

RESOLUTION NO. 001378

David A. Daoas, Chairperson, National Commission on Indigenous Peoples (NCIP), Quezon City, requests a ruling from the Commission on the following issues:

"I. x x x Under paragraph V, subparagraph 2 of the NCIP Guidelines for Retention and Placement prepared by the Consultative Body, all applicants are given thirty (30) days from date of posting of the approved staffing pattern within which to file their respective applications.

"Query No. 1. For the ONCC/OSCC employees who fail to file their applications within the thirty day period, would they be considered as separated from the service and should a Notice of Termination/Separation be validly issued?

"Query No. 2. For the ONCC/OSCC employees with permanent appointments who filed their application for only one position within the thirty day period and did not indicate an alternative position of his/her choice but could not be appointed to the position he/she applied for, is the NCIP obligated to find another position for him/her?

"II. With the merger of the ONCC and OSCC as organic offices of the NCIP, there are more employees than available positions under the newly approved staffing pattern of the NCIP. Other positions in the defunct ONCC and OSCC have also been abolished.

"Query No. 1. At the Central Office almost all of the positions are occupied by two persons, what would happen to the other employee who would not be appointed? At the Regional Offices, there are two divisions under the new staffing pattern of the NCIP but there were three divisions under the old staffing pattern of the ONCC/OSCC. How would we treat the third division chief?

"Query No. 2. There are employees of the ONCC/OSCC who hold permanent appointments as Chiefs of Division but they do not hold any masters degree. Do they qualify for the same position? As they claim, do they have vested rights to these positions?

"Query No. 3. What about those whose positions under the ONCC/OSCC were abolished under the staffing pattern of the NCIP? Should the NCIP issue the Notice of Separation/Termination to these employees? In case they apply for reappointment (sic) and they are appointed to a position lower in rank than the position they originally occupy, what would

be their salary grade?

"III. In the case of the NCIP reorganization, would the prohibition against nepotism apply to employees who have permanent appointments to their positions in the defunct ONCC/OSCC considering that the appointing authority, recommending authority, or their supervisor is now a relative but at the time of their appointment to their respective positions in the ONCC/OSCC neither the appointing authority, nor recommending authority, nor supervisor is their relative?

"IV. Under paragraph No. 7, M.C. No. 1, s. 1997 of the Civil Service Commission. The degree of Doctor of Medicine, Bachelor of Laws, Doctor (sic) of Dental Medicine/Dental Surgery, and Doctor of Veterinary Medicine shall be considered the appropriate educational attainment for appointment to Division Chief positions xxx. Would anyone who holds any of the enumerated degrees qualify for the position of Division Chief even if he/she did not pass the required Bar/Board examination but has been in the government service for several years?

"V. Under the defunct ONCC/OSCC there were employees appointed as DMO II or DMO III but have been designated by the head of the agency as Provincial Officers. Claiming security of tenure and vested right but without a masters degree, are these employees entitled to reappointment as Provincial Officers despite the fact that under the staffing pattern of the NCIP a Provincial Officer is a DMO V position which requires a masters degree?"

The first issue, which poses two queries, will be answered jointly. It must be stressed that failure of the ONCC/OSCC employees to file their applications within a period of thirty (30) days should not be considered a waiver on their part to be appointed to the same position. Hence, issuance of a Notice of Termination is not warranted. It is worthy to mention that ONCC/OSCC employees who were appointed under permanent status enjoy security of tenure. Hence, they can be removed from the service as a result of a bona fide reorganization only upon a faithful and strict compliance with Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of the Reorganization) and its Implementing Rules. Valid reorganization requires the strict observance of laws, rules and regulations governing reorganization. This is so in order to check the abuses of the appointing authority in indiscriminately removing his perceived political "enemies" and appointing those whom he pleases (CSC Resolution No. 94-1970).

The ONCC/OSCC employees permanent appointments who did not indicate in their application an alternative position do not forfeit their right to be re-appointed to the new approved staffing patterns. While it is true that said employees may have applied for positions other than what they had been holding, such act, however, is not a valid ground to remove them from the service. Nowhere can it be found in RA 6656 or its Implementing Rules that when an employee, during the process of reorganization, applies for another position, he shall forfeit the position he is holding. The mere act of applying for another position will never result in the forfeiture of an employee's employment, specially so if the status of his employment is permanent (CSC Resolution No. 00-0718 dated March 21, 2000).

The second issue involves merger of ONCC and OSCC as organic officers of the NCIP which caused the abolition of some

positions. It must be stressed that during reorganization, all positions are deemed vacant or non-existent. In the case of National Land Titles and Deeds Registration Administration vs. Civil Service Commission, G.R. No. 84301 dated April 7, 1993, the Supreme Court held, as follows:

"Thus, without need of any interpretation, the law mandates that from the moment an implementing order is issued, all positions xxx are deemed non-existent. This, however, does not mean removal. Abolition of a position does not involve or mean removal for the reason that removal implies that the post subsists and that one is merely separated therefrom. After abolition, there, is in law, no occupant. Thus, there can be no tenure to speak of. It is in this sense that from the standpoint of strict law, the question of any impairment of security of tenure does not arise."

Considering that there are more employees than available positions at the Central Office of the NCIP as a result of the abolition of some positions, the incumbents to positions which were abolished shall be compared in terms of relative fitness and the most qualified and competent shall be preferred. Section 6, Implementing Rules of R.A. 6656, provides that:

"Section 6. Relative Fitness. Where the number of incumbents to be placed exceed the number of positions in the new staffing pattern, they shall be compared in terms of relative fitness and the most qualified and competent shall be preferred. xxx"

Hence, it presupposes that for one to be issued an appointment, he must possess the qualifications for the position in the new approved staffing pattern.

