



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
BUREAU OF JAIL MANAGEMENT AND PENOLOGY
NATIONAL HEADQUARTERS

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MEMORANDUM

FOR : **ELISA B OREIRO**
Jail Senior Superintendent
Officer-In-Charge, DPRM

SUBJECT : **CLARIFICATORY OPINION** on the Effectivity of Original and Promotional Appointment in the Government Service

DATE : 17 November 2016

1. References: a. Indorsement letter of the Office of the Ombudsman, dated 18 October, 2016;
b. Request for Reinstatement to Promotional Position Prior to Revocation by JO2 JOEL P NAUNGAYAN and JO1 EUPEE ZAINAL ABEDIN ABEDIN, dated 03 October 2016; and
c. Executive Order No. 292, Instituting the Administrative Code of 1987.

2. It has been observed that our Jail Officers lack knowledge or are misinformed on the effectivity and completion of original and promotional appointment. We must be cognizant of the fact that promotion to the next higher in rank is one of the most sensitive issue among our field personnel, hence, we must and should inform them through proper and extensive information campaign on the effectivity and completion of promotion as enunciated under Civil Service Laws, reinforced by corresponding pronouncement of the High Court in its several decisions.

3. As correctly pointed out by the two (2) petitioners, that: *"an appointment accepted by the appointee cannot be withdrawn or revoke by the appointing authority and shall remain in force and in effect until disapproved by the Commission."*¹ However, this specific proviso pertains to a "completed appointment" to which our two (2) Jail Officers has misinterpreted and misconstrued this provision of law.

4. The High Court in its decision refers to a completed appointment upon taking an oath prior to assumption of office and in its absence there can be no completed appointment.

*"An oath of office is a qualifying requirement for a public office; a prerequisite to the full investiture with the office. It is only when the public officer has satisfied the prerequisite of oath that his right to enter into the position becomes plenary and complete."*² (emphasis and underlining ours)

RECTORATE FOR PERSONNEL AND
RECORDS MANAGEMENT (DPRM)

1 Rule V, Section 9, E.O. 292

2 Mendoza vs Laxina, G.R. No. 146875, July 14, 2003

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5. It is crystal clear from the foregoing pronouncement, **oath of office** is a condition sine qua non in order for an appointment be declared plenary and complete. In this particular case, there were no Appointments addressed to subject personnel and duly signed by the appointing authority that were issued showing the plantilla position item that they are supposed to occupy. Thus, the mere issuance of General Orders is not sufficient to say that the appointment has reached completion required by law, because an appointee needs to perform a positive act of taking an oath prior to completion. By having failed to reach the status of completion, petitioners cannot invoke as a matter of right the irrevocability of their appointment.

6. Much more, it is erroneous to equate the issuance of General Orders with a completed appointment, these two (2) are distinct and separate. The issuance of General Orders is a common practice in the Jail Bureau where candidates for appointments to the next higher in rank are being considered, nonetheless, being subjected to extensive review and verification. However, this does not mean that it passes the test of irrevocability because the High Court provides a positive act of oath taking as a condition precedent.

7. Moreover, the General Order issued on 21 September 2016 nullifying/revoking the one previously issued as against herein petitioners were not exercised with evident bad faith, ill-will or malice. This has undergone the process of verification and due consideration before its issuance which is a valid exercise of discretionary power of the appointing authority.

"Indeed, appointment is an essentially a discretionary power and must be performed by the officer in which it is vested accordingly to his best lights, the only condition being that appointee should process the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide."³ (emphasis and underlining ours)

8. Lastly, the salaries adjusted equivalent to the amount equal to the rank to which they should have been promoted was not withdrawn/revoke by the Finance Service Office (FSO) of the National Headquarters due to inadvertence. We must bear in mind that the recently concluded promotion was not a regular promotion but a *mass promotion* wherein numerous appointees from different ranks all over the country has been processed by the FSO-NHQ and the DPRM, hence their names were included due to this fact and not that they are promoted.

9. In view of the foregoing arguments, it is most respectfully recommended to the DPRM to:

1. Extensively disseminate, through their respective counterparts, the distinction between a complete appointment and the general orders for appointment to avoid misconstruction and misinterpretation of the provisions of law on appointment and promotion;
2. Communicate to the two (2) petitioners the basis for which their application for appointment to the next higher in rank was denied due course;

³ Rimonte vs. CSC, 312 Phil 421, 430

3. Coordinate with the FSO-NHQ to readjust their salary to the rank they are presently occupying;
4. To refund the excess amount on the salaries paid to herein petitioners which was inadvertently increased, so herein will not unjustly enriched themselves due to inadvertence.

10. Respectfully submitted for guidance and information.


PAULINO H MORENO JR
Jail Senior Superintendent
Chief, Legal Service Office

APPROVED / DISAPPROVED:



SERAFIN P BARRETTO JR, CESO IV, CSS
Jail Director
Chief, BJMP