

Nepal Health Service Act, 2053 (1997)

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1. Nepal Health Service (First Amendment)
Act, 2055 (1999) 2055.10.27 (10 Feb.1999)
2. Health Related Some Nepal Acts
Amendment Act, 2058 (2001) 2058.5.6 (22 Aug.2001)
3. Nepal Health Service (Second
Amendment) Act, 2058 (2001) 2058.7.22 (7 Nov. 2001)
4. Nepal Health Service (Third Amendment)
Act, 2063 (2006) 2063.8.22 (8 Dec. 2006)
5. Republic Strengthening and Some Nepal
Laws Amendment Act, 2066 (2010) 2066.10.7 (21 Jan 2010)

Act Number 32 of the year 2053 (1997)

An Act Made to Provide for the Constitution, Operation and Conditions of Service of the Health Service

Preamble: Whereas, being the health service an essential service for the general public, it is expedient to make provisions on the constitution, operation and conditions of service of the health service in order to make the health service more competent, vigorous, service-oriented and responsible;

Now, therefore, be it enacted by Parliament in the Twenty-Fifth year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as "Nepal Health Service Act, 2053 (1997)".

(2) This Act shall come into force on the 91st day after the date on which His Majesty grants royal assent.

2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,-

(a) "health service" means the Nepal health service constituted pursuant to Section 3;

(b) "employee" means any person who is holding a post of the health service;

(c) "integrated medical officer" means a person who, having acquired master's degree on *Ayurved* and *Aellopathic* from a recognized educational institute, is holding a post of the health service, after getting his/her name registered in the *Ayurved* Medical Council, and this term includes a person whose name is registered after the formation of the *Ayurved* Medical Council where the Council was not yet formed at the time of commencement of this Act;

(d) "Authority" means any official with powers to make appointments pursuant to Section 11;

(e) "family" means the husband, wife, son, unmarried daughter, adopted son, unmarried adopted daughter, father, mother or step mother living together with an employee and whom he/she himself/herself has to maintain and subsist, and this term also

includes his or her grandfather, grandmother in the case of a male and unmarried female employee,¹ and her mother-in-law, father-in-law, in the case of a married² female employee;

- (f) "Head of Department" means the prescribed official;
- (g) "Chief of Office" means the head employee of the prescribed office;
- (h) "permanent post" means a post of the health service which is pensionable and of which term is not specified;
- (i) "expert post" means a post which has functions, duties and responsibilities of special nature and requires special qualifications;
- (j) "Ministry" means the Ministry of Health of the Government of Nepal; and
- (k) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act.

Chapter-2

Constitution of health service

- 3. **Constitution of health service:** A service named Nepal Health Service is hereby constituted.
- 4.³ **Class and class adjustment:** (1) There shall be the following classes in the health service:

1 Amended by Nepal Health Service (Third Amendment) Act, 2063.

2 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

3 Amended by Nepal Health Service (Third Amendment) Act, 2063.

Officer	Assistant
Twelfth	Fifth
Eleventh	Fourth
Tenth	Third
Ninth	
Eighth	
Seventh	
Sixth	

(2) Notwithstanding anything contained in Sub-section (1), if the third class does not have any employee, that class shall lapse.

(3) The employees serving in the first and second classes of the Nepal health service at the time of commencement of this Section shall be adjusted to the third class.

(4) The non-gazette third class employees appointed pursuant to the Civil Service Act, 2049 (1993) prior to 14 *Jestha* 2054 shall be adjusted to the fourth class.

5. Posts of service: (1) There shall be technical posts including the expert posts in different classes of the health service. The titles of such posts shall be as prescribed.

(2) The Government of Nepal shall prepare the job description of each level of the health service. Such job description shall clearly specify, *inter alia*, the functions, duties, responsibilities and powers of the concerned post.

6. Medical systems under the health service: (1) There shall be the following medical systems in the health service:

- (a) *Aellopathy* Medical System,
- (b) *Ayurved* Medical System,
- (c) Homeopathy Medical System.

(2) In addition to the medical systems mentioned in Sub-section (1), the Government of Nepal may, by a Notification in the Nepal Gazette, prescribe other medical system.⁴

7. **Groups and sub-groups:** (1) There may also be different groups and sub-groups as prescribed in the health service.

(2) The minimum qualifications required for different posts in the groups and sub-groups of the health service shall be as prescribed.

Chapter-3

Fulfillment of vacancy in health service

8.5 **Fulfillment of vacancy in health service:** (1) The following posts of the health service shall be fulfilled through open competition or promotion as follows:

	By open competition	By promotion	
		By e valuation of competency	By internal competitive examination
(a) Fourth	100%	-	-
(b) Fifth	50%	-	50%

4 By a Notification in the Nepal Gazette dated 2054.9.7 (22 Dec. 1997), the Government of Nepal specified the “Unani Medical System”.

5 Amended by Nepal Health Service (Third Amendment) Act, 2063.

(c) Sixth	-	50%	50%
(d) Seventh	100%	-	-
(e) Eighth	100%	-	-
(f) Ninth	10%	60%	30%
(g) Eleventh	10%	60%	30%
(h) Twelfth	-	100%	-

(2) The posts and levels other than those to be fulfilled pursuant to Sub-section (1) shall be made through upgradation of level pursuant to Section 9.

8A.⁶ Restriction on fulfillment of vacancy: (1) No post of the health service shall be fulfilled in any manner other than that provided for in this Act.

(2) If any post in the health service becomes vacant in any manner, the concerned body shall give information thereof to the Public Service Commission within One month of the post being vacant. The official who does not give information within that period shall be liable to departmental action.

(3) If it is so written pursuant to Sub-section (2), requisition may be made specifying the posts fallen vacant by that period and the posts that are to fall vacant by way of retirement and promotion within the running fiscal year.

⁶ Amended by Nepal Health Service (Third Amendment) Act, 2063.

(4) Other provisions relating to the requisition for vacancy fulfillment shall be as prescribed.

(5) No salary shall be provided without having a salary report passed by the Civil Employee Records Office (*Nijamati Kitabkhana*), in the case of employees serving in the Ministry, Department, center and offices situated within the Valley, and by the Treasury and Accounts Comptroller Office concerned, in the case of employees of the District based Offices.

(6) If any employee is appointed in contravention of Sub-section (1) or if it is found that salary has been provided without having the salary report passed pursuant to Sub-section (2), the salary, allowances and amounts for other facilities received by such employee shall be realized from the appointing and salary providing official as government dues.

8B.7 Restriction on appointment on wages or contract: (1) No one shall appoint, or cause to be appointed, any person on wages or contract for any job to be performed by the employee.

Provided that, if there arises difficulty with the health service delivery owing to that any doctor or health worker is on the study or extra-ordinary leave, the Government of Nepal may employ on contract service a doctor or health worker who is in possession of the qualification in his or her post for the period during which such a doctor or health workers goes on leave.⁸

(2) If any one appoints, or causes to be appointed, any person in contravention of Sub-section (1), the salary, allowances and amounts

7 Inserted by First Amendment.

8 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

for other facilities received by that person so appointed shall be realized from the appointing official as government dues.

9.⁹ **Upgrade:** (1) Out of the posts in the service, the posts of Fourth level, Fifth level, officer Seventh level, Eighth level and Tenth level shall be fulfilled from the Third level, Fourth level¹⁰, officer Sixth level, Seventh level and Ninth level respectively, by way of upgrading.

(2) The freshly appointed and posted officer Sixth level employee and officer Seventh level medical officer, dental officer, officer *Kabiraj*, integrated medical officer or other medical officer equivalent thereto who has served for at least One year in the most remote area or for Two years in a remote area and gained at least excellent marks in the work performance evaluation for Three years after the date of fresh appointment and posting shall be upgraded to the Seventh level post and the Eighth level post, respectively.

(3) If an employee who is upgraded from the officer Sixth level post to the Seventh level post pursuant to Sub-section (2) gains at least excellent marks in the work performance evaluation for Two years in that post, such employee shall be upgraded to the Eighth level post.

(4) The employees, who were permanently appointed to the gazetted Third class post on the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) prior to the commencement of the Nepal Health Service Act, 2053 (1997) and have completed a service period of Three years after having served for at least One year in the most remote area or Two years in the remote area, shall be upgraded to the Eighth level post.

