

J. Y. Interpretation No.491 (October 15, 1999) *

ISSUE: Should the grounds for disciplinary actions against civil servants be stipulated by law, or can they be prescribed by the competent administrative agency with administrative regulations? Should due process of law be followed in making a discharge decision?

RELEVANT LAWS:

Articles 18 and 23 of the Constitution (憲法第十八條、第二十三條); J. Y. Interpretation No. 443 (司法院釋字第四四三號解釋); Articles 12, Paragraph 1, Subparagraph 2, Paragraph 2, and 18 of the Public Functionaries Merit Evaluation Act (公務人員考績法第十二條第一項第二款、第二項、第十八條).

KEYWORDS:

discharge decision (免職之懲處處分), right to work (工作權), right to serve in public service (從事於公務之權利), clarity requirement of the law (法律明確性原則), due process of law (正當法律程序), civil service discipline (文官懲戒), equal protection of law (法律之平等保護). **

HOLDING: The right to serve in a public post prescribed in Article 18 of the Constitution aims at guaranteeing the

解釋文：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務之權利，其範圍不惟涉

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people the opportunity for public service in accordance with laws and regulations. Such a right not only concerns the people's right to work and equal protection under law-- so that the state must establish relevant systems regulating the exercise of public authority and the fulfillment of the state's duties and responsibilities-- but also the security of civil employees' rights and interests. The (various) types of discipline of civil servants are punishments imposed by the state on a civil employee for his/her violations of the law and neglect of duty. The power to take disciplinary measures may, within a reasonable extent, be conferred to superior officers by law. A discharge decision made by either a central or a local administrative agency in accordance with the provisions of the Public Functionaries Merit Evaluation Act or other relevant laws and regulations having the effects of restricting the right(s) of people to serve in public post(s) is, in essence, disciplinary. The causes for a discharge must be stipulated by statute so that the intent of Article 23 of the Constitution can be preserved. Article 12, Paragraph 1, Subparagraph 2, of the Pub-

及人民之工作權及平等權，國家應建立相關制度，用以規範執行公權力及履行國家職責之行為，亦應兼顧對公務人員之權益之保護。公務人員之懲戒乃國家對其違法、失職行為之制裁。此項懲戒得視其性質，於合理範圍內，以法律規定由其長官為之。中央或地方機關依公務人員考績法或相關法規之規定對公務人員所為免職之懲處處分，為限制人民服公職之權利，實質上屬於懲戒處分，其構成要件應由法律定之，方符憲法第二十三條之意旨。公務人員考績法第十二條第一項第二款規定各機關辦理公務人員之專案考績，一次記二大過者免職。同條第二項復規定一次記二大過之標準由銓敘部定之，與上開解釋意旨不符。又懲處處分之構成要件，法律以抽象概念表示者，其意義須非難以理解，且為一般受規範者所得預見，並可經由司法審查加以確認，方符法律明確性原則。對於公務人員之免職處分既係限制憲法保障人民服公職之權利，自應踐行正當法律程序，諸如作成處分應經機關內部組成立場公正之委員會決議，處分前並應給予受處分人陳述及申辯之機會，處分書應附記理由，並表明救濟方法、期間及受理機關等，設立相關制度予以保障。復依公務人員考績法第十八

lic Functionaries Merit Evaluation Act prescribes that agencies may record two major demerits at one time in an evaluation for causes. Yet Paragraph 2 of the same Article prescribing that the causes for recording two major demerits at one time shall be promulgated by the Ministry of Civil Service is incompatible with the intent of the Interpretation expounded above. In addition, where the causes for a disciplinary decision are stipulated in abstract concepts by the law, their meaning shall be intelligible for and foreseeable by the regulated civil servants, and shall be verifiable by the courts in judicial review, in order to be in accordance with the principle of clarity and definiteness of law (Rechtsbestimmtheitprinzip). Since a discharge decision against a civil servant carries the effect of restricting the right of people to serve in public posts, an agency that makes such a discharge decision must follow due process of law, such as composing an unbiased committee within the agency for reaching the decision, giving the discharged employee a chance to present or rebut, making the decision in written form with accompanying reasons as

條規定，服務機關對於專案考績應予免職之人員，在處分確定前得先行停職。受免職處分之公務人員既得依法提起行政爭訟，則免職處分自應於確定後方得執行。相關法令應依本解釋意旨檢討改進，其與本解釋不符部分，應自本解釋公布之日起，至遲於屆滿二年時失其效力。

well as instructions regarding the means, time period and competent agency for an appeal. The state must establish relevant systems guaranteeing such procedural rights. The employing agency may, in accordance with Article 18 of the Public Functionaries Merit Evaluation Act, suspend the duties of the discharged employee before the discharge is finalized. Yet the discharged employee is entitled to appeal pursuant to the law and the discharge decision can be implemented only when it is finalized. The relevant laws and regulations should be reviewed and revised in accordance with this Interpretation, whereas those contrary to the Interpretation shall become void within two years from the date of this Interpretation.

