

SALVADOR, ORLANDO R.

Re: Pre-retirement Promotion;
Computation of Retirement Benefits

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RESOLUTION No. 992353

Orlando R. Salvador, Assistant Regional Director, Bureau of Internal Revenue, revenue region No. 3 (BIR - 3), Tuguegarao, Cagayan seeks a clarification of the CSC-DBM Circular No. 3 series of 1991 concerning unauthorized pre-retirement promotions.

Pertinent portions of his letter dated July 15, 1999, reads as follows:

"I reported to duty as Asst. Regional Director (Director I) of Revenue Region No. 3, Tuguegarao, Cagayan on August 11, 1997 in compliance with Revenue Travel Assignment Order No. 50-98 dated July 16, 1998 of the Commission of Internal Revenue, x x x; that on August 31, 1998, the Commission of Internal Revenue issued his recommendation to Pres. Joseph Estrada for my appointment together with the others (Regional Directors and Asst. Regional Directors) with the approval of the Secretary of Finance; that after the processing of my papers the President on November 26, 1998 issued my promotional appointment as Asst. Regional Director x x x; that on April 25, 1999 I reached the compulsory retirement age of 65 years and upon my prior request the Civil Service Commission extended my term as Asst. Regional Director under CSC Resolution No. 990322 dated February 1, 1999 for a period of six (6) months from April 27, 1999 to October 26, 1999 x x x.

"Considering that the undersigned reported as Asst. Director on August 11, 1997 in compliance with Revenue Travel Order No. 50-98 dated July 16, 1997, I believe it is eight

(8) months prior to my compulsory retirement dated April 26, 1999. I have been discharging the functions of Asst. Director immediately even before my papers were submitted to the Office of the President on September 2, 1998. Clearly, I have occupied the position of Asst. Director and assumed office way back the 6-month prohibitive period, prior to my retirement. The documents relative to my promotional appointment were submitted to the Office of the President before the 6-month prohibitive period. (It might be worth mentioning also that I have been discharging the functions of Actg. Asst. Director by virtue of Revenue Travel Assignment Order No. 8-98 dated July 16, 1998 and to which I assumed office thereat on February 5, 1998, photocopy hereto attached as Annex "F" and "G"."

CSC-DBM Circular No. 3, series of 1991, which prescribes the guidelines for Pre-retirement promotions provides:

X X X

"4.2 Unauthorized pre-retirement promotions and salary increases as contemplated in this Circular shall include the following cases:

4.2.1 Promotion with increase in salary during the 6-month period immediately preceding the date of retirement of an official or employee under the mandatory mode."

X X X

It cannot be denied that the actual period of Salvador's service to the government as an Assistant Director of Revenue District No. III in Tuguegarao, Cagayan, started at the moment when he discharged the functions of such office which began at the time he reported for work, although in an acting capacity, i.e., on August 11, 1997 in compliance with the Bureau's Revenue Travel Assignment Order No. 50-98 dated July 16, 1998. Clearly, Salvador has been discharging the duties of his office as an Assistant

Regional Director long before reaching his compulsory retirement age of 65, i.e., on April 25, 1999, and even prior to the processing of his promotional appointment papers which was eventually signed by the President and was referred to the Commissioner of the BIR on November 26, 1998.

It would be grossly inequitable to deny Salvador of the benefit of the promotion he rightfully deserved and it would be in effect, to ignore the fact of Salvador's actual period of service to the government as an Assistant Regional Director. This would also be violative of the spirit of the government retirement laws. As the Supreme Court in *GSIS vs. Civil Service Commission* (245 SCRA 179) ruled:

"Retirement benefits given to government employees in effect reward them for giving the best years of their lives to the service of their country. This is specially true with those in government service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be spent more profitably in lucrative appointments in the private sector. In exchange for their selfless dedication to government service, they enjoy security of tenure and are ensured of a reasonable amount of support after they leave the government. The basis for the provision of retirement benefits is, therefore, service to government."

Under the peculiar circumstances of the present controversy, the demand for equity prompts this Commission to regard spirit not letter, and intent, not form, in according substantial justice. Thus, in CSC Resolution No. 95-3557 dated June 13, 1995 (Cited in Delano M. Valera, CSC Resolution No. 991404 dated July 1, 1991), the Commission ruled:

"After an evaluation of the records, this Commission finds that Carmen Francisco is qualified for the position of Clerk IV ²¹ The promotion was processed outside the six-month period before the retirement. Hence, the promotional appointment of Francisco does not fall within the prohibition of CSC-DBM Joint Circular No. 3, series of 1991."

WHEREFORE, the Commission hereby rules and so holds that the promotion of Orlando R. Salvador as BIR Assistant Regional Director. (Director I) was in order and he is entitled to his retirement benefits

appurtenant to said position.

Quezon City, OCT 14, 1999

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III