9 Amended by First Amendment.

10 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

(5)¹¹ Notwithstanding anything contained in Sub-section (4), the employees, who were permanently appointed to the gazetted Third class post on the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) or after the commencement of the Nepal Health Service Act, 2053 (1997) and has obtained the master's degree after gaining the basic bachelor's degree in the subject related with the group, sub-group of the service and completed a service period of Three years after having served for at least One year in any area outside the Kathmandu Valley or has obtained the post graduate diploma after gaining the basic bachelor's and completed a service period of Three years after having served for at least Two years in any area outside the Kathmandu Valley shall also be upgraded to the Eighth level post.

(6) If the employees as referred to in Sub-sections (4) and (5) have not served for such period and in such area as mentioned in those Sub-sections, such employees shall be upgraded only after they have attended and served in such area until the required period.

Provided that, if an employee as mentioned above cannot be deputed to the said area because of the lacking of post or position or office, such employee shall also be upgraded to the Eighth level post.

(7) The employees who, holding the officer Ninth level post for Two years, have gained at least excellent marks in the work performance evaluation for Two years shall be upgraded to the officer tenth level post.

(7a)¹² After the commencement of this Section, the upgrading of the following employees shall be made as follows:

11 Amended by Second Amendment.

12 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

- (a) Employees serving in the Third level at the time of the commencement of this Section, to the Fourth level of the concerned group,
- (b) Employees who were adjusted to the Third level after the commencement of this Section, to the Fourth level after having completed Two years of service period in that level,
- (c) Employees who were adjusted to the Fourth level of the health service after 14 Jestha 2054, to the Fifth level of the concerned group,
- (d) Out of the employees who were adjusted to the Fourth level pursuant to Sub-section (4) of Section 4, the employees who have completed Three years of service period and gained the prescribed qualification for the Fourth level, to the Fifth level of the concerned group,
- (e) Employees who were freshly appointed to the Fourth level of the health service or adjusted to that level and have completed Five years of service period in the level, to the fifth level of the concerned group,
- (f) Employees who were appointed to the Sixth and Seventh levels after completing the procedures of the Public Service Commission prior to the commencement of this Section, to the Seventh and Eighth level of the concerned group, respectively,

- (g) Out of the employees who were adjusted to the fifth level and senior Fifth level prior to the commencement of this Section, the employees who have gained the prescribed qualification for the fourth level and completed Ten years of service period in the Fifth level, to the Sixth level of the concerned group,
- (h) Employees who were freshly appointed to the Fifth level prior to the commencement of this Section and have completed at least Ten years of service period in that level, to the Sixth level of the concerned group,
- (i) Employees who were upgraded to the Fifth level after the commencement of this Section and having completed at least Ten years of service period in that level, to the Sixth level of the concerned group.

(7b)¹³ A separate pool position shall be arranged for the employees whose level has been adjusted after 14 *Jestha* 2054 and are currently serving in the officer Sixth level and they shall be upgraded to the Seventh level of the concerned group.

(7c)¹⁴ After upgradation pursuant to Sub-section (7b), such employees shall be grouped in the concerned group based on their qualification. If any of the employees so grouped is relieved of the health service for any reason, such a position held by him or her shall ipso facto lapse.

13 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

14 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

(7d)¹⁵ An employee who is upgraded to a higher level pursuant to this Section shall perform the functions of the level from which he or she is upgraded.

(7e)¹⁶ If an employee who is upgraded to the Seventh level pursuant to Clause (f) of Sub-section (7a) after the commencement of this Section served in a remote area during the period as referred to in Sub-section (2), he or she shall be deemed to have served in the remote area for upgradation to a higher level.

(8)¹⁷

(9)¹⁸

(10)¹⁹

9A.²⁰ Upgradation not to be made: Notwithstanding anything contained in Section 9, an employee shall not be upgraded in the following circumstance and during the following period:

- (a) In the event of suspension, during the period of suspension,
- (b) In the event of withholding of salary increment or promotion, during the period of such withholding,
- (c) In the event of suspension of name registration by the health related council established pursuant to the prevailing law, during the period of such suspension.

15 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

16 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

17 Deleted by Nepal Health Service (Third Amendment) Act, 2063.

18 Deleted by Nepal Health Service (Third Amendment) Act, 2063.

19 Deleted by Nepal Health Service (Third Amendment) Act, 2063.

20 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

10. Appointment on recommendation of Public Service

Commission: Appointment to the post required to be fulfilled by open competition or internal competition shall be made on recommendation of the Public Service Commission.

11. Appointment to the post of health service: (1) The Government of Nepal shall make appointment to the officer level post of the health service; and a Notification of such appointment shall be published in the Nepal Gazette.

(2) The Head of Department may make appointment to the assistant level post of the health service.

(3) Notwithstanding anything contained in Sub-section (2), the Chief of Office may make appointment to the posts of assistant first level to the fifth level in his/her office and subordinate office.

12. Disqualifications for being candidate: (1) The following persons shall not be qualified for appointment to the post of the health service:

- (a) In the case of assistant level post, those who have not completed the age of Eighteen years,
- (b) In the case of officer level post, those who have not completed the age of Twenty years,
- (c) Those who have already completed the age of Forty Five years,

Provided that, the age bar (limit) shall not apply to the incumbent permanent employee and the temporary employee, who, upon being duly appointed to the post of the health service, has completed a service period of Five years continuously.

- (d) Those who have not been registered in the Health Professional Council established pursuant to the prevailing law and who have not got such registration renewed,

Provided that, this Clause shall not be considered to bar the making of appointment to the post in the level in respect whereof there is no provision for registration of name in any health related professional council established pursuant to the prevailing law.

- (e) Those who have been dismissed from the service, with being disqualified for the government service in the future,
- (f) Those who are non-Nepalese citizens,
- (g) Those who have been convicted by the court of a criminal offence involving moral turpitude.

13.²¹ Provisions relating to temporary appointment: (1) The Public Service Commission shall, for the purpose of making temporary appointments, publish a separate list arranged in order of merit from amongst those candidates who have attended the examination conducted by it but have not been recommended for permanent appointment.

(2) If any temporary appointment is to be made to any vacant post of the health service, the Authority must write to the Public Service Commission.

(3) The Public Service Commission shall, if so written to it pursuant to Sub-section (2), recommend the person included in the list

²¹ Amended by Second Amendment.

arranged in order of merit for temporary appointment for a maximum period of Six months on the basis of the requisition.

(4) Where a notice is not published pursuant to Sub-section (1) or the number of the persons recommended pursuant to Sub-section (3) is less than the number of vacant posts, temporary appointment may be made for a maximum period of Six months, with the consent of the Public Service Commission.

(5) Until recommendation is made by the Public Service Commission for filling vacancies permanently, the term of office of the employees appointed pursuant to this Section can be extended with the consent of the Public Service Commission.

(6) Information of temporary appointment made pursuant to Sub-section (4) shall be given to the Ministry of General Administration within Seven days.

(7) Notwithstanding anything contained above, no temporary appointment can be made to any post of the service without making requisition to the Public Service Commission for permanent fulfillment.

(8) If any one makes temporary appointment in contravention of this Section, the salary, allowances and amounts for other facilities earned and received by the employee so appointed shall be realized from the appointing official as government dues.

14. Retention of lien: An employee shall continue to have lien over his or her post in the following circumstances:

- (a) As long as he or she continues to function in that post;
- (b) Until the period of time allowed for the assumption of charge of another post, on being transferred to that post;

- (c) While he or she is on leave after getting the same sanctioned;
- (d) While he or she is under suspension;
- (e) While he or she is deputed by the Government of Nepal on governmental or non-governmental function or while he or she is serving in any other post in an acting capacity.

15. Acting assignment: (1) An employee who is holding a post that is One level junior to a vacant post of any Head of Department or Chief of Office or in which he or she has a lien in the concerned group, sub-group of the health service can, based on the prescribed grounds, be appointed to act in such vacant or lien post for a maximum period of One year.

(2) Notwithstanding anything contained in Sub-section (1),²² the period of acting in that post may, in consultation with the Public Service Commission, be extended for a maximum period of One year until recommendation is made by the Public Service Commission for permanent fulfillment.

