



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 : DEOGRACIAS C TAPAYAN, CES (E)
Jail Chief Superintendent
Officer-In-Charge, BJMP

SUBJECT : *CLARIFICATORY OPINION re: Confirmation Prior to Execution of Decision in Administrative Cases Imposing the Penalty of Removal/Dismissal from the Service*

DATE : 15 December 2015

1. References:

- a. Section 47(2) Chapter 6, Title I(A), Book V of the Revised Administrative Code of 1987;
- b. Section 32, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292; and
- c. Section 61, Rule 12 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

2. In connection with the above-cited references, there appears to be a perceived inconsistency between the provisions of the 2007 Revised BJMP Administrative Disciplinary Machinery¹ giving authority to the Chief, BJMP to confirm prior to implementation the decisions in administrative cases involving Jail Non-Commissioned Officers (JNCOs) decided by the Regional Directors imposing the penalty of dismissal from the service, on one hand and the provisions of the Revised Administrative Code of 1987 (Executive Order No. 292) in relation to its Omnibus Rules Implementing Book V and the Revised Rules on Administrative Cases in the Civil Service (RRACCS) which provides that decisions of a bureau or office head imposing the penalty of removal can only be executed after confirmation by the Secretary concerned, on the other.

3. This clarification hinges on the applicability of the provisions of the 2007 Revised BJMP Administrative Disciplinary Machinery specifically Sections 12 and 13, Rule VII, as the continuous application of which would have the effect of infusing more life to it that is diametrically inconsistent with the present state of the law, thereby unnecessarily exposing the BJMP leadership particularly the Chief, BJMP and other signatories in the confirmation order to legal

¹ Sections 12 & 13, Rule VIII

high time to revisit and pose a question: *Does the confirmation by the Chief, BJMP in cases decided by the Regional Director imposing the penalty of dismissal finds basis in law?* To answer it requires not only an incisive look into the provisions of the pertinent civil service rules, but an examination as well of the applicable statutory provisions. The Revised Rules on Administrative Cases in the Civil Service (RRACCS)² respectively state:

"In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned".

x x x

"All decisions of heads of agencies are immediately executory pending appeal before the Commission. The decision imposing the penalty of dismissal by the disciplining authorities in departments is not immediately executory unless confirmed by the Secretary concerned. However, the Commission may take cognizance of the appeal pending confirmation of its execution by the Secretary" (Underlining supplied).

4. Likewise, the Omnibus Rules Implementing Book V of Executive Order No. 292³ textually provides:

"In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned
(Underlining ours).

5. Moreover, the Revised Administrative Code of 1987⁴ was explicit, thus:

x x x

² Section 9, Rule 2 and Section 61, Rule 12

³ Section 32, Rule XIV

⁴ Section 47(2), Chapter 6, Title I(A), Book V

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned (Underlining supplied).

6. On the other hand, the 2007 Revised BJMP Administrative Disciplinary Machinery⁵ pertinently provides:

x x x. When the penalty imposed is removal or dismissal from the service, the same shall become effective and implemented only after confirmation by the Chief, BJMP in cases filed against Non-Officers Rank decided by the Regional Director (Underlining supplied).

7. The above-quoted statutory provision and that of the civil service rules are clear and categorical enough that decisions rendered by a bureau or office head imposing the penalty of dismissal shall be executory only after confirmation by the Secretary concerned. Under Section 2(8), *Introductory Provisions, Executive Order No. 292*, "Bureau" refers to any principal subdivision or unit of any department while "Office" refers to any major functional unit of a department or bureau including regional offices pursuant to Section 2(9), *Introductory Provisions, Executive Order No. 292*. As such, there can be no doubt that not only the decisions of the head of the bureau like the Chief, BJMP that can be the subject for confirmation by the Secretary concerned but it includes as well decisions of the BJMP Regional Director being the "office head" of the Regional Office once the penalty imposed is dismissal from the service.