REASONING: The right to serve in a public post is aimed at guaranteeing the people the opportunity for public service in accordance with laws and regulations. Such a right concerns the people's right to work and equal protection under law and the state shall enact statutes protecting the rights of civil servants regarding, for example, employ-

解釋理由書：憲法第十八條規定人民有服公職之權利，旨在保障人民有依法令從事於公務之權利，其範圍不惟涉及人民之工作權及平等權，國家應制定有關任用、銓敘、紀律、退休及撫卹等保障公務人員權益之法律，用以規範執行公權力及履行國家職責之行為。公務人員之懲戒乃國家對其違法、失職行為之制裁，此項懲戒為維持長官監督

ment, appointment, discipline, retirement and relief pension, the exercise of public authority and the fulfillment of the state's duties. The (various) types of discipline of civil servants are punishments imposed by the state on a civil employee for his/her violations of law and neglect of duty. Such discipline is necessary for the superiors to preserve the power of oversight, and their exercise may, in view of the nature of the disciplinary measures and within a reasonable extent, be conferred to the superiors. A discharge decision made by either a central or a local administrative agency in accordance with the provisions of the Public Functionaries Merit Evaluation Act or other relevant laws and regulations carrying the effects of restricting the right of people to serve in public post(s) is, in essence, disciplinary. The causes for a discharge must be stipulated by statute so that the intent of Article 23 of the Constitution can be preserved. Whenever the law authorizes the competent agency to promulgate supplemental rules (See the Reasoning of this Yuan Interpretation No. 443) for restricting such a right to serve in public post(s) guaranteed

權所必要，自得視懲戒處分之性質，於合理範圍內，以法律規定由長官為之。中央或地方機關依公務人員考績法或相關法規之規定，對公務人員所為免職之懲處處分，為限制其服公職之權利，實質上屬於懲戒處分。其構成要件應由法律定之，方符憲法第二十三條規定之意旨。關於限制憲法第十八條所定人民服公職之權利，法律固得授權主管機關發布命令為補充規定（參照本院釋字第四四三號解釋理由書），其授權之目的、範圍及內容則應具體明確而後可。惟公務人員考績法第十二條第一項第二款規定各機關辦理公務人員之專案考績，一次記二大過者免職，同條第二項復規定一次記二大過之標準由銓敘部定之。此項免職處分係對人民服公職權利之重大限制，自應以法律定之。上開法律未就構成公務人員免職之標準，為具體明確之規定，與前述解釋意旨有違。又懲處處分之構成要件，法律以抽象概念表示者，不論其為不確定概念或概括條款，均須符合明確性之要求。其意義須非難以理解，且為一般受規範者所得預見，並得經由司法審查加以確認方可。對於公務人員之免職處分既係限制憲法保障人民服公職之權利，自應踐行正當法律程序，諸如作成處分應經機關內部組成

by Article 18 of the Constitution, the purpose, scope and contents of such an authorization has to be concrete and clear. Article 12, Paragraph 1, Subparagraph 2, of the Public Functionaries Merit Evaluation Act prescribes that agencies may record two major demerits at one time in an evaluation for causes. Paragraph 2 of said Article prescribes that the criteria for recording two major demerits at one time should be stipulated by the Ministry of Civil Service (by rules). Such a discharge decision is a primary restriction on the people's right to serve in public post(s); thus, its causes should be prescribed by law. The abovementioned statute does not concretely and clearly set up the criteria for a discharge and thus is contrary to the Interpretation rendered above. In addition, where the causes for a disciplinary decision are stipulated in abstract concepts by the law, either in open-ended or general clauses, their meaning shall be intelligible to and foreseeable by the regulated civil servants, and be verifiable by the courts in judicial review. As a discharge decision against a civil servant will restrict the right of the people to serve in public posts

立場公正之委員會決議，委員會之組成由機關首長指定者及由票選產生之人數比例應求相當，處分前應給予受處分人陳述及申辯之機會，處分書應附記理由，並表明救濟方法、期間及受理機關等，設立相關制度為妥善之保障。復依公務人員考績法第十八條規定，服務機關對於專案考績應予免職之人員，在處分確定前得先行停職。受免職處分之公務人員既得依法提起行政爭訟，則免職處分自應於確定後方得執行。相關法令應依本解釋意旨檢討改進，其與本解釋不符部分，應自本解釋公布之日起，至遲於屆滿二年失其效力。

guaranteed by the Constitution, an agency intending to take such an action must follow due process of law. Such due process of law includes composing an unbiased committee for reaching the decision whose members should be appointed by the head of the agency and elected by the employees in roughly equal ratio; providing the employee to be discharged with a chance to present or rebut; making the decision in written form with accompanying reasons as well as instructions regarding the means, time period and competent agency for appeal; and establishing relevant systems for adequate protection. Furthermore, the discharged employee is entitled to appeal pursuant to the law and the discharge decision can be enforced only when it is finalized. The relevant laws and regulations should be reviewed and revised in accordance with this Interpretation, whereas those contrary to this Interpretation shall become void within two years from the date of this Interpretation.

Justice Geng Wu filed concurring opinion.
Justice Hsiang-Fei Tung filed dissenting opinion.

本號解釋吳大法官庚提出協同意見書；董大法官翔飛、劉大法官鐵錚分別提出不同意見書。

Justice Tieh-Cheng Liu filed dissenting
opinion.