16. Oath: Each employee must, before assuming his/her office after being appointed for the first time, swear an oath as prescribed.

17.²³ Provisions relating to Posting: (1) The employees shall be posted according to their educational qualification, training and experience.

(2) Notwithstanding anything contained in Sub-section (1), in posting from the Sixth level to the Seventh level, posting shall be made by giving priority to those who have gained the educational qualification prescribed for the Seventh level, are senior and have

22 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

23 Amended by Nepal Health Service (Third Amendment) Act, 2063.

served in a remote area, out of the employees whose level and post have been adjusted to that level.

(3) Notwithstanding anything contained elsewhere in this Act, title of post as prescribed may be given to an employee of the health service who has gained the qualification as prescribed for the assistant level post as prescribed.

- 18. Probation period:** While making fresh appointment to any permanent post of the health service, such appointment shall be made on probation for a period of Six months in the case of a female employee and that of One year in the case of a male employee.²⁴ If his or her performance is not satisfactory during the probation period, his or her appointment may be canceled. The appointment of an employee whose appointment has not been so cancelled shall be deemed to have *ipso facto* been confirmed on the expiration of the probation period.

Provided that, an employee who has once undergone a probation period in the permanent post of the health service shall not be required to again undergo the probation period.

- 19.²⁵ Appointment of secretary:** (1) Notwithstanding anything contained in the prevailing law, an employee who has served for at least Five years in the Eleventh level of the health service or an employee serving in the Twelfth level may be appoint to the post of secretary of the Ministry of Health and Population.

(2) The term of office of the secretary appointed pursuant to Sub-section (1) shall be Five years, subject to Section 45.

24 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

25 Amended by Nepal Health Service (Third Amendment) Act, 2063.

(3) In counting the term of office of the secretary pursuant to Sub-section (2), the period of service carried out by him or her in the Twelfth level shall also be counted.

Chapter-4

Transfer, deputation and promotion

20. Power to make transfer and make deputation: The powers to make transfer and make deputation shall be vested in the Government of Nepal in the case of the officer level employees and in the Authority in the case of the assistant level employees.

21^{.26} Grounds for making transfer or making deputation: (1) The employees shall be transferred to the most remote, remote and non-remote areas in order to provide them with experience of different geographical regions of the country.

(2) The division and sub-division of the most remote, remote and non-remote areas shall be made as prescribed.

(3) No employee shall generally be transferred until the employee completes at least One year in the most remote area or at least Two years in the remote area.

Explanation: For the purposes of this Sub-section, "One year" means a period of continuous attendance of at least Two Hundred Thirty Three days.

(4) No employee shall be deputed to any office for more than Thirty days in a year. In cases where an employee is deputed for a

²⁶ Amended by Nepal Health Service (Third Amendment) Act, 2063.

period more than that, the salary and allowances, if any, payable for the period of deputation so made in excess shall be recovered by deducting the same from the salary and allowances receivable by the authority making such deputation

(5) Notwithstanding anything contained in Sub-section (4), an employee may be deputed for a period of more than Thirty days, in any of the following circumstances:

- (a) For the treatment of an infectious disease or natural calamity or taking part in any training, seminar, symposium or national programme upon being nominated by the Government,
- (b) For appointing him or her as acting in any post,
- (c) To perform the functions of the Chief of Office or Unit Office where the vacant post of such Chief cannot be filled immediately.

(6) If any employee who has been deputed in the most remote or remote area pursuant to Sub-section (3) is deputed in a training, seminar, symposium or national programme pursuant to Sub-section (5), such employee shall not be considered to have worked in the most remote or remote area during the period of such deputation.

21A.²⁷ Power to transfer prior to expiration of required period:

Notwithstanding anything contained in Section 21, in the following circumstances, an employee may, prior to the expiration of the period, be transferred:

²⁷ Inserted by Nepal Health Service (Third Amendment) Act, 2063.

- (a) Where the medical board formed by the Government of Nepal recommends that any employee in service in any place cannot work there because of physical or mental health,
- (b) Where departmental action is to be taken against any employee,
- (c) Where, because of the reduction in any position, an employee serving in that position becomes redundant (*Phajil*),
- (f) On the basis of mutual consent in the case of employee serving in the posts of rural health worker, *Ayurvedic* health worker and infant maternal worker or on the basis of requisition for employee in the event of vacancy in such posts.

23. Other provisions relating to transfer: Other provisions relating to transfer shall be as prescribed.

24. Promotion: Promotion to the officer level post of the health service shall be made on recommendation of the promotion committee formed pursuant to Section 25.

25. Promotion committee: (1) There shall be a promotion committee as follows to make recommendation for promotion to the officer level post of the health service.

- (a) Chairperson of the Public Service Commission or Member of the Public Service Commission designated by him or her - Chairperson
- (b) Member of the Public Service Commission designated by the Chairperson of the Public Service Commission - Member

- (c) Chief Secretary - Member
- (d) Expert in the concerned subject
nominated by the public Service
Commission - Member
- (e) Secretary at the Ministry of Health - Member-
Secretary

(2) Notwithstanding anything contained elsewhere in this Act, the promotion committee shall, based on the work performance capacity, make recommendation of at least Fifty percent additional candidates of the vacant posts if available, for making promotion to the Twelfth level post. The Government of Nepal shall, from amongst the candidates so recommended, promote those candidates whom it considers to be appropriate based on seniority and work efficiency.

(3) There shall be a prescribed promotion committee to make recommendation for promotion to the assistant level post of the health service.

(4) The procedures to be followed by the promotion committee to make recommendation for promotion of employees shall be as prescribed.

(5) The promotion committee shall meet in every Six months and make recommendation for promotion no later than Three months after the date of receipt of application forms²⁸ for promotion.

26²⁹ Minimum qualification and service period for promotion: In order to be a candidate for promotion, an employee must have completed the service period of Three years in the post that is One

28 Amended by Nepal Health Service (Third Amendment) Act, 2063.

29 Amended by First Amendment.

class below the class of the post to which promotion is made and possessed the educational qualifications as prescribed.

Provided that:

- (1) An employee whose level is set at the senior Fifth level in the course of adjustment of level after 14 Jestha 2054 may be a candidate for promotion despite that the employee does have the educational qualification prescribed for the Fifth level.
- (2) An employee who has completed Ten years in the Fifth level may be a candidate for promotion despite that the employee does have the educational qualification prescribed for the Fifth level.
- (3) An employee must have worked in the remote area for at least Two years in order for the employee to be a candidate for promotion after the commencement of this Section.
- (4) If an employee who has been upgraded to the Eighth level pursuant to Clause (f) of Sub-section 7(a) of Section 9 after the commencement of this Section has worked in the level that is one level below that in the remote area for Two years, the employee shall be deemed to have served in the remote area for promotion to the Ninth level.

26A.³⁰ **Calculation of service period:** (1) The period of service carried out in the equivalent post of the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) prior to 14 Jestha 2054 shall be calculated for the purposes of promotion.

30 Amended by Nepal Health Service (Third Amendment) Act, 2063.

(2) The period of service carried out in the Sixth and the Seventh levels by the employees appointed to those levels in accordance with the procedures of the Public Service Commission prior to the commencement of this Section shall be calculated for the purposes of upgrading or promotion to the higher level.

27.³¹ Ineligibility for being potential candidate for promotion: (1)

Notwithstanding anything contained in Section 26, an employee shall not be eligible to be a potential candidate for promotion in the following circumstances and during the following period:

- (a) In the event of suspension, during the period of suspension,
- (b) In the event of withholding of promotion, during the period of withholding,
- (c) In the event of withholding of increment in salary, during the period of withholding,
- (d)³²
- (e) In the event of suspension of registration of an employee by a health related professional council formed pursuant to the prevailing law, during the period of such suspension,
- (f)³³ During the period of service added pursuant to Sub-section (2) of Section 45.

(2) Notwithstanding anything contained in Sub-section (1), if any employee is suspended pursuant to Clauses (a) and (e) of the said Sub-

31 Amended by First Amendment.

32 Deleted by Nepal Health Service (Third Amendment) Act, 2063.

33 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

section after the publication of a notice of promotion or his or her promotion or salary increment is withheld pursuant to Clause (b) or (c), his or her promotional appointment shall be withheld during such period; and after the expire of that period, he or she shall be granted promotional appointment as if he or she were not suspended or withheld, and his or her seniority only shall be maintained.

