 (in figures) *16* (in words) *16*

Weight in Grams
16 (in words) *16* Grams

and