The claim that former incumbents have vested right to the positions they were holding prior to reorganization is misplaced. It must be stressed that during reorganization, a former incumbent merely enjoys preference for appointment to the same or comparable position in his agency, and not a vested right thereto. This is anchored on the provision of Section 4 (par. 1), R.A. 6656, which reads, as follows:

"Section 4. Officers and employees holding permanent appointments shall be given preference for appointment to new positions in the approved staffing pattern comparable to their former positions or in case there are not enough comparable positions, to positions next lower in rank."

Moreover, the ruling of the Commission in CSC Resolution No. 97-0197 dated January 9, 1997, applies. It reads, as follows:

"It is quite clear xxx that during a reorganization, employees under permanent status enjoys preference for appointment to comparable positions in the new staffing patterns. However, they may also be appointed to lower positions if there are not enough comparable positions. The said employees under permanent status do not have a vested right to be appointed to exactly the same position they held prior to the reorganization.

"It should be stressed that during a bona fide reorganization, some employees under permanent status may even be separated from the service if the number of regular positions in the new organization is not sufficient to accommodate everybody. This was the rationale of earlier Commission resolutions in the cases of Bonifacio Rellin, et. al (CSC Resolution No. 93-3454 August 26, 1993) and Rhodora Dionisio F., et al (CSC Resolution NO. 94-4582, August 18, 1994) wherein the non-reappointment of some municipal employees was upheld. xxx"

Furthermore, in declaring that the right to hold public office is not a vested right, Supreme Court in the case of Siete vs. Santos, G.R. No. 82421 dated September 26, 1990/En Banc, held, as follows:

"Aside from the fact that it is well-settled that the right to hold a public office under our political system is neither a natural nor a vested right (Aparri v. Court of Appeals, 127 SCRA 237-238). Section 16, Article XVIII of the 1987 Constitution explicitly authorizes the removal of career civil service employees not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of said Constitution."

This ruling was reiterated by the Supreme Court in the case of NLTDRA vs. Civil Service Commission, supra, thus:

"A final word, on the 'vested right theory' advanced by respondent Civil Service Commission. There is no such things as a vested interest or an estate in an office, or even an absolute right to hold it. Except constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested rights in an office or its salary xxxx."

On the issue of whether the NCIP issue a Notice of Termination to employees whose positions were abolished under the new staffing pattern, the answer is in the affirmative. Career service employees whose positions were abolished and who do not qualify for appointment to any comparable position or position next lower in rank, shall be notified of their separation pursuant to a bona fide reorganization.

As to the salary grade former incumbents shall receive in case they are re-appointed to a position lower in rank, reference should be made to the provision of Section 13 of Republic Act No. 6758 (An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes). Said section, also cited in CSC Resolution No. 93-2240 dated June 22, 1993 reads, as follows:

"SECTION 13. PAY ADJUSTMENTS - (a) xxx (b) Pay Reduction - If an employee is moved from a higher to a lower class, he shall not suffer a reduction in salary: Provided, That such movement is not the result of a disciplinary action or voluntary demotion."

From the above, while the former incumbent is re-appointed to a position next lower in rank as a result of a bona fide reorganization, he is entitled to receive the salary grade corresponding to that of his former position in the old staffing pattern.

On the issue of whether the prohibition on Nepotism applies to appointments issued pursuant to a bona fide reorganization, the answer is in the affirmative. It must be stressed that the rule on Nepotism covers the issuance of all kinds of appointments. It is settled that in the implementation of a bona fide reorganization, all positions are considered vacant. Hence, there is a need to issue new appointments to qualified individuals. Considering that the law does not exclude appointments issued pursuant to a bona fide reorganization, said appointments cannot be exempted from the operation of the rule on Nepotism.

Anent the fourth issue of whether the holder of a degree of Doctor of Medicine, Bachelor of Laws, Doctor of Dental Medicine/Dental Surgery, or Doctor of Veterinary Medicine may qualify for appointment to the position of Division Chief even if he does not pass the required Bar/Board examinations, the Commission rules that if the qualification requirement for the position requires passing of a Bar/Board examination (RA 1080 eligibility), then a holder of the above-enumerated degrees cannot be appointed to a division chief position. Pursuant to CSC Memorandum Circular No. 42, series of 1991, "policies requiring an appointee to possess an eligibility resulting from a Bar or Board Examination will be strictly enforced." Hence, if the position does not require an RA 1080 eligibility, a holder of any of the above-mentioned degrees may qualify for appointment to a division chief position provided he possesses a master's degree.

Finally, pertinent to the last issue, it is worthy to reiterate that in reorganization, there no such thing as a vested right to public office, for the right to the same cannot be equated to the right of ownership which may be asserted against everybody at all cost. Thus, the appointee to the positions in the new staffing pattern must meet the requirements for the position.

WHEREFORE, it is hereby mandated that in the implementation of bona fide reorganization, strict observance of the provisions of RA 6656 and the rules and regulations governing reorganization must be strictly observed.

Quezon City, June 13, 2000

(Sgd.) JOSE F. ERESTAIN, JR.

Commissioner

(Sgd.) CORAZON ALMA G. DE LEON

Chairman

(Sgd.) ELMOR D. JURIDICO

Commissioner

Attested by:

(Sgd.) ARIEL G. RONQUILLO

Director III