28. Evaluation of work performance: The work performance evaluation form as prescribed shall be used to evaluate the work performance of an employee.

29. Criteria for promotion: (1) The promotion committee shall recommend an employee for promotion based on his or her work efficiency.

(2) In evaluating the work efficiency of the employee, a maximum of 100 marks shall be granted as follows:

- | | |
|--|--------------------|
| (a) For work performance evaluation | -Forty marks |
| (b) For seniority | -Twenty marks |
| (c) For service in geographical region | -Twenty Five marks |
| (d) For educational qualification and training | -Fifteen marks |

(3)The allocation of marks as referred to in Sub-section (2) shall be as prescribed.

(4)³⁴ The evaluation of work performance by employees shall be made on the prescribed criteria.

(5) The concerned.....³⁵ employee who is not satisfied with the recommendation for promotion made by the promotion committee pursuant to Sub-section (1) may file a complaint with the Public Service Commission within Thirty Five days after the date on which such recommendation is made. The complaint so made shall be settled within Sixty days.

(6) If, in settling the complaint pursuant to Sub-section (5), it appears that an erroneous evaluation was made deliberately, the Public Service Commission may write to the Head of Department to warn the concerned employee.

29A.³⁶ **Sheet roll/personal details to be maintained:** (1) It shall be the responsibility of the concerned Head of Department or Chief of Office to maintain accurately the sheet roll/personal details of the employees serving in his or her office. It shall be the duty of the concerned employee to update or cause to be updated his or her personal details.

(2) If any employee who has already been a potential candidate cannot submit an application form because of being abroad in the course of a governmental business, study or deputation or owing to a natural calamity or force majeure event, the concerned Head of Department or Chief of Office shall send the details of such an employee to the office publishing the notice for promotion within the time-limit set forth in that notice. The promotion committee shall settle promotion related acts based on the details so sent.

34 Amended by Nepal Health Service (Third Amendment) Act, 2063.

35 Deleted by First Amendment.

36 Amended by Nepal Health Service (Third Amendment) Act, 2063.

(3) If any candidate is proved to have submitted false details in filling up the application form for promotion, he or she shall be liable to departmental action.

30. Alteration in conditions of promotion: In making any amendment to Sections 26, 26A,³⁷ 27, 28 and 29 or the Rules framed thereunder, provision shall be made so that such amendment shall come into force only on a date after One year of such amendment.

31. Change of group or sub-group: (1) If the Government of Nepal considers it necessary, it may, in consultation with the Public Service Commission, change the group or sub-group of any employee from one to another group of the health service, based on the prescribed grounds.

(2) Where the Government of Nepal has sent any person holding a post in the health service to pursue study in order to acquire special qualifications, after such persons attends service following completion of study, the group or sub-group has to be changed that is related with his or her special qualifications in consultation with the Public Service Commission.³⁸

(3)³⁹ In making change to other group or sub-group pursuant to Sub-section (1) or (2), such a change may be made only when a post in such a group or sub-group is vacant.

37 Inserted by First Amendment.

38 Inserted by First Amendment.

39 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

Chapter-5

Provisions relating to nomination for study and training

32. Grounds for nomination for study, training or study tour: In nominating employees for study, training or study tour, the Ministry shall make nomination from amongst the employees in the Ministry and subordinate offices within the group or sub-group of the health service based on the following grounds:

- (a) The subject of study, training or study tour is useful and necessary for the group or sub-group for which the concerned employee is serving.
- (b) Giving priority to the requirements prescribed for nomination for scholarship received for study, training or study tour, based on priority from amongst the employees who secure higher marks for educational qualifications, seniority, experience of service in geographical region and work performance evaluation pursuant to Section 29.
- (c) Those who have not crossed the age of Forty Five years in the case of study of bachelor, master or any educational degree.

Explanation: For the purposes of this Chapter,

- (1) “Study” means a study to be done for getting bachelor, master or any educational degree in a subject concerned with the group, sub-group of the health service.
- (2) “Training” means any training programme to gain skills to be operated for a certain period as per the fixed curricula

by an institution, except for awarding bachelor, master or any educational degree.

- (3) “Study tour” means a symposium, seminar or study tour, except a study and training, organized for a period not exceeding Six months.

33. Priority to be given while making nomination: In making nomination of employees for a study, training or study tour abroad, generally those employees who have not got an opportunity of have foreign study; training or study tour shall be nominated based on the priority as follows, subject to Section 32. Provided that, no nomination shall be repeated for a programme with the same standard and nature.

- (a) The assistant Fifth level, officer Sixth, Seventh and Eighth level employees for study,
- (b) The employees of officer Ninth level and below for training,
- (c) Generally, the Chief of Office, employees of officer Tenth level and above as per the previously determined programme for study tour.

34. Disqualification for nomination: (1) The following employees shall not be eligible to be nominated for study or training:

- (a) Those who are not potential candidates for promotion pursuant to Section 27 or whose grade is withheld pursuant to this Act,⁴⁰
- (b)⁴¹ A freshly appointed and posted employee of officer level who has not served in the most remote area for at least One year or in remote area for at least

40 Inserted by Nepal Health Service (Third Amendment) Act, 2063 .

41 Amended by First Amendment.

Two years and who has not served, holding the permanent post of gazetted level of the Nepal Health Service under the Civil Service Act, 2049 (1993) prior to the commencement of the Nepal Health Service Act, 2053 (1997), in the most remote area for at least One year or in remote area for at least Two years,

- (c)⁴² Where an employee mentioned in Clause (b) has not served in such area and for such period as mentioned in that Clause, until he or she serves in such area for a continuous period as mentioned.

Provided that, in making nomination for a training which is highly technical and special nature and for a period less than Ninety days, the ineligibility as mentioned in this Section shall not apply.

(2) In the case of those who go for study without prior approval of the Ministry, no scholarship shall be provided by the Government of Nepal.

- 35. Period for which service to be done upon completion of study, training or study tour:** Any employee who pursues a study, training or goes on a study tour on the nomination of the Government of Nepal must, upon completing such a study, training or study tour, serve for upto the period as mentioned below in a compulsory manner:

42 Inserted by First Amendment.

<u>Period of study, training or study tour</u>	<u>Minimum period for which service to be done</u>
(a) Up to Three months	One year
(b) From Three months to Six months	One and half year
(c) From Six month to Nine months	Two years
(d) From Nine months to One year	Three years
(e) From One year to Two years	Four years
(f) From Two years to Three years	Five years
(g) From Three years to Four years	Seven years
(h) From Four years to Five years	Eight years
(i) From Five years to Six years	Nine months

36. Bond to be executed: (1) Any employee shall, before going for having study, training or study tour, execute a bond to the effect that he or she shall return upon completing such a study, training or study tour and carry out service as referred to in Section 35.

(2) The format of bond to be executed pursuant to Sub-section (1) shall be as prescribed.

(3) If any employee does not return to the service after completing the study, training or study tour or does not complete the period of service required to be carried out under Section 35, the amount of salary, allowances received by him or her during the period of the study, training or study tour and tuition fee and scholarship amount, as well, shall be realized from such employee as government dues and departmental action shall be taken against him/her.⁴³

43 Amended by Nepal Health Service (Third Amendment) Act, 2063.

Chapter-6

Salary, allowance, festival expenses and other facilities

37. Salary and allowance: (1) An employee shall be entitled to salary and allowance, if any receivable, from the day of assumption of his or her post.

(2) The salary and allowances receivable by the employees for their service in the health service shall be as prescribed by the Government of Nepal from time to time.

(3) Except in the circumstances stipulated in Section 39 or 73, each employee shall be entitled to an increment in salary as prescribed, upon completion of One year of service. Provided that, in so prescribing the increment in salary, the number of increment in salary shall be adjusted in a manner that is not less than the amount being received by the employee.⁴⁴ In the event of release of withholding of increment in salary of any employee, the concerned official must mention in writing on which date the increment in salary is to be sanctioned.

38. Entitlement to earned salary and allowance: (1) Each employee shall receive salary and allowance as well, if any receivable, upon completion of each month.

(2) Each employee shall receive his or her earned salary and allowance as well, if any receivable, even if he or she is relieved of the service for any reason whatsoever.