8. In statutory interpretation, nothing is more settled than the rule that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language

⁵ Section 12, Rule VIII

employed and the statute must be taken to mean exactly what it says⁶. The reason is because when the law is clear, interpretation does not apply---only application, that is, the law must be given its literal meaning and applied without attempted interpretation⁷. Otherwise, a contrary interpretation would run counter to the clear language of the law as it would have the effect of amending the statutory provision.

9. Interestingly, the provision of the 2007 Revised BJMP Administrative Disciplinary Machinery, however, contemplates two situations: (1) *cases originally filed and decided by the Chief, BJMP and the penalty imposed is dismissal from the service are subject for confirmation by the Secretary of the DILG*; while (2) *cases decided by the BJMP Regional Director are subject for confirmation by the Chief, BJMP when the penalty imposed is removal from the service*. Clearly, such provision made a distinction as to what cases falling within the confirmatory authority of the Chief, BJMP and that of Secretary of the DILG. Basically, the point of perceived incongruity lies with the BJMP having made such distinction when the law itself specifically the Revised Administrative Code of 1987 made no distinction. Elementary is the rule in statutory interpretation that where the law does not distinguish, no distinction should be made⁸. In other words, there should be no distinction in the application of a statute where none is indicated⁹.

10. While it is true that the BJMP is clothed with the authority to promulgate its own administrative disciplinary machinery pursuant to Section 62 of RA 6975 but such provision has to be construed in relation to Section 91 of the same law which clearly provides that the Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department. In the application thereof, the Supreme Court in the case of *SPO3 Cabada v. Hon. Alunan III*¹⁰ made a categorical pronouncement in this manner:

"The rules and regulations implementing the Civil Service Law referred to in Section 91 of the DILG Act of 1991 is the Omnibus Rules Implementing Book V of Executive Order No. 292 known as the Administrative Code of 1987 promulgated by the CSC. Sections 31 and 32, Rule XIV of the said Rules provide as follows:

x x x

⁶ Baranda v. Gustillo, 165 SCRA 757, 770, citing cases

⁷ Pascual v. Pascual-Bautista, 207 SCRA 561, 568

⁸ Salenilla v. CA, 169 SCRA 829

⁹ Banco de Oro Savings & Mortgage Bank v. Equitable Banking Corp., 157 SCRA 188, quoting Loc Cham v. Ocampo, 77 Phil. 636

¹⁰ G. R. No. 119645, August, 1996

Sec. 32. x x x. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department, then to the Merit Systems Protection Board, and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned" (Underlining ours).

11. Nevertheless, it is worth emphasizing that the authority of an agency to promulgate administrative rules must be aligned with law. In the case of *LBP v. CA*¹¹, the High Court ruled:

"Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law" (Underlining ours).

12. With respect to confirmation, the Supreme Court in the case of *Rosalinda Dimapilis-Baldoz v. COA*¹² citing an earlier cases of *Jacinto v. CA*¹³ and *Bangalisan v. CA*¹⁴ ruled:

"As a matter of law, a department Secretary's decision confirming the removal of an officer under his authority is immediately executory, even pending further remedy by the dismissed public officer" (Underlining supplied).

13. Speaking of confirmation by the Secretary of the DILG prior to execution of a decision imposing the penalty of removal from the service, the case of *LOYOLA, Manuel Jr., C. a BJMP personnel, under CSC-NCR Decision No. 140728 promulgated on 12 December 2014* is in point. In this case, Manuel C. Loyola Jr. was appointed with the rank of Jail Office 2 on 25 March 2004. Thereafter, said personnel was dismissed from the service on 13 December 2005 after having been found guilty for Grave Misconduct. As a result, he was terminated from the service pursuant to *BJMP General Order No. 2006-24 dated 25 January 2006*. On 19 October 2006, Loyola filed a Motion for Reconsideration before the DILG contending that in view of the failure of the DILG to confirm the BJMP Order of dismissal, the same cannot be implemented pursuant to

¹¹ 327 SCRA 1042, 1052

¹² G. R. No. 199114, July 16, 2013

¹³ 346 SCRA 656

¹⁴ 342 SCRA 586

the provision of the Revised Administrative Code of 1987 and the pertinent civil service rules. On 25 May 2010, the DILG granted his motion and ordered his reinstatement. The CSC-NCR Decision afore-quoted made an introductory pronouncement in this manner:

x x x

"At the outset, it must be noted that before an order for dismissal by an office or bureau may be implemented, confirmation by the Secretary of the department or agency concerned is required before the penalty of dismissal is deemed executory pursuant to Section 9, Rule 2 of the RRACCS provides that the "penalty of dismissal from the service shall be executory only upon confirmation by the Department Secretary."

