

J. Y. Interpretation No.430 ( June 6, 1997 ) \*

**ISSUE:** May active service military officers who file petitions for remaining on active duty according to pertinent rules and whose petitions are rejected following orders of discharge seek remedies by lodging administrative appeals and bringing administrative proceedings following the respective due procedures?

**RELEVANT LAWS:**

Article 16 of the Constitution (憲法第十六條) ; Article 1 of the Administrative appeals Act (訴願法第一條) .

**KEYWORDS:**

administrative appeal (訴願), litigation (訴訟), right to lodge administrative appeal (訴願權), right to institute legal proceedings (訴訟權), status (身分), occupation (職業), public functionary (公務員), administrative act (行政處分), administrative proceeding (行政爭訟), active service military officer (現役軍官), petition (聲請), remain on active duty (繼續服役), discharge (退伍), perform public service (服公職), combat duty (作戰任務), duty of obedience (服從義務), right of military command (軍事指揮權), right to award and discipline (賞罰權), final and binding judgment (確定終局判決) .\*\*

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\* Translated by Professor Spenser Y. Hor.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

**HOLDING:** Article 16 of the Constitution guarantees the people the right to lodge administrative appeals and the right to institute legal proceedings. When the people's rights or interests protected by law are infringed, their rights to lodge administrative appeals or to institute legal proceedings following proper legal procedures cannot be limited simply because of their posts or occupations. We have already repeatedly stated that whether civil servants who are subject to administrative acts due to their posts can bring administrative proceedings depends on the contents of such administrative acts issued. Military officers are in a broad sense civil servants and have public law relationships with the State due to their official posts. Active service military officers who file petitions for remaining on active duty according to pertinent rules and whose petitions are rejected following orders of discharge, if they question the orders, may seek remedies by lodging administrative appeals and bringing administrative proceedings following the respective due procedures since the orders of discharge affect their military statuses

**解釋文：**憲法第十六條規定人民有訴願及訴訟之權，人民之權利或法律上利益遭受損害，不得僅因身分或職業關係，即限制其依法律所定程序提起訴願或訴訟。因公務員身分受有行政處分得否提起行政爭訟，應視其處分內容而定，迭經本院解釋在案。軍人為廣義之公務員，與國家間具有公法上之職務關係，現役軍官依有關規定聲請續服現役未受允准，並核定其退伍，如對之有所爭執，既係影響軍人身分之存續，損及憲法所保障服公職之權利，自得循訴願及行政訴訟程序尋求救濟，行政法院四十八年判字第十一號判例與上開意旨不符部分，應不予援用。

and may result in violation of the constitutional guarantee of the right to perform public service. The part of Supreme Administrative Court Precedent No. 11 (Pantze No. 11), Supreme Administrative Court of 1959, which is in contravention to this Interpretation, shall no longer be applicable.

**REASONING:** Article 16 of the Constitution guarantees the people the right to lodge administrative appeals and the right to bring legal action. When the people's rights or interests protected by law are infringed, their rights to lodge administrative appeals or to bring legal action following proper legal procedures cannot be limited simply because of their posts or occupations. We have already stated in Interpretations Nos. 187, 243, 298, and 338 that whether civil servants who are subject to administrative acts due to their posts can bring administrative proceedings depends on the contents of the administrative acts issued. If the administrative act will affect a civil servant's status or his rights and interests thereof, he may exercise his abovementioned

**解釋理由書：**憲法第十六條規定人民有訴願及訴訟之權，人民之權利或法律上利益遭受損害，不得僅因身分或職業關係，即限制其依法律所定程序提起訴願或訴訟。因公務員身分受有行政處分得否提起行政爭訟，應視處分內容而定，其足以改變公務員身分或對於公務員權益有重大影響之處分，受處分之公務員自得行使上開憲法第十六條之權利，請求司法機關救濟，迭經本院釋字第一八七號、第二四三號、第二九八號及第三三八號等分別釋示在案。軍人負有作戰任務，對軍令服從之義務，固不能與文官等同視之。惟軍人既屬廣義之公務員，與國家之間具有公法上之職務關係，倘非關軍事指揮權與賞罰權之正當行使，軍人依法應享有之權益，自不應與其他公務員，有所差異。現役軍官依有關規定聲請續服現役未受允准，

tioned rights under Article 16 of the Constitution to seek remedies from the judicial branch. Military officers have combat duties during wartime, and their duty of obedience cannot be equated to that of ordinary public officials. However, since military officers are in a broad sense civil servants and have public law relationships with the State due to their official posts, except for the due exercise of rights of military command and for awards and discipline, their legal rights shall not differ from those of other civil servants. Active service military officers who file petitions for remaining on active duty according to pertinent rules and whose petitions are rejected following orders of discharge, if they question the orders, may seek remedies by lodging administrative appeals and bringing administrative proceedings following the respective due procedures. Supreme Administrative Court Precedent No. 11 (Pan-tze No. 11), Supreme Administrative Court of 1959, provides that, “Administrative appeals can be brought only when administrative acts issued by government branches are illegal or inappropriate so as to infringe upon people’s

並核定其退伍，如對之有所爭執，既係影響軍人身分之存續，損及憲法所保障服公職之權利，自得循訴願及行政訴訟程序尋求救濟。行政法院四十八年判字第十一號判例：「提起訴願，限於人民因官署之處分違法或不當，而損害其權利或利益者，方得為之。至若基於特別權力關係所生之事項，或因私法關係發生爭執，則依法自不得提起訴願」，與上開意旨不符部分，應不予援用。查具有軍人身分者，申請志願退伍或繼續服役未受允准，係影響其軍人身分關係是否消滅之重大不利益處分，應得循行政爭訟程序，請求救濟，雖經行政法院民國八十五年四月十七日庭長評事聯席會議決議在案，惟上開判例既為本件據以聲請解釋之確定終局裁判所引用，仍應受理解釋，併此說明。

rights or interests. As to administrative acts issued due to special authority relationships or due to disputes rising from private law relationships, there is no legal ground for administrative appeals.” The foregoing is in contravention to this Interpretation and shall no longer be applicable. On April 17, 1996, the Judges Joint Committee of the Supreme Administrative Court’s Chief Judges made a resolution that those active service officers who file petitions for voluntary discharge or for remaining on active duty and whose petitions are rejected may follow the administrative procedure to seek remedies, because the rejections are adverse administrative acts and will affect their military statuses. Since the Supreme Administrative Court Precedent No. 11 (Pan-tze No. 11), Supreme Administrative Court of 1959, was cited by the final and binding judgment which gave rise to this Interpretation, it is noteworthy that we should review this petition accordingly.

Justice Chi-Nan Chen filed dissenting opinion.

本號解釋陳大法官計男提出不同意見書。