44 Amended by Health Related Some Nepal Acts Amendment Act, 2058.

(3) Except as provided in this Act or the Rules framed hereunder, no salary of any employee shall be deducted.

(4) The salary to which any employee is entitled shall not be withheld during the period he or she is serving or is on leave.

39. Crossing of efficiency bar: No employee shall be deemed to have crossed the efficiency bar until the Secretary at the Ministry, in the case of an officer employee, and the Authority, in the case of an assistant employee, mention in writing that such employee is eligible to cross the efficiency bar.

40. Salary receivable in the event of suspension: (1) If any employee is suspended in connection with any governmental business or as a result of an action taken on behalf of the Government of Nepal, such employee shall receive only half of his salary during the period of such suspension.

Provided that, if the charge against him or her is not proved and he or she is acquitted of the charge, he or she shall receive the salary less the half salary, if any, he or she has received during the period of suspension and the full salary (including increment in salary, if any, to be made) and the festival expenses⁴⁵ if he or she has not received the half salary. If he or she is convicted, he or she shall not be entitled to the remaining salary from the date of such suspension.

(2) If any employee is suspended for any reason other than that mentioned in Sub-section (1), he or she shall not be entitled to any salary for the period of such suspension.

41. Deposit of contribution to Employee Provident Fund: An amount at the rate of Ten percent of the monthly salary of the employee

⁴⁵ Amended by Health Related Some Nepal Acts Amendment Act, 2058.

shall be deducted, and the Government of Nepal shall, adding the amount of One Hundred percent thereof to such amount, deposit the total amount in the Employee Provident Fund.

42.⁴⁶ **Festival expenses and other facilities:** (1) An employee of the health service shall, each year, receive an amount equivalent to the salary of One month being earned by him or her as the festival expenses, for a festival which he or she observes according to his or her religion, culture and traditions.

(2) The employees who have retired with person shall receive an amount equivalent to the pension of one month being received by him or her as the festival expenses.

(3) The provisions relating to medical expenses, disability pension, facilities payable on grounds of deformities, extra-ordinary family pension and gratuity, educational allowances, children allowance, infant care allowance or other facilities to be receivable by the employees of the health service shall be as prescribed.

43.⁴⁷ **Provisions relating to insurance facility:** (1) If an employee dies while in service, his or her near heir shall be provided with a lump sum of One Hundred Fifty Thousand Rupees for insurance.

(2) The Government of Nepal shall establish a fixed term (*Sabadhik*) life insurance fund. A sum of Two Hundred Rupees shall be deducted from the monthly salary of each employee and deposited in that fund, and the Government of Nepal shall add the amount equal thereto and make the Twenty-year term life insurance for the insured sum of One Hundred Thousand Rupees. From the amounts deposited in

46 Amended by Health Related Some Nepal Acts Amendment Act, 2058.

47 Amended by Health Related Some Nepal Acts Amendment Act, 2058.

that insurance fund, the insured sum and bonus shall be paid to the employee at the time of his or her retirement.

(3) If any employee who has made deduction pursuant to Sub-section (2) takes compulsory retirement from the service prior to the completion of twenty years of service period, the following amount shall be provided to him or her:

- (a) Ten Thousand Rupees in the event of deduction of amount for a period less than One year,
- (b) Twenty Five Thousand Rupees in the event of deduction of amount for One year to Five years,
- (c) Fifty Thousand Rupees in the event of deduction of amount for Five years to Ten years,
- (d) Seventy Five Thousand Rupees in the event of deduction of amount for Ten years to Fifteen years,
- (e) One Hundred Thousand Rupees in the event of deduction of amount for up to Twenty years,

Provided that, if the amount deposited by him or her and interest thereon, dividend exceeds the said amount, the amount equivalent thereto shall be provided from the said fund.

(4) If any employee who has made deduction pursuant to Sub-section (2) takes retirement from the service for any reason whatsoever, except in the event of compulsory retirement or death of that employee prior to the completion of twenty years of service period, an amount equal to the surrender (*Samarpan*) value shall be provided to such an employee.

(5) Notwithstanding anything contained in Sub-sections (2) or (3), an employee retiring from the health service may give continuity in such a manner as to mature the amount deposited by him or her for the term life insurance within a period of Twenty years or less.

Provided that, the Government of Nepal shall not bear any amount for the same.

(6) Other provisions relating to the term life insurance fund shall be as prescribed.

- 44. Special provisions on incapable employee:** If the medical board formed by the Government of Nepal certifies that any employee is not capable because of a physical or mental disease to carry out functions regularly, the Government of Nepal may retire him or her by adding a maximum service of Seven years to his or her service period.

Chapter-7

Retirement, gratuity and pension

- 45. Compulsory retirement:** (1) Any employee who has completed the age of Sixty years or the tenure as referred to in Section 19 shall *ipso facto* retire from the service.

(2) Notwithstanding anything contained in Sub-section (1), if the Government of Nepal needs the expert service, it may add the service period of an employee who retires on completion of the age of Sixty years, for maximum period of Three years.

(3) Even the employees who are incumbent in service on the extension of their tenure after completion of the thirty-year service period pursuant to the Civil Service Act, 2049 (1993) may hold office in the health service until they complete the age of Sixty years.

(4) For purposes of this Section, the age of an employee shall be calculated as follows:

- (a) The age to be set from the birth day or year inscribed in the certificate of educational institute submitted by him or her at the time of joining the service,
- (b) Failing the records as referred to in Clause (a), the age to be set from the birth day or year inscribed in the sheet roll/personal details filled up by him or her at the time of joining the service.

46. Voluntary retirement: Any employee who is eligible to receive pension and has completed the age limit of Fifty years⁴⁸ may voluntarily retire from the service on such terms and within such period as set forth and specified in a Notification published by the Government of Nepal in the Nepal Gazette. A service period not exceeding Seven years shall be added and the total service period shall be fixed for pension in such a manner that the age does not cross Sixty years.

47. Gratuity: (1) If any employee, who has served for Five years or more in the health service but has not completed the period required for pension, retires or leaves service by getting resignation accepted or is removed from the post without being disqualified for government service in the future, he or she shall receive gratuity at the following rate:

48 Amended by Health Related Some Nepal Acts Amendment Act, 2058.

- (a) In the case of the employee who has served in the health service from Five years to Ten years, half the last month's salary for each year of his or her service,
- (b) In the case of the employee who has served in the health service for more than Ten years up to fifteen years, the last one month's salary for each year of his or her service,
- (c) In the case of the employee who has served in the health service for more than Fifteen years but less than Twenty years, the last one and half month's salary for each year of his or her service.

(2) Notwithstanding anything contained in Sub-section (1), no gratuity shall be paid to any employee who is proved to have lied about citizenship or age or qualification with the intention of entering into or continuing to hold the health service, and such employee shall be subject to punishment pursuant to the prevailing law.

48. Pension: (1) An employee who has been in the health service for a period of Twenty years or more shall be entitled to a monthly pension at the following rate:

Total year of service × amount of the last salary

50

Provided that:

- (1) No employee who has been dismissed from the service with being disqualified for government

service in the future shall be entitled to the pension pursuant to this Section.

- (2) No pension shall be paid to any employee who is proved to have lied about citizenship or age or qualification with the intention of entering into or continuing to hold the health service; and such employee shall be subject to punishment pursuant to the prevailing law.

(2) Notwithstanding anything contained in Sub-section (1), the minimum amount of pension shall not be less than half the amount of basic figure of salary of the incumbent employee of the same post and more than the basic scale of the incumbent employee of the same post.⁴⁹

(3) If any employee who was in the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) and has now been changed to the health service as referred to in this Act completes the term and gets retired pursuant to Section 19, his or her total service period shall be fixed by adding such period as is required for him or her to complete Sixty years of age.

(3a)⁵⁰ If any employee who has completed a service period of Fifteen years but not Twenty years dies, a maximum period of Five years shall be added to his or her service period, and his or her family shall be allowed to receive either pension or gratuity, whichever that family chooses.

49 Inserted by Health Related Some Nepal Acts Amendment Act, 2058.

50 Inserted by Health Related Some Nepal Acts Amendment Act, 2058.

(4) If any person who is receiving pension on account of his or her earlier service in any government post is appointed to the health service post later, he or she shall be entitled to pension pursuant to this Section, with the addition of the period of his or her earlier service to that of his or her subsequent service.