Clearly, Loyola's termination from the service by the BJMP pending confirmation by the DILG Secretary is premature, and is thus considered unlawful. (Underlining ours)

x x x

14. In light of all the foregoing discussion and to make the pertinent provisions of the 2007 Revised Administrative Disciplinary Machinery¹⁵ align with and in harmony with the provision of the Revised Administrative Code of 1987 and the pertinent civil service rules, it is therefore our considered view that from now on, cases decided by the Regional Director imposing the penalty of dismissal from the service shall be coursed through to the BJMP-NHQ and the same shall be forwarded to the Office of the Secretary, Department of the Interior and Local Government (DILG) for confirmation prior to its implementation.

15. Considering however that confirmation is a condition precedent and an integral part of the implementation process and without which a decision imposing removal from the service cannot be implemented, and considering further that the issuance of an implementing order vests within the authority of the Directorate for Personnel and Records Management (DPRM) and its subordinate offices in the regional level pursuant to the 2007 Revised BJMP Administrative Disciplinary Machinery¹⁶, it is therefore imperative to respectfully recommend that the DPRM be accorded the opportunity to carry out the following, to wit:

a. Make the necessary request for confirmation before the Department of the Interior and Local Government (DILG) for decisions imposing the penalty

¹⁵ Sections 12 and 13, Rule VIII

¹⁶ Section 13, Rule VIII

Clarificatory Opinion

Re: Confirmation prior to Execution of Decision imposing the penalty of removal/dismissal from the service

Page 7 of 7

X-----X

of dismissal from the service regardless of whether an appeal has been filed or not;


b. Facilitate the expeditious issuance of the confirmation;

c. Cause the immediate implementation of the decision once a confirmation from the Secretary, DILG is obtained.


16. Preceding recommendation is not only out of respect for the DPRM's functional jurisdiction but more importantly, the logical recognition of its authority as well as familiarity on policies pertaining to personnel.

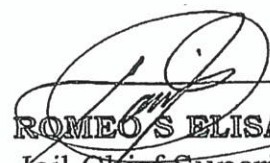
17. Finally, recommend further that copies of this clarificatory opinion be furnished the regional offices and other concerned offices and directorates of the NHQ for their information and strict guidance.


18. Respectfully submitted.


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

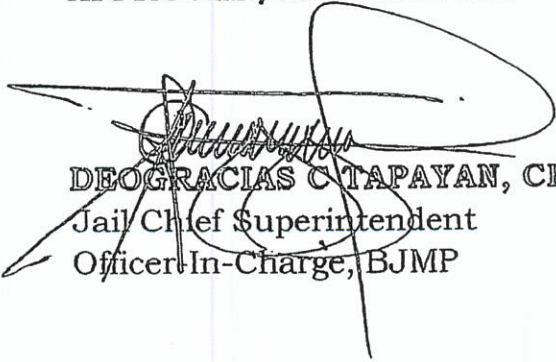
RECOMMEND APPROVAL:


EMMANUEL T SIOJO, DSC
Jail Chief Superintendent
Chief, Directorial Staff


ROMEO S ELISAN, JR., MPA
Jail Chief Superintendent
Deputy Chief for Operation


SERAFIN P BARRETTO, JR, CESO IV
Jail Chief Superintendent
Deputy Chief for Administration

~~APPROVED /DISAPPROVED~~


DEOGRACIAS C TAPAYAN, CES (E)
Jail Chief Superintendent
Officer-In-Charge, BJMP