



Republic of the Philippines  
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## MEMORANDUM FROM THE SECRETARY

TO : ALL UNDERSECRETARIES, ASSISTANT SECRETARIES, BUREAU AND SERVICE DIRECTORS, REGIONAL EXECUTIVE DIRECTORS AND HEADS OF ATTACHED AGENCIES

RE : PREVENTIVE SUSPENSION OF DENR EMPLOYEES

DATE : FEB 20 2004

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Due to numerous queries received by this Office regarding preventive suspension, please be guided by the following:

“There are thus two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: (1) preventive suspension pending investigation and (2) preventive suspension pending appeal, if the penalty imposed by the disciplining authority is suspension or dismissal, and after review, the respondent is exonerated.

Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate the charges against respondent by preventing the latter from intimidating or in any way influencing the witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation respondent is found innocent of the charges and is exonerated, he should be reinstated.

X X X

Is he entitled to the payment of salaries during the period of suspension?

X X X

But although we held that employees who are preventively suspended pending investigation are not entitled to the payment of their salaries even if they are exonerated, we do not agree with the government that they are not entitled to compensation for the period of their suspension pending appeal if eventually they are found innocent. (underscoring supplied)

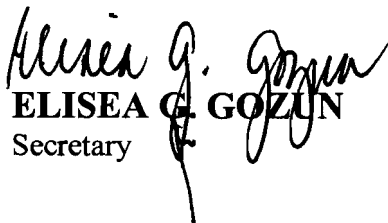
Preventive suspension pending investigation, as already discussed, is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. On the other hand, preventive suspension pending appeal is actually punitive although it is in effect subsequently considered illegal if respondent is exonerated and the administrative decision finding him guilty is reversed. Hence, he should be reinstated with full pay for the period of suspension. Thus, Section 47(4) states that respondent ‘shall be considered under preventive suspension during the pendency of the appeal in the event he wins.’ On the other hand, if his conviction is affirmed, *i.e.* if he is not exonerated, the period of his suspension becomes part of the final penalty of suspension or dismissal.

It is precisely because respondent is penalized before his sentence is confirmed that he should be paid his salaries in the event he is exonerated. It would be unjust to deprive him of his pay as a result of the immediate execution of the decision against him and continue to do so even after it is shown that he is innocent of the charges for which he was suspended. Indeed, to sustain the government's theory would be to make the administrative decision not only executory but final and executory. The fact is that Sections 47(2) and (4) are similar to the execution of judgment pending appeal under Rule 39, Section 2 of the Rules of the Court. Rule 39, Section 5 provides that in the event the executed judgment is reversed, there shall be restitution or reparation of damages as equity and justice may require.

Though an employee is considered under preventive suspension during the pendency of his appeal, in the event he wins, his suspension is unjustified because what the law authorizes is preventive suspension for a period not exceeding 90 days. Beyond that period, the suspension is illegal. Hence, the employee concerned is entitled to reinstatement with full pay. Under existing jurisprudence, such award should not exceed the equivalent of five years pay at the rate last received before the suspension was imposed." [*Gloria vs. Court of Appeals*, 306 SCRA 287 (1999)]

The foregoing decision had been quoted in the cases of *Acosta, et al. vs. Court of Appeals, et al.* (GR No. 132088 dated 28 June 2000) and *Caniete, et al. vs. Secretary of Education* (GR No. 140359 dated 19 June 2000) and *Dado, et al.* (CSC Resolution No. 01-0340 dated 02 February 2001)

PLEASE BE GUIDED ACCORDINGLY.

  
**ELISEA G. GOZUN**  
Secretary