(5)⁵¹ If an employee who has continuously served in a post under development positions prior to 14 Jestha 2054 been appointed to a post under regular positions wishes to obtain pension, pension shall be provided to that employee by adding such additional service period, out of his or her service period under the development positions, as may be required for pension.

49. Increment in pension: Where the salary of the incumbent employee is increased, Two-third amount of the increment in the basic figure of salary shall also be added to the amount of pension of the retired employee of the same post.

50. Family pension and gratuity: (1) If any employee dies while in service or prior to completion of Seven years after he or she started to receive pension, a gratuity or pension as provided for in Section 47 or 48 shall be provided to his or her family or minor brother or unmarried sister.

Provided that, in the case of pension, such pension shall not be available for more than Seven years. No pension shall be provided to the family of the employee, who died prior to the completion of Seven years after he or she started to receive pension, after completion of Seven years.

51 Inserted by Health Related Some Nepal Acts Amendment Act, 2058.

(2) Notwithstanding anything contained in Sub-section (1), if the recipient of such pension is a minor, he or she shall be entitled to such pension until he or she attends majority.

(3) The widower husband or widow wife of an employee shall be entitled, for life, to half the amount of pension receivable by such employee from the date of expiration of the period during which such widower husband or widow wife is entitled to family pension pursuant to Sub-section (1) by reason of the death of her husband or his wife while in service or prior to completion of Seven years after he or she started to receive pension and from the date of death of such employee where such widower husband or widow wife is not entitled to such family pension or where his wife or her husband dies after completion of Seven years after he or she started to receive pension.

(4) Where the salary of incumbent employee is increased, the Two-thirds of the total amount increased in the figure of basic salary shall also be added to the amount of family pension of the person receiving family pension pursuant to Sub-sections (1), (2) and (3).

(5) If any employee dies prior to receiving any amount to which that employee is entitled under this Act, such amount shall be paid to the person from amongst his family members who is held to be entitled to the gratuity or pension of that employee pursuant to this Act.

(6) In providing gratuity or pension, if the deceased employee has nominated any member of his or her family or his or her minor brother or unmarried sister, gratuity or pension shall be provided to such person, and if, for any reason, gratuity or pension cannot be provided to such person or if nobody has been nominated, it shall be provided to the nearest heir from amongst the members of his or her family.

51. Reference of salary: (1) Wherever in this Chapter and in Chapter-6, a reference of salary is made, it shall mean the concerned employee's salary amount (including salary increment) for the time being.

(2) For purposes of Sections 47 and 48, the term "last salary" shall mean the concerned employee's salary at the time of his/her retirement, and if any employee has been on extra-ordinary leave or under suspension at the time of such retirement, the amount of full salary shall be computed even for such period.

Chapter-8

Conduct

52. Punctuality and regularity: Each employee must attend his/her office regularly during the time appointed by the Government of Nepal and must not remain absent from the duty without having prior sanction of leave as far as possible.

53. Discipline and obedience: (1) An employee must remain in discipline and perform his/her duties with honesty and promptness.

(2) An employee must expeditiously carry out any orders given by his or her superior officer on matters relating to governmental business.

(3) An employee must show due respect to all the employees superior to him or her and treat his or her subordinate employees properly.

54. Restriction on using political or undue influence: No employee shall, with intention to satisfy his or her personal interests on matters relating to his/her service, exert or attempt to exert any political or other undue influence upon any other employee.

- 55. Restriction on taking part in politics:** No employee shall canvass, make speech for or against any political party or organization or take part in politics making speeches.
- 56. Restriction on criticizing Government:** (1) No employee shall, on his/her real or pseudo name or anonymity, publish any feature article, provide any news to the press, broadcast a speech through radio or television etc., make any public speech or publish any statement in such a manner as to be contrary to the policies of the Government of Nepal or to undermine the mutual relationship between the Government of Nepal and the people or the relationship with any foreign country.
- (2) Notwithstanding anything contained in Sub-section (1), it shall not bar the publishing or broadcasting of any feature article in such a manner as not to be contrary to the prevailing law and the policies of the Government of Nepal.
- 57. Restriction on publishing news relating to governmental business:** No employee shall, without being authorized by the Government of Nepal, provide or divulge, directly or indirectly, to any other unauthorized employee or non-governmental person or press any confidential matter which was known to him or her in the course of performing the governmental duty or any matter prohibited by law or any document or news written or collected by him or her. This restriction shall also be applicable to a person who has been relieved of the government service for any reason whatsoever.
- 58. Restriction on receiving gift, present, donation etc. and borrowing:** (1) No employee shall, without prior approval of the Government of Nepal, accept a gift, donation, present or gratification of any kind either by him/herself or through any member of his/her

family, or ask for donation or borrow any loan from any person concerned with any government business, in such a manner as to affect the government business in any manner.

(2) If any employee happens to receive any present from any foreign government or any representative of such foreign government, he/she must inform the Government of Nepal about it and shall act accordingly as sanctioned.

59. Restriction on establishing and operating company and carrying on trade or profession and doing private practice: (1)

No employee shall, without prior approval of the Government of Nepal, carry out the following acts:

- (a) To participate in the establishment, registration or operation of any bank or company or to open and operate any health clinic or private hospital or nursing home or work in such health clinic or private hospital,
- (b) To carry on any trade or profession requiring registration according to the prevailing laws,
- (c) To accept any kind of employment elsewhere.

(2) Notwithstanding anything contained in Sub-section (1), an employee may carry out any literary, scientific or artistic works in a manner not to be contrary to the policies of the Government of Nepal.

60. Restriction on taking part in election: No employee shall take part in an election to any political post nor shall solicit vote for anyone nor shall exercise influence of any kind in the election.

Provided that, this shall not bar the exercise of his/her right to vote conferred under the prevailing laws.

61. **Restriction on agitation and strike:** No employee shall perform an agitation, participate in a strike or entice anyone to perform such acts in a manner to undermine the sovereignty and integrity of Nepal, the law and order situation of the country, external relations and public decency and make contempt of court, create hatred among the peoples of various castes, tribes, religions, classes, regions and communities or cause obstruction with performing one's functions and duties or entice any one else to commit such act.
62. **Restriction on staging strike, detention and Gherao:** No employee shall stage any strike or pen-down action and exert any pressure inflicting physical or mental suffering or entice other persons to commit such acts in a manner to cause hindrance or obstruction to any office or officer in the performance of the duties required by law.
63. **Restriction on doing act recklessly or with ulterior motive:** No employee shall, in rendering health services to a patient in the course of performing his or her duties, so act recklessly or with ulterior motive as likely to cause loss or damage to the body of the patient.
64. **Restriction on making representation:** No employee shall make representation on behalf of any person or group, except for making petition to the concerned body or official either by him or herself or through his or her attorney in respect of any grievance caused to him or her.

Provided that, this Act shall not be deemed to bar the making representation on behalf of a professional organization of employees recognized by the Government of Nepal and the performing of any act

required to be preformed based on the duties of the post of the employee.

65. Membership of association: (1) No employee shall, without prior approval of the Government of Nepal, become a member of any kind of organization, other than a professional organization registered pursuant to the prevailing law.

(2) Notwithstanding anything contained in Sub-section (1), nothing contained in this Section shall be deemed to prevent an employee from becoming a member of his/her professional and other social organization in a manner not to be contrary to the policies of the Government of Nepal.

66. Statement of property: Each employee must submit a statement of his/her property; and if the statement so submitted is held to be false, action shall be taken pursuant to the prevailing law.

67. To keep conduct compatible with own service and post: Each employee must also keep his/her conduct compatible with his/her service and post.

68. Powers to warn: If any employee is not punctual, does not carry out the order given by the employee superior to him/her on matters relating to any government business or becomes reckless or slow on office works, the concerned supervisor may give a warning to such an employee, with setting out the reason therefor; and records thereof must be maintained in the sheet roll/personal details file of the concerned employee.

