

## J. Y. Interpretation No.205 (May 23, 1986) \*

**ISSUE:** Do the terms of the Guidelines for Examinees stating that the assignment of persons who passed the Rank B examination is limited to military officers and the persons who have recently been replaced and resettled and will not be reassigned contradict the Constitution?

### **RELEVANT LAWS:**

Articles 3 and 4 of the Act Governing the Replacement and Resettlement of Veterans (國軍退除役官兵就業安置辦法第三條及第四條) ; Article 15 of the Examination Act (考試法第十五條) ; Article 2 of the Regulation Governing the Assignment of Persons Passing the Civil Tests (考試及格人員分發辦法第二條) ; Article 9 of the Regulation Governing the 1983 Specific Examination for the Replacement of Veterans as Public Functionaries (七十二年特種考試退除役軍人轉任公務人員考試規則第九條) .

### **KEYWORDS:**

Equal rights of the people (人民平等權) , right to take examinations (應考試權) , right to assume public service (服公職權) .\*\*

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\* Translated by Ching P. Shih.

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

**HOLDING:** The 1983 Specific Examination for the Replacement of Veterans as Public Functionaries is designed for a specific purpose in fact. Its specific purpose is the orderly replacement and resettlement of veterans. The terms of the Guidelines for Examinees stating that the assignment of persons who passed the rank B examination is limited to military officers and the persons who have recently been replaced and resettled and will not be reassigned are promulgated by the competent authority based on legislations relating to the assistance of the replacement and resettlement of veterans. The purposes of these terms are to allow the persons passing the examination to obtain employment or acquire qualifications for assuming public service, respectively, in accordance with the original plan of assumption. These terms do not contradict provisions relating to the protection of the equal rights of the people and the right to take examinations and hold public offices under the Constitution. Although it is not proper that the examinees of the rank B examination mentioned above include military sergeants while the assignment of

**解釋文：**七十二年特種考試退除役軍人轉任公務人員考試，原係因應事實上之特殊需要，有其依序安置退除役官兵就業之特定目的。其應考須知內所載乙等考試及格人員之分發以軍官為限，前經安置就業之現職人員不予重新分發之規定，係主管機關依有關輔導退除役官兵就業法令而為，旨在使考試及格者依原定任用計畫分別得以就業或取得任用資格，與憲法保障人民平等權及應考試服公職之權之規定尚無牴觸。至該項考試中乙等考試之應考人，既包括士官在內，而分發則以軍官為限，不以考試成績之順序為原則，雖未盡妥洽，亦不生牴觸憲法問題。

persons who pass the examination is exclusive to military officers, there is no question of any contradiction of the Constitution.

**REASONING:** Article 7 of the Constitution clearly states that the people of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law. The right to take examinations and hold public offices prescribed in Article 18 of the Constitution shall also be deemed equal. However, the so-called equality mentioned here means substantial equality. In respect to related matters, a restriction was properly imposed under law for the needs in fact and the purposes of taking examinations, and there should definitely be no contradiction in the above principle of equality.

According to Article 12 of the Veterans Assistance Act, the Specific Examination for the Replacement of Veterans as Public Functionaries is designed for veterans to acquire the qualifications to hold public offices. The assignment for deter-

**解釋理由書：**按中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等，為憲法第七條所明定。其依同法第十八條應考試服公職之權，在法律上自亦應一律平等。惟此所謂平等，係指實質上之平等而言，其為因應事實上之需要，及舉辦考試之目的，就有關事項，依法酌為適當之限制，要難謂與上述平等原則有何違背。

特種考試退除役軍人轉任公務人員考試，依國軍退除役官兵輔導條例第十二條規定，在使退除役官兵取得擔任公職之資格，其須分發任用者，則依當時適用之考試法第十五條規定，應與任用計畫相配合，由行政院國軍退除役官

mining the veterans who need to be so designated shall be carried out by the Veterans Affairs Commission under Article 15 of the then-applicable Examination Act and coordinated with the plan of assumption. Therefore, Article 9 of the Regulation Governing the 1983 Specific Examination for the Replacement of Veterans as Public Functionaries states: The assignment for the persons who passed this examination shall be carried out by the Central Personnel Administration and together with the Veterans Affairs Commission under the Regulation Governing the Assignment of Persons Passing the Civil Tests and other regulations regarding the assistance for those obtaining employment. As regards the persons who passed the specific examination, Article 2 of the Regulation Governing the Assignment of Persons Passing the Civil Tests restricts the assignment to "those who needed to be so designated." The so-called related provisions of the assistance for those obtaining employment should include the related provisions of Article 2, Paragraph 2, of the Enforcement Rules of the Veterans Assistance Act and Articles 3 and 4 of

兵輔導委員會（以下簡稱輔導會）依其職掌辦理。故七十二年特種考試退除役軍人轉任公務人員考試規則第九條規定：本考試及格人員之分發，由行政院人事行政局會同輔導會，依考試及格人員分發辦法及有關輔導就業之規定辦理。其中考試及格人員分發辦法第二條對於公務人員特種考試及格人員即以「需要分發任用」者為限。至其所謂有關輔導就業之規定，則包括國軍退除役官兵輔導條例施行細則第二條第二項及國軍退除役官兵就業安置辦法第三條、第四條等有關規定在內。依其規定，輔導會為適應國軍待退員額之需求，配合安置能量，得視實際情形，訂定安置順序。是輔導會本此職權，洽請舉辦此次特種考試，原係因應事實上之特殊需要，有其依序安置退除役官兵就業之特定目的。其應考須知內所載乙等考試及格人員之分發，以軍官為限，前經安置就業之現職人員不予重新分發之規定，係主管機關依有關輔導退除役官兵就業法令而為，旨在使此次考試及格之退除役官兵，在原任用計畫範圍內者得以分發就業；其不在原任用計畫範圍內者亦取得擔任公職之任用資格，遇機得以任用或升遷，依首開說明，與憲法保障人民平等權及應考試服公職之權之規定尚

the Act Governing the Replacement and Resettlement of Veterans. According to their provisions, to accommodate the need for stand-by discharging military personnel and to coordinate with the capacity of replacement and resettlement, the Veterans Affairs Commission may consider the actual situations by setting up an order for replacement and resettlement. Thus, based on its duty, the Veterans Affairs Commission's asking to hold this specific examination is for specific needs in fact and has as a special purpose the orderly replacement and resettlement of veterans assuming employment. The terms of the Guidelines for Examinees stating that the assignment of persons who pass the rank B examination is limited to military officers and the persons who have currently been replaced and resettled and will not be reassigned are promulgated by the competent authority based on legislations relating to the assistance in the replacement and resettlement of veterans. The purposes of these terms are to render the veterans passing this examination designated for employment within the scope of the original plan of assumption. Those who

無抵觸。

obtain qualifications for assuming public service outside the scope of the original plan of assumption may, if willing to wait for opportunities, be retained or promoted. According to the statements made above, these terms do not contradict provisions relating to the protection of the equal rights of the people and the right to take examinations and hold public offices under the Constitution.

Although it is not proper that the examinees of the rank B examination mentioned above include military sergeants while the assignment of persons who pass the examination is exclusive to military officers and is not on the basis of the order of the test results, there is no question of a contradiction of the Constitution incurred.

至該項考試中乙等考試之應考人，既包括士官在內，而分發則以軍官為限，不以考試成績之順序為原則，雖未盡妥洽，亦不生牴觸憲法問題。