

**CERILLES, Aurora Enerio**

Re: Query; Retirement Benefits

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### **RESOLUTION NO. 021112**

Aurora Enerio Cerilles, Provincial Governor, Pagadian City, Province of Zamboanga del Sur, in a letter dated February 7, 2002, requests an opinion on whether both separation and retirement benefits may be granted an employee who has been separated from the service due to a valid reorganization.

Pertinent portions of the letter-request are, as follows:

*"Mrs. Revisincia M. Briones, former Provincial Budget Officer who was retired from the service in view of the implementation of this province' reorganization requested clarification from the Civil Service Commission (Regional IX) on the issue of separation and retirement benefits due her as provided for in R.A. 6656.*

*"The issue specifically centered on whether or not both separation and retirement benefits (a separate and distinct benefits) can be claimed by an employee who, before reaching the compulsory retirement age of 65 years old, is separated from the service due to reorganization.*

*"Madam, this is actually the same query raised by the rest of the more than 71 eligibles for retirement now affected by this province' recent reorganization.*

*"In her letter of December 18, 2001 to Mrs. Briones, CSC Region IX Director Macybel Alfaro-Sahi cited several provisions of R.A. 6656, Section 9 thereof, Section 260 of the GAAM citing the case of Nunal vs. COA GR No. 78648, January 24, 1989 and Section 37 of the Omnibus Rules on Leave (CSC NC No. 41, S. 1998 as amended by CSC MC 14, S. 1999 giving impression that 'indeed separated employees due to reorganization are entitled to separation pay in addition to retirement benefits and to commutation of leave credits (terminal leave benefits) and such other benefits as provided for by law.' (Emphasis ours). Applying the rule of statutory construction, the provisions of Section 9, R.A. 6656 is very explicit, that is, the payment of both.*

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*"In a long line of court decisions of similar case, the high court ruled that the claim of both benefits is possible in cases where two separate and distinct agencies are assuming the payment of each of these benefits. Sheer logic dictates that the payment of separation benefit is on account of the reorganization while for*

*retirement, it is a benefit accruing to employees who financially shared a portion of his pay with his trustee, the GSIS, to answer for his old age pension. With the separate intent of the benefits, would it not be reasonable that these benefits both be given to employees? And, based on the principle of social legislation, would it not be reasonable also that we interpret these doubtful provisions in favor of the employees?"*

Relevant to the matter is **Section 9, Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization)**, which reads:

*"SECTION 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned."* (Emphasis supplied)

Apropos to the aforestated provision is **Section 21 of the Civil Service Rules on Government Reorganization** issued on June 30, 1988, which is quoted, as follows:

*"SECTION 21. Separation and Retirement Benefits – All officers and employees, including casuals and temporary employees who have been separated pursuant to reorganization under any of the valid causes, except those as a result of final disciplinary action, shall if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided that application for clearance has been filed and no action thereon has been made by the corresponding department or agency.*

*"Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service.*

*"Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned."* (Emphasis supplied)

It is explicit from the foregoing that the law intends to give ample protection to civil servants whose employment has

been terminated due to reorganization, by giving them separation pay or retirement benefits, if entitled thereto, and other monetary benefits. While the aforementioned provision of law used the conjunctive "and" between the words "separation pay" and "retirement", this does not mean that both benefits shall be given to an affected employee. This interpretation is supported by the phrase "if entitled thereto" found before the phrase "be paid the appropriate separation pay and retirement and other benefits under existing laws". Thus, payment of both separation and retirement benefits is not absolute.

Let it be stressed also that these "separation pay" and "retirement" benefits are given for the same purpose, to give financial assistance to retirees or separated employees during the time that they are out of the service. Thus, entitlement to one of the two benefits will already serve the purpose. If both are given to the employees concerned, there shall be duplication of purpose that may cause the depletion of government resources. Moreover, it is not always the case that all those employees affected are already of retireable age and thus justice and equity dictate that those who are not yet qualified to receive retirement pay must also receive a similar reward for their past services in the government and so the payment of separation benefits.

In **CSC Resolution No. 00-1957 dated August 30, 2000 (NAUNGAYAN, Teofilo, et al.)**, the Commission had the occasion to interpret the aforementioned provision of law. It held, as follows:

*"The aforementioned provision of law says: 'separation pay and retirement and other benefits under existing laws'. Be it noted that the conjunctive 'and' is used between 'separation pay and retirement', which in its elementary sense would mean that they are to be taken jointly. (Ruperto G. Martin, Statutory Construction sixth edition, p. 88) Obviously, therefore, 'separation pay and retirement' refer to only one benefit, of which an employee affected by the reorganization, if entitled thereto, must be paid plus other benefits under existing laws, i.e. terminal leave pay, etc. This is to be contra-distinguished with the 'separation gratuity' mentioned in the penultimate sentence of the said Section 9 of R.A. 6656 to which an employee affected by the reorganization is entitled payment should he or she be not eligible for separation pay and retirement and other benefits under existing laws."*

Clearly, an employee affected by reorganization can not be granted separation pay in addition to retirement benefits. If an employee is entitled and has actually received either separation pay or retirement benefit, the receipt of one necessarily bars entitlement to the other. This is in view of the fact that both benefits arise from one and the same cause, that is, the employee's separation from the service.

Significantly, there seems to be no apparent reason for granting an employee the separation pay provided for under R.A. 6656 in addition to retirement benefits. This is so because to assume otherwise would not only be an act of "over-liberality" on the part of the government or State but likewise inconsistent with its policy against double pension or double compensation for the same service.

The separation pay or gratuity provided for under R.A. 6656 is obviously in consideration of the employee's services to

the government. It is similarly obvious that the retirement benefits granted under existing retirement laws are in consideration of the same services to the government. Therefore, for an affected employee to receive both benefits would amount to allowing him to receive double pension or compensation for the same services as consideration.

True, **Section 260 of the Government Accounting and Auditing Manual (GAAM)** provides that an employee whose position has been abolished by law or ordinance is entitled to separation pay. However, it does not provide that he or she is entitled to retirement benefits over and above the separation pay granted to him or her by the agency. It reads, in part, as follows:

*"b. Any office or agency may also be abolished or its functions and activities integrated with those of another agency.*

*"When the position of an official/employee under Civil Service is abolished by law or ordinance, the official/employee so affected shall be reinstated in another vacant position without diminution of salary. Should such position not be available, he shall be granted separation pay equivalent to one month salary for every year of service over and above the monetary privileges granted to officials/employees under existing laws (Nunal vs. COA GR No. 78648, Jan. 24, 1989, citing BP 337).*

*"c. Employees laid off as a result of the foregoing may be paid separation pay in accordance with such policy as the agency may formulate or the law may authorize."*

It is clear from the foregoing that an affected employee is entitled only to separation pay in addition to other monetary benefits, such as the money value of leave credits, but not to include retirement benefits.

**WHEREFORE**, the Commission hereby rules and so holds that separated employees due to a valid reorganization are not entitled to both separation pay and retirement benefits. The concerned employee may avail of the separation pay or opt to retire, if qualified under existing laws.

Quezon City, AUG 22 2002

(Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

(Signed)  
**KARINA CONSTANTINO-DAVID**

Chairman

(Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Signed)  
**ARIEL G. RONQUILLO**  
Director III

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