Chapter-9

Service security

- 69. Security of service of employee:** No employee, other than the following employee, shall be removed or dismissed from the service without providing him/her with a reasonable opportunity to furnish proofs for his/her defense:
- (a) Who has been convicted by a court of a criminal offence involving moral turpitude,
 - (b) Who is holding a temporary post,
 - (c) Who has disappeared and whose whereabouts are not known or there are sufficient grounds that it is not possible to establish contact with him/her,
 - (d) Whose name registration has been cancelled by the health related professional council established pursuant to the prevailing law.
- 70. Saving of employee:** (1) No case may be instituted against any employee in respect of any government business performed by him/her considering it to be the carrying out of the duties of his/her post, without fulfilling the procedures as mentioned in Sub-section (2).
- (2) In order to institute a case against any employee pursuant to Sub-section (1), an approval of the Attorney General shall be required in the case of a state case and that of the Authority shall be required in respect of the other case; and the following matters have to be observed in respect of a civil case:
- (a) A written notice stating the reasons for instituting the case and the name and address of the plaintiff and of his/her attorney, if any, has been delivered to

the Authority or the concerned employee or sent by post through a registered mail and a copy of such notice has been submitted to His Majesty's Government.

- (b) The case has been filed within Eight months from the date of cause of action.

Provided that, nothing contained in this Sub-section shall be considered to institute a case against an employee who has cause physical loss and damage to any person as a result of his or her act done recklessly or with ulterior motive and claim for compensation pursuant to the prevailing law.

(3) In respect of any act performed by any employee in the course of discharging the duties of his/her post while he/she was incumbent, no case may be instituted against him or her without the approval as referred to in Sub-section (2) even after the termination of his or her service.

(4) If the Government of Nepal gives approval to institute a case pursuant to Sub-section (3), the Government of Nepal shall defend on his or her behalf.

- 71. Security of conditions of service:** The conditions of service relating to salary, gratuity, pension and other facilities of any employee prevailing at the time of his/her appointment shall not, without his/her consent, be so altered as to cause adverse effects on him/her. If any subsequent amendment causes adverse effects, in any manner, on such conditions of service of any employee who is already incumbent prior

to such amendment, such amended provisions shall not be applicable to him/her in absence of his/her written consent agreeing to the application of such provisions.

Chapter-10

Punishment and appeal

72. **Punishment:** An employee may be subjected to the department punishment as follows if there exist appropriate and sufficient reasons:

(a) **Ordinary Punishment**⁵² :

- (1) Censure,
- (2) Withholding of promotion for up to Two years,
- (3) Withholding of a maximum of Two salary increments,
- (4) Withholding of promotion for up to Five years,
- (5) Withholding of a maximum of Five salary increments,
- (6) Demoting to the basic scale of the post.

(b) **Special punishment:**

- (1) Removal from service, without being disqualified for government service in the future.
- (2) Dismissal from service, with being disqualified for government service in the future.

73.⁵³ **Censure or withholding of promotion for up to Two years or withholding of a maximum of Two salary increments:**

Punishment of censure or withholding of promotion for up to Two

52 Amended by Nepal Health Service (Third Amendment) Act, 2063.

53 Amended by Nepal Health Service (Third Amendment) Act, 2063.

years or withholding of a maximum of Two salary increments may be imposed on an employee, in any of the following circumstances:

- (a) If he or she commits breach of discipline for more than One time,
- (b) If he or she violates the matters relating to conduct mentioned in this Act and the Rules framed hereunder,
- (c) If he or she fails to hand over the charges pursuant to the prevailing law,
- (d) If he or she is given warning for up to Two times a year under Section 68,
- (e) If he or she fails to settle advances pursuant to the prevailing law,
- (f) If he or she fails to observe any direction given by the official superior to him or her in respect of his or her frequent disregard of grievances and complaints of the stakeholders,
- (g) If the office-bearer obliged to enforce, or cause to be enforced, the job description fails to do so.

73A.⁵⁴ Withholding of promotion for up to Five years or withholding of a maximum of Five salary increments or demoting to the

basic scale of the post: Punishment of withholding of promotion for up to Five years or withholding of a maximum of Five salary increments or demoting to the basic scale of the post held by him or her may be imposed on an employee, in any of the following circumstances:

- (a) If he or she frequently commits breach of discipline,

⁵⁴ Inserted by Nepal Health Service (Third Amendment) Act, 2063.

- (b) If he or she fails to fulfill the duties of the post specified by this Act or the prevailing law in a responsible manner,
- (d) If he or she fails to observe any direction given in respect of irregularities found from management audit.

74. Removal or dismissal from service: (1) An employee may be removed from serve, without being disqualified for the health service in the future, in any of the following circumstances:

- (a) If the employee acts recklessly or with ulterior motive,
- (b) If the employee fails to perform the duties or responsibilities of his or her post,
- (c) If he or she frequently violates the matters relating to conduct,
- (d) If he or she frequently consumes alcoholic substances during the office hours,
- (e) If he or she frequently commits acts of indiscipline,
- (f) If he or she takes part in politics,
- (g)⁵⁵ If he or she is given censure for more than Two times in relation to failure to maintain discipline and obedience as referred to in Section 53,
- (h) If he or she absents himself or herself from his or her office continuously for Ninety days without having sanction of a leave,

55 Amended by Nepal Health Service (Third Amendment) Act, 2063.

- (h1)⁵⁶ If he or she does not attend the office where he or she has been posted or deputed and carry out functions,
- (j) If he or she does not serve for the period as specified pursuant to Section 35.

(2) An employee may be dismissed from service, with being disqualified for the health service in the future, in any of the following circumstances:

- (a) If he or she is convicted by a court of a criminal offence involving moral turpitude.
- (b) If he or she commits corruption.

74A.⁵⁷ Special provisions relating to departmental action and punishment: Notwithstanding anything contained elsewhere in this Act, if, pursuant to the Commission for the Investigation of Abuse of Authority Act, 2048 (1991), that Commission, and, pursuant to the prevailing law, the concerned body writes for departmental action against any employee, departmental punishment must be imposed accordingly, after fulfilling the required procedures.

75.⁵⁸ Departmental punishment awarding official: (1) The Authority shall have the powers to issue order of punishment to the employees.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), the official to award punishment to the employees shall be as prescribed.

⁵⁶ Inserted by Nepal Health Service (Third Amendment) Act, 2063.

⁵⁷ Inserted by Nepal Health Service (Third Amendment) Act, 2063.

⁵⁸ Amended by Nepal Health Service (Third Amendment) Act, 2063.

76. Appeal against order of departmental punishment: (1) Such employee may make an appeal to the Administrative Court formed pursuant to Sub-section (1) of Section 69 of the Civil Service Act, 2049 (1993) against an order of special punishment issued by the official authorized to issue order of departmental punishment pursuant to Sub-clause (1) or (2) of Clause (b) of Section 72.

(2) If any employee is reinstated by virtue of the final settlement of an appeal pursuant to this Section in respect of such employee, his or her service shall not be restated if he or she does not come to attend office within Three months of the date of receipt of the notice of that decision.

(3) If the appellant so desires, he/she may appear on the appointed dates in person or by attorney and appoint a legal practitioner for pleading.

77.⁵⁹ Delegation of powers to award departmental punishment and hear appeal: The Government of Nepal may, by a Notification in the Nepal Gazette, delegate the powers of any official empowered to issue order of punishment pursuant to Section 75 to any other official specified in that Notification, to be exercised for such period as specified in that Notification.

78. Powers to suspend: (1) If the investigation of any charge mentioned in Section 74 is to be conducted in respect of any employee, the official empowered to issue order of punishment may suspend such an employee until the conclusion of the investigation.

Provided that, generally suspension shall not be ordered unless the following circumstance exists:

⁵⁹ Amended by Nepal Health Service (Third Amendment) Act, 2063.

- (a) Where there is a possibility that he/she can collect false evidence or conceal any evidence against him/her if he or she is not suspended and is allowed to carry out the duties of his or her post, or
- (b) Where there is a possibility of governmental loss or damage if he or she is not suspended and is allowed to carry out the duties of his/her post.

(2) The official empowered to issue order of punishment to an employee may give a notice of the charge to him/her on his/her removal or dismissal from service, and may also suspend him/her.

(3) In suspending any employee pursuant to Sub-section (1), he/she must not be suspended ordinarily for more than Two months. The action against the employee must be completed within that period. If such action cannot be completed within that period because of the occurrence of any extra-ordinary circumstance and the period of suspension has to be extended, the period of suspension may be extended for up to one month with the prior approval of the Authority.

