

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NOTIFICATION

Peshawar, dated the 29TH January, 2015

No. SO(H&E)/2-65/2014.-In exercise of the powers conferred by section 10 of the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014 (Khyber Pakhtunkhwa Act No. XXVI of 2014), the Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA COMMUNITY EMBEDDED
EMPLOYEES OF LADY HEALTH WORKERS PROGRAM (EFFICIENCY
AND DISCIPLINARY) RULES, 2015

1. Short title, commencement and application.---(1) These rules may be called the Khyber Pakhtunkhwa Community Embedded Employees of Lady Health Workers Program (Efficiency & Discipline) Rules, 2015.

(2) They shall come into force at once and shall apply to the Community Embedded Employees of the Program.

2. Definition.---(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 Community Embedded Employee against whom action is taken under these rules;
- (b) "**Community Embedded Employee**" means a Program Employee residing and working within his/her defined catchment population for which he/she was appointed or posted;
- (c) "**Catchment population**" means the local population for which a Community Embedded Employee of the Program is appointed or posted and regularly resides therein;

- (d) **"appellate authority"** means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (e) **"appointing authority"** means an authority specified in Rule 3(5);
- (f) **"Competent authority"** means the respective appointing authority;

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

- (g) **"Government"** means the Government of Khyber Pakhtunkhwa;
- (h) **"Charge"** means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (i) **"penalty"** means a penalty which may be imposed under these rules; and
- (j) **"Program"** means the Lady Health Workers Program.
- (k) **"Inquiry officer"** means a female officer appointed by the competent authority.
- (l) **"misconduct"** includes-
 - (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to conduct rules;
 - (iii) conduct unbecoming of Program Employee and a gentleman; or
 - (iv) Involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) Having been appointed or promoted on extraneous grounds in violation of any law or rules; or
 - (vi) Conviction for a moral offence by a court of law.

- (vii) 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
- (viii) dishonesty or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
- (ix) 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
- (x) Possession of pecuniary sources or property by a community embedded employee or any of his dependants or any other person, through his/her or on his/her behalf, which cannot be accounted for and which are disproportionate to his/her known sources of income; or
- (xi) Maintaining a standard of living beyond known sources of income; or
- (xii) Having a reputation of being corrupt; or
- (xiii) Inefficient
- (m) “Inefficiency” means failure to efficiently perform functions assigned to a community embedded employee in the discharge of his/her duties;
- (n) “Inquiry committee” means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardizations) Act, 2014 (Khyber Pakhtunkhwa Act No. XXVI of 2014).

3. Grounds for proceedings.---A community embedded employee shall be liable to be proceeded against under these rules if he /she is-

- (a) has unlawfully ceased to be a regular resident within or has become a non-resident for his catchment population; or

- (b) is involved in any other engagement or a practice which is not in accordance with the laid down and approved policy of the Program; or
- (c) has ceased to be efficient in the performance of official duties; or
- (d) has proved guilty of gross misconduct.

4. Penalty.---Penalty under these rules shall not absolve a community embedded employee from liability to any other punishment to which he/she may be liable for an offence, under any other law, committed by him /her while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Community Embedded Employee under these rules it shall either;-

- (i) Proceed itself against the accused by issuing a show cause notice under rule 14 and, for reasons to be recorded in writing, dispense with inquiry;

Provided that no opportunity of showing cause or personal hearing shall be given where,-

- (a) The competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (b) A Community Embedded Employee has entered into plea bargain under any law of the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine imprisonment; or
- (c) A Community Embedded Employee is involved in subversive activities; or
- (d) It is not reasonably practicable to give such an opportunity to the accused ;or

- (ii) Get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 10:

Provided that the competent authority shall dispense with the inquiry where:-

- (i) a Community Embedded Employee has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Community Embedded Employee is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

- (2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. Suspension--- A Community Embedded Employee against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, for such date as may be specified by the competent authority.

7. Procedure where inquiry dispensed with:- If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment responsibility and penalty or penalties proposed to be imposed upon him;

- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d.) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charge have been proved against him/her;
- (e) exonerate the accused by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose the penalties mentioned in these rules, by an order in writing , if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of termination from service shall be imposed, in addition to the recovery, if any

8. Action in case of conviction or plea under any law.---Where a Community Embedded Employee is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law if a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority after examining facts of the case, shall-

- (a) Terminate the Community Embedded Employee where he/she has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily:

Provided that termination in these cases shall be with immediate effect from the date of conviction by a court of law; and

- (b.) proceed against the Community Embedded Employee under rule 20, where he/she has been convicted of charges other than corruption or moral turpitude.

9. Procedure in case of willful absence.---Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Community Embedded Employee for seven or more days, a notice shall be issued by the competent authority 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 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, penalty of termination from service may be imposed upon such Community Embedded Employee.

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 shall be different from the inquiry officer or the inquiry committee which conducted the preliminary inquiry.

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 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 absent himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical

Board: provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry.

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely.

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative:-The departmental representative shall perform the shall perform the following duties, namely;

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds, of defense by the accused before the inquiry office or inquiry committee, as the case may be.

14. Order to be passed or receipt of report from the inquiry officer or inquiry committee.---(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall

- (a) inform him of the charges proved against him and the penalty or penalties proposed to be imposed to upon him;
- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he wants to be heard in person or not:
- (c) provide a copy of the inquiry report to the accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused during personal hearing, by an order in writing.

- (i) exonerate the accused if charges had not been proved: or

(ii) impose penalty specified in rule 19 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provision of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order de novo inquiry through different officer or inquiry committee.

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant to certain reason.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing:- The competent authority may, by an order in writing, call the accused and the departmental representative, along relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

16. Departmental appeal and review:- (1) An accused who has been awarded and penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

(2) The authority empowered under sub-rule (1) shall call for the record the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing.

(a) uphold the order of penalty and reject the appeal or review petition;
or

(b) set aside the orders and exonerate the accused.

(3) An appeal or review petition preferred under these rules shall be made in the form of the petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper temperate language.

17. Appearance of Counsel:- No party to any proceedings under these rules at any stage of the proceedings, shall be represented by an advocate.

18. Exception. Notwithstanding anything to the contrary contained in these rules, in cases where the Community Embedded Employees collectively strike work, willfully absent themselves from the duty or abandon their official work, the competent authority in respect of senior most accused may serve upon them through newspaper or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Community Embedded Employees the penalty prescribed in these rules.

19. Indemnity. No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued where under.

20. Jurisdiction barred. Save as provided under these rules, no order made or proceeding taken under these rules shall be called in question in any court and no injunction shall be granted by any court in respect of any decision so made or proceeding taken in pursuance of any power conferred by, or under these rules.

***SECRETARY TO GOVT. OF KHYBER PAKHTUKHWA
HEALTH DEPARTMENT***

Endst: No & date even.

Copy of above is forwarded to:

1. The Registrar, Supreme Court of Pakistan. Islamabad.
2. All Administrative Secretaries, to Govt. of Khyber Pakhtunkhwa.
3. The Accountant General Khyber Pakhtunkhwa.
4. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Advocate General, Khyber Pakhtunkhwa.
7. The Director General, Health Services Khyber Pakhtunkhwa
8. PSO to Chief Secretary Khyber Pakhtunkhwa.
9. The Manager, Government Printing Press & Stationary Department Peshawar for publication in the Government t Official Gazette after publication 10 copies may be forwarded to this Department.
10. The Director Information Khyber Pakhtunkhwa Peshawar

11. The Deputy Director (IT) Health Department for uploading in the official website.
12. PS to Secretary Health Department.

(Kashif Iqbal Jilani)
Section Officer (E.II)