

J. Y. Interpretation No.483 (May 14, 1999) *

ISSUE: Are the provisions of Article 18, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act, which allows the transfer of a legally appointed official to a lower rank or lower grade position, and Article 13, Paragraph 2, of the Public Functionaries Remuneration Act and Article 7 of the Enforcement Rules of said Act, which have the effect of capping the annual salary increase of the transferred official once he/she reaches the cap in his/her new position, consistent with Article 18 of the Constitution, which protects the people's right to hold public office?

RELEVANT LAWS:

Article 18 of the Constitution (憲法第十八條) ; Article 1 of the Public Functionaries Discipline Act (公務員懲戒法第一條) ; Article 16 of the Public Functionaries Protection Act (公務人員保障法第十六條) ; Article 18, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act (公務人員任用法第十八條第一項第三款) ; Articles 13, Paragraph 2, and 16 of the Public Functionaries Remuneration Act (公務人員俸給法第十三條第二項、第十六條) ; Article 7 of the Enforcement Rules of the Public Functionaries Remuneration Act (公務人員俸給法施行細則第七條) .

* Translated by Professor S. M. Yu.

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

KEYWORDS:

transfer to lower rank or lower grade (降級或減俸), merit evaluation (晉級), capped annual increase (年功俸).**

HOLDING: A public official once appointed to a rank and grade with pertinent salary level should not be downgraded or have his/her salary reduced without review by the competent authority charged with the discipline of public functionaries according to legal procedure. Such is the institutional protection afforded by the Constitution for the right of holding public office and the source of Article 1 of the Public Functionaries Discipline Act, Article 16 of the Public Functionaries Protection Act and Article 16 of the Public Functionaries Remuneration Act.

The first sentence of Article 18, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act provides “A legally appointed official, unless he/she consents of his/her own free will, should not be transferred to a lower rank

解釋文：公務人員依法銓敘取得之官等俸級，非經公務員懲戒機關依法定程序之審議決定，不得降級或減俸，此乃憲法上服公職權利所受之制度性保障，亦為公務員懲戒法第一條、公務人員保障法第十六條及公務人員俸給法第十六條之所由設。

公務人員任用法第十八條第一項第三款前段規定：「經依法任用人員，除自願者外，不得調任低一官等之職務；在同官等內調任低職等職務者，仍以原職等任用」，有任免權之長官固得據此將高職等之公務人員調任為較低官

position; if transferred to a lower grade position within the same rank, he/she shall be deemed appointed to the original grade.” The supervisor with power of appointment and dismissal may accordingly transfer a higher rank or grade official to a position of lower rank or grade. However, once transferred, according to Article 13, Paragraph 2, of the Public Functionaries Remuneration Act and Article 7 of the Enforcement Rules of the said Act, if such official’s salary level has already reached the annual salary level cap of the new position, he/she will not be promoted during merit evaluation. The result of such high to low transfer is that, no matter how meritorious his/her performance, or whether he/she has reached such cap in his/her original grade, there is no opportunity for promotion. Then the transfer becomes, in fact if not in name, something similar to disciplinary demotion or salary reduction. This is not in accordance with the purpose of constitutional protection of the people’s right to hold public office. Therefore, the competent authority should promptly review and amend the above-mentioned Public Functionaries Appoint-

等或職等之職務；惟一經調任，依公務人員俸給法第十三條第二項及同法施行細則第七條之規定，此等人員其所敘俸級已達調任職等年功俸最高級者，考績時不再晉敘，致高資低用人員縱於調任後如何戮力奉公，成績卓著，又不論其原敘職等是否已達年功俸最高級，亦無晉敘之機會，則調任雖無降級或減俸之名，但實際上則生類似降級或減俸之懲戒效果，與首開憲法保障人民服公職權利之意旨未盡相符，主管機關應對上開公務人員任用法、公務人員俸給法及附屬法規從速檢討修正。

ment Act, Public Functionaries Remuneration Act and related rules.