(4) Any employee arrested and detained for a criminal charge involving moral turpitude shall be deemed to have *ipso facto* been suspended during the period of such detention.

79. Termination of suspension: If any employee is reinstated in his or her post or he or she is removed or dismissed from service, his or her suspension shall stand terminated.

80. Providing opportunity for defense: (1) The official empowered to issue order of departmental punishment must, prior to issuing an order of punishment to any employee, serve on him or her a notice, explaining the reason for taking such action and give an opportunity to

defend him/herself within a reasonable time limit. In giving such opportunity, the charge against him/her must be clearly indicated and the facts and grounds on which each charge is based must be specified. In such case, the concerned employee must also submit his or her defense within the time limit.

(2) The official empowered to issue order of departmental punishment may, if he or she thinks it necessary, conduct an investigation either by him or herself or through any other officer. The officer conducting the investigation must follow the prescribed procedures.

81. To propose punishment prior to issuance of order of special

punishment: If the concerned employee does not submit defense under Section 80 or if the defense submitted by such employee is not satisfactory, the official empowered to issue order of departmental punishment must, prior to issuing an order of special punishment, ask such employee to furnish an explanation why the proposed punishment intended to be imposed on him/her should not be imposed on, within a reasonable time limit in this respect.

82. Seeking consultation of Public Service Commission:

If it appears that the defense submitted under Section 80 or the explanation furnished under Section 81 by the concerned employee in the course of action on departmental punishment is not satisfactory and punishment is to be imposed on such employee, the official empowered to issue order of departmental punishment must propose the punishment intended to be imposed on that employee and seek consultation of the Public Service Commission.

83. Procedures for seeking consultation of Public Service

Commission: (1) In writing to the Public Service Commission under Section 82 in respect of departmental punishment against any employee, all related documents showing that why such departmental punishment is intended to be awarded for what offense and explanation, if any, furnished on behalf of the concerned employee have to be submitted to the Public Service Commission.

(2) In the event of requirement of any details on the employee, in addition to the documents received pursuant to Sub-section (1), the Public Service Commission may seek the same from the concerned official; and it shall be the duty of that official to provide the details sought by the Public Service Commission.

84. Not to remain in service: (1) The following employees shall cease to hold office in the following conditions:

- (a) In the event of holding a post with fixed term, on termination of the term of that post,
- (b) Where the employee has gone away and whose whereabouts are not known or there is adequate ground that it is not possible to establish contact with him or her,
- (c) Where the name registration is cancelled by the health related professional council established pursuant to the prevailing law.

(2) The Authority shall give information that he employee ceases to hold office in the service in circumstances of Clauses (b) and (c) of Sub-section (1).

- 85. Decision not to be affected:** No decision shall be affected by any minor error which does not cause substantial effects on the action against any employee conducted by the competent authority pursuant to this Act or the Rules framed hereunder.

Chapter-11

Miscellaneous

- 86. Leave to which employee is entitled:** The employees shall be entitled to the following leaves, as prescribed:

- (a) Casual and Festival Leave;
- (b) Home Leave;
- (c) Sick Leave;
- (d) Maternity Leave;
- (d1)⁶⁰ Maternity Care Leave;
- (e) Obsequies Leave;
- (f) Study Leave;
- (g) Extra-ordinary Leave;
- (h) Substitute Leave;
- (i) Extra Service Leave.

- 86A.⁶¹ Period of absence not to be included in service period:** (1) Any employee who does not attend his or her office without obtaining a leave shall be marked with absentee and his or her salary shall be deducted and he or she shall also be liable to departmental punishment.

60 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

61 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

The period of such absence shall not be included in his or her service period.

(2) No official shall allow an employee who remains absent for a period of more than Sixty consecutive days without having a leave sanctioned to make attendance.

(3) If any official allows any employee to make attendance in contravention of Sub-section (2), the official shall be liable to departmental action and the salary, and allowance as well received by that employee shall be recovered from such an official as government dues.

86B.⁶² Entitlement to facilities pursuant to the Civil Service Act, 2049

(1993): Notwithstanding anything contained elsewhere in this Act, if provisions are made under the Civil Service Act, 2049 (1993) for more facilities than those set forth in this Act in relation to salary, allowances, leave, gratuity and pension to the civil employees, such provisions shall also apply to the employees of the health service.

87. Reward: (1) A reward of Five salary increments shall be given to an employee who has secured most excellent marks in the work performance evaluation form pursuant to the Rules framed under this Act continuously for the minimum service period required for becoming a potential candidate for promotion to the post that is one level higher than the level in which the employee is incumbent but he or she has not been able to get place in promotion. Such amount of reward, accompanied by a letter of appreciation, shall be provided by a decision of the Head of Department.

62 Inserted by Nepal Health Service (Third Amendment) Act, 2063 (.....).

(2) If the addition of salary increment given pursuant to Sub-section (1) is above the last salary scale of the concerned employee, the amount of such excess salary increment shall be provided by adding the same to the monthly salary receivable by him/her.

88. Management audit: Except in the matters within the domain of the Public Service Commission, the Ministry of General Administration may supervise, monitor and evaluate as to whether the employees in service in different bodies of the Ministry of Health have abided by the prevailing law and other administrative Rules and procedures and give direction, and if, in making such supervision, it appears that departmental action is to be taken against any employee, it may also recommend such action; and it shall submit an annual report thereof to the Government of Nepal.

89. Change of service: All employees holding office in the group or sub-group of the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) and the rules framed thereunder and the prescribed posts related with the health service under the miscellaneous service,⁶³ prior to the commencement of this Act shall be deemed to have been changed to and hold respective posts in the respective group and sub-group of the health service formed pursuant to this Act

90.⁶⁴

91. Calculation of service period: In calculating the service period of an employee for purposes of this Act, the entire period of the employee holding office permanently in the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) prior to the commencement of this Act shall be calculated in the health service under this Act.

63 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

64 Deleted by Nepal Health Service (Third Amendment) Act, 2063.

92. Full salary and allowance to be received on being reinstated in

health service: (1) If any employee is re-instated in the health service upon annulment by the court of the order of his or her retirement, removal or dismissal from health service, such employee shall be entitled to the salary, allowances, festival expenses⁶⁵ as well as increment in salary, if any, receivable, from the date of his or her retirement, removal or dismissal from health service to the date of his or her re-instatement in the health service.

(2) If any employee who was retired or removed or dismissed from civil service pursuant to the Civil Service Act, 2049 (1993) and the Civil Service Rules, 2050 (1994) prior to the commencement of this Act is reinstated in the service by a court order, such employee shall also be entitled to the salary, allowance, festival expenses⁶⁶ and increment in salary pursuant to Sub-section (1).

93. Delegation of powers: (1) The Government of Nepal may, by a notification in the Nepal Gazette, delegate the powers conferred to it pursuant to this Act to any official specified in that notification.

(2) The official may so delegate any powers conferred to him/her pursuant to this Act to any of his or her subordinate employee that such powers are to be exercised under his or her general direction.

94. Handing over charge: Any employee required to hand over the cash, goods in kind or documents required to be handed over by him/her must hand them over to the concerned employee within the prescribed time-limit, and the person required to take them over must take them over within that time-limit.

65 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

66 Inserted by Nepal Health Service (Third Amendment) Act, 2063.

95. Power to frame Rules: The Government of Nepal may, in order to implement the objectives of this Act, frame necessary Rules.

96. Repeal and saving: (1) Clause (j) of Section 3 of the Civil Service Act, 2049 (1993) is, hereby, deleted.

(2) All the acts done and actions taken in respect of the employees of the Nepal Health Service pursuant to the Civil Service Act, 2049 (1993) and the Rules framed thereunder shall be deemed to have been done and taken under this Act.

Note bene:

1. Words converted by the Nepal Health Service (Third Amendment) Act, 2063 (.....):

Conversion of words has been made by substituting the words "Ayurvedic doctor" for the words "officer *Kaviraj*" appearing in various places of the Principal Act.

2. Words converted by Some Nepal Acts Amendment Act, 2063-

The words "His Majesty the Government" has been converted by "Government of Nepal".

