

J. Y. Interpretation No.114 (July 6, 1966) *

ISSUE: Shall the reinstatement of a civil servant's former office upon expiration of the disciplinary suspension period be excluded from application to the one whose duty has been suspended before the passing of a resolution of discipline?

RELEVANT LAWS:

Article 4, Paragraph 2 of the Public Functionaries Discipline Act (公務員懲戒法第四條第二項) .

KEYWORDS:

reinstatement (復職) , suspension of duty (停止職務) , passing of a resolution to discipline (懲戒處分議決) .**

HOLDING: The reinstatement of a disciplined public servant when his or her suspension period has expired, as prescribed by Article 4, Paragraph 2 of the Public Functionaries Discipline Act, does not exclude cases where the person's duty has been suspended before the passing of a resolution to discipline.

REASONING:

解釋文：公務員懲戒法第四條第二項所定休職期滿之復職，不因其在懲戒處分議決前，曾被停止職務，而排除其適用。

解釋理由書：

* Translated by Robert Huai-Ching Tsai.

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ment provided in Article 16, Paragraph 3, of the Public Functionaries Discipline Act is meant to restore the position that was summarily suspended before the passing of a resolution to discipline; while the reinstatement provided in Article 4, Paragraph 2, of the same Act is meant to restore the position upon execution of a suspension order, the nature of the two are somewhat different. Since Article 4, Paragraph 2, of the Public Functionaries Discipline Act expressly provides for reinstatement upon expiration of the suspension, any person who was suspended should not be excluded from the law's application merely because he or she has been suspended before the passing of a resolution to discipline.

Justice Lu Chu Ger filed dissenting opinion.

十六條第三項之復職，係復懲戒處分議決前被停之職，第四條第二項之復職，係於休職處分執行後回復被休之職，二者性質不同。休職期滿，許其復職，既為公務員懲戒法第四條第二項所明定。則凡受休職處分者，自不因其在懲戒處分議決前，曾被停止職務，而排除其適用。

本號解釋諸葛大法官魯提出不同意見書。