REASONING: Under Article 18 of the Constitution, people have the right to hold public office. Article 1 of the Public Functionaries Discipline Act provides, “Except as otherwise provided by law, public functionaries should only be disciplined in accordance with this law.” Article 16 of the Public Functionaries Protection Act provides, “The salary level of public functionaries affirmed after proper review should be protected and no downgrading or salary reduction should be allowed except in accordance with law.” The Public Functionaries Remuneration Act promulgated on July 16, 1986, provides in Article 16, “The rank and grade affirmed by the Civil Service Authority should not be downgraded unless in accordance with the Public Functionaries Discipline Act and other relevant laws.” Thus, the legally acquired rank, grade and salary level of public functionaries should not be downgraded or reduced except through a decision, after proper review, according to legal procedure by the au-

解釋理由書：人民有服公職之權，此為憲法第十八條所明定。公務員懲戒法第一條：「公務員非依本法不受懲戒。但法律另有規定者，從其規定。」公務人員保障法第十六條：「公務人員經銓敘審定之俸級應予保障，非依法律不得降級或減俸。」中華民國七十五年七月十六日公布之公務人員俸給法第十六條：「經銓敘機關敘定之等級，非依公務員懲戒法及其他法律之規定，不得降敘。」是公務人員依法銓敘取得之官等俸級，非經公務員懲戒機關依法定程序之審議決定，不得降級或減俸，乃憲法上服公職權利所受之制度性保障，亦為公務員懲戒法第一條、公務人員保障法第十六條及公務人員俸給法第十六條之所由設。

thority charged with the discipline of public functionaries. Such is the institutional protection for holding public office under the Constitution, and the source of Article 1 of the Public Functionaries Discipline Act, Article 16 of the Public Functionaries Protection Act and Article 16 of the Public Functionaries Remuneration Act.

The first sentence of Article 18, Paragraph 1, Subparagraph 3, of the Public Functionaries Appointment Act promulgated on April 21, 1986, provides, “A legally appointed official, unless he/she consents of his/her own free will, should not be transferred to a lower rank position; if transferred to a lower grade position within the same rank, he/she should be deemed appointed to the original grade.” The supervisor with power of appointment and dismissal may accordingly transfer a high rank or grade official to a position of lower rank or grade. However, according to Article 13, Paragraph 2, of the Public Functionaries Remuneration Act, “Officials transferred from a higher grade to a lower grade within the same rank with the original salary level shall

七十五年四月二十一日公布之公務人員任用法第十八條第一項第三款前段規定：「經依法任用人員，除自願者外，不得調任低一官等之職務；在同官等內調任低職等職務者，仍以原職等任用」，有任免權之長官固得據此將高職等之公務人員調任為較低官等或職等之職務；惟一經調任，依公務人員俸給法第十三條第二項：「在同官等內高資低用，仍敘原俸級人員，考績時不再晉敘。」及七十六年一月十四日發布之公務人員俸給法施行細則第七條第一項：「本法第十三條第二項所稱『在同官等內高資低用，仍敘原俸級人員，考績時不再晉級』，指同官等內高職等調任低職等仍以原職等任用人員，原敘俸級已達所調任職等年功俸最高級者，考績時不再晉敘。」此等人員其所敘俸級已達調任職等年功俸最高級者，考績時不再

not be promoted during merit evaluation.” Article 7, Paragraph 1, of the Enforcement Rules of the Public Functionaries Remuneration Act promulgated on January 14, 1985, provides, “the sentence ‘officials transferred from a higher grade to a lower grade within the same rank with the original salary level shall not be promoted during merit evaluation’ in Article 13, Paragraph 2, of this Act refers to the rule that an official who is transferred from a higher grade to a lower grade position within the same rank, but retains his/her original grade, once his/her original salary level has reached the annual salary level cap of the new position, shall not be promoted during merit evaluation.” Officials whose salary level has reached such cap shall not be promoted, with the result that, such a high-low transferee, no matter how meritorious his/her performance, or whether he/she has reached such cap under his/her original position, has no opportunity for promotion. Then the transfer becomes, in fact if not in name, something similar to disciplinary demotion or salary reduction. This is not in accordance with the purpose of the constitutional protect-

晉敘，致高資低用人員縱於調任後如何戮力奉公，成績卓著，又不論其原敘職等是否已達年功俸最高級，亦無晉敘之機會，則調任雖無降級或減俸之名，但實際上則生類似降級或減俸之懲戒效果，與首開憲法保障人民服公職權利之意旨未盡相符，主管機關應對上開公務人員任用法、公務人員俸給法及附屬法規從速檢討修正。

tion of the people's right to hold public office. Therefore, the competent authority should promptly review and amend the abovementioned Public Functionaries Appointment Act, Public Functionaries Remuneration Act and related rules.