

J. Y. Interpretation No.323 (June 18, 1993) *

ISSUE: Is the precedent holding to the effect that a person dissatisfied with the appointment review conducted by the competent authority in charge of personnel matters regarding his or her disqualification or demotion may not initiate an administrative litigation in violation of the Constitution?

RELEVANT LAWS:

Articles 16 and 18 of the Constitution (憲法第十六條、第十八條) .

KEYWORDS:

personnel review (人事審查) , administrative litigation (行政訴訟) .**

HOLDING: If persons who wish to serve as civil servants with various government agencies receive a review by the agencies in charge of personnel that determine such persons should not be qualified or should be demoted, this decision materially adversely affects the constitutional guarantees of serving in the government. If these persons undergo a

解釋文：各機關擬任之公務人員，經人事主管機關任用審查，認為不合格或降低原擬任之官等者，於其憲法所保障服公職之權利有重大影響，如經依法定程序申請復審，對復審決定仍有不服時，自得依法提起訴願或行政訴訟，以謀求救濟。行政法院五十九年度判字第四〇〇號判例，與上開意旨不符部分，應不再援用。

* Translated by Lawrence S. Liu.

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

legal procedure for reconsideration and still challenge the same determination of the reconsideration proceedings, they surely may seek administrative appeal or litigation as a redress under the law. To the extent Judicial Precedent 59-Pan-400 is inconsistent with the above-cited view, it shall cease to be applied.

REASONING: Whether a civil servant receiving an administrative sanction may bring an administrative litigation depends on the nature of the sanction. If it is one that is sufficient to change his or her status as a civil servant, or one that constitutes a material disciplinary sanction of a civil servant, then the civil servant subject to such a sanction may seek relief with the competent judicial authorities. This position is clear from our previous Interpretations Nos. 187, 201, 243, 266, 298 and 312. If persons who wish to serve as civil servants with various government agencies receive a review by the agencies in charge of personnel that determine that such persons should not be qualified or should be demoted, this decision materially adversely affects the constitutional

解釋理由書：因公務員身分受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有重大影響之懲戒處分，受處分之公務員並得向該管司法機關聲明不服，業經本院釋字第一八七號、第二〇一號、第二四三號、第二六六號、第二九八號及第三一二號解釋分別釋示在案。各機關擬任之公務人員，經人事主管機關任用審查，認為不合格或降低原擬任之官等者，於其憲法所保障服公職之權利有重大影響，如經依法定程序申請復審，對復審決定仍有不服時，自得依法提起訴願或行政訴訟，以謀求救濟。行政法院五十九年度判字第四〇〇號判例：「人事主管機關對於公務員任用資格所為之審定及任用之准駁，非官署對人民之行政處分可比，公務員對之如有不服，自可向其本機關長官轉請復

guarantees of serving in the government. If these persons undergo a legal procedure for reconsideration and still challenge the same determination of the reconsideration proceedings, they surely may seek administrative appeal or litigation as a redress under the law. Judicial Precedent 59-Pan-400 holds that: “a determination of the qualifications of a would-be civil servant and a decision to hire or not to hire a civil servant by the agencies in charge of personnel are not administrative sanctions by a government agency against private citizens. If a civil servant disagrees with such a decision, other than seek a reconsideration from a more senior official in his or her agency, he or she may not seek administrative appeal.” To the extent this Judicial Precedent is inconsistent with our above-cited view, it shall cease to be applied.

As to that part of the petitioner’s application that arises from Article 10, Paragraph 5 of the Enforcement Rules of the Act Governing the Replacement Test of the Reserve Military Personnel for Civil Positions, we do not review it because it

審外，不得對之提起訴願」，與上開意旨不符部分，應不再援用。

至本件聲請人就有關後備軍人轉任公職考試比敘條例施行細則第十條第五項部分，未經確定終局裁判，核與規定不合，應不受理，併此說明。

has not received a final and nonappealable judgment and, therefore, does not comply with rules governing our review.