

J.Y. Interpretation No. 491*

(October 15, 1999)

ISSUE: 1) Should the causes for disciplinary actions against civil servants be stipulated by law, or can they be prescribed by the competent administrative agency with administrative regulations?

2) Whether and what due process of law should be followed in making a discharge decision?

RELEVANT LAW:

Article 7, 15, 18 and 23 of the Constitution; Article 12, 18 of the Law Governing the Merit Evaluation of Public Functionaries

KEYWORDS:

Discharge decision, right to work, right to serve in public service, the clarity requirement of the law, due process of law, civil service discipline, equal protection of law

HOLDING

The right to serve in a public post prescribed in Article 18 of the Constitution aims at guaranteeing the people possessing a right to serve in public service in accordance with laws and regulations. Such a right not only concerns the people's right to work and equal protection of law-- so that the state must establish relevant systems regulating the exercise of public authority and the fulfillment of the state's duties and responsibilities-- but also the security of civil employees' rights and interests. The (various) disciplines of civil servants are punishments imposed by the state onto a civil employee for his/her violations of the law and neglect of duty. The power to take disciplinary measures may, within a reasonable extent, be conferred to superior officers by law. A discharge decision made by either a central or a local administrative agency in accordance with the provisions of the Law Governing the Merit Evaluation of Public Functionaries or other relevant laws and regulations having the effects of restricting the right(s) of people to serve in public post(s) is in

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essence disciplinary. The causes for a discharge must be stipulated by statute so that the aspiration of Article 23 of the Constitution can be preserved. Article 12, Paragraph 1, Subparagraph 2 of the Law Governing the Merit Evaluation of Public Functionaries prescribes that agencies may record two major demerits at one time in an evaluation for causes. Yet Paragraph 2 of the same Article prescribing that the causes for recording two major demerits at one time shall be promulgated by the Ministry of Civil Service is incompatible with the understanding expounded above. In addition, where the causes for a disciplinary decision are stipulated in abstract concepts by the law, their meaning shall be intelligible for and foreseeable by the regulated civil servants, and shall be verifiable by the courts in judicial review, in order to be in accordance with the clarity requirement of the law. Since a discharge decision against a civil servant carries the effect of restricting the right of people to serve in public posts, an agency makes such a discharge decision must follow due process of law, such as composing an unbiased committee within the agency for reaching the decision, giving the discharged employee a chance to present or rebut, making the decision in written form with accompanying reasons as well as instructions regarding the means, time-period and competent agency for an appeal. The state must establish relevant systems guaranteeing such procedural rights. The employing agency may, in accordance with Article 18 of the Law Governing the Merit Evaluation of Public Functionaries, suspend the duties of the discharged employee before the discharge is finalized. Yet the discharged employee is entitled to appeal pursuant to the law and the discharge decision can be implemented only when it is finalized. The relevant laws and regulations should be reviewed and revised in accordance with this Interpretation, whereas those repugnant to the Interpretation shall become void at the latest two years after the date of rendering this Interpretation.

REASONING:

The right to serve in a public post is aimed at guaranteeing the people to possess such a chance to serve in public service in accordance with laws and regulations. Such a right concerns the people's right to work and equal protection of law and the state shall enact statutes protecting the rights of civil servants regarding, for example, employment, appointment, discipline, retirement and relief pension, the exercise of public authority and the fulfillment of the state's duties. The (various) disciplines of civil servants are punishments imposed by the state onto a civil employee for his/her violations of law and neglect of duty. Such disciplines are necessary for the superiors to preserve the power of oversight, and their exercise may, in view of the nature of the disciplinary measures and within a reasonable extent be conferred to the superiors. A

discharge decision made by either a central or a local administrative agency in accordance with the provisions of the Law Governing the Merit Evaluation of Public Functionaries or other relevant laws and regulations carrying the effects of restricting the right of people to serve in public post(s) is in essence disciplinary. The causes for a discharge must be stipulated by statute so that the aspiration of Article 23 of the Constitution can be preserved. Whenever the law authorizes the competent agency to promulgate supplemental rules (cf. the Reasoning of J.Y. Interpretation No. 443) for restricting such a right to serve in public post(s) guaranteed by Article 18 of the Constitution, the purpose, scope and contents of such an authorization has to be concrete and clear. Article 12, Paragraph 1, Subparagraph 2 of the Law Governing the Merit Evaluation of Public Functionaries prescribes that agencies may record two major demerits at one time in an evaluation for causes. Paragraph 2 of said Article prescribes that the criteria for recording two major demerits at one time should be stipulated by the Ministry of Civil Service (by rules). Such a discharge decision is a primary restriction on people's right to serve in public post(s), thus its causes should be prescribed by law. The above-mentioned statute does not concretely and clearly set up the criteria for a discharge and thus is repugnant to the Interpretation rendered above. In addition, where the causes for a disciplinary decision are stipulated in abstract concepts by the law, either in open-ended clauses or general clauses, their meaning shall be intelligible to and foreseeable by the regulated civil servants, and be verifiable by the courts in judicial review. As a discharge decision against a civil servant will restrict the right of people to serve in public posts guaranteed by the Constitution, an agency intending to take such an action must follow due process of law. Such due process of law includes composing an unbiased committee for reaching the decision whose members should have been appointed by the head of the agency and elected by the employees in roughly equal ratio; providing the employee to be discharged with a chance to present or rebut; making the decision in written form with accompanying reasons as well as instructions regarding the means, time-period and competent agency for appeal; and establishing relevant systems for adequate protection. Furthermore, the discharged employee is entitled to appeal pursuant to the law and the discharge decision can be enforced only when it is finalized. The relevant laws and regulations should be reviewed and revised in accordance with this Interpretation, whereas those repugnant to this Interpretation shall become void at the latest two years after the date of rendering this Interpretation.