



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

LEGAL OPINION NO. N-C-2001-01

SUBJECT : National Government Compensation

ISSUE : Whether or not an employee who was found guilty and was meted a penalty of suspension without pay in FY 2000 is entitled to receive the full amount of year-end bonus and cash gift during the year the decision was handed down.

FACTS : The query at bar involves an employee of the Commission on Human Rights (CHR) who was found guilty of simple misconduct and violation of reasonable office rules and regulations in FY 2000 and was meted a penalty of suspension-without-pay for fifteen (15) days in the year 2000 and who was later on directed to refund the full amount of his combined year-end bonus and cash gift. As represented, however, due to humanitarian reasons, considering that the concerned employee is a mechanic, he was allowed to refund the full amount through salary deduction.

Items 2.1 and 2.2 of Budget Circular (BC) No. 15 dated March 15, 1998, provide:

"2.1 A compensation policy is hereby declared that regular additional benefits such as Personnel Economic Relief Allowance (PERA), Additional Compensation (ADCOM) and Year-end Benefits (YEB) shall be paid only when basic pay is also paid.

2.2 In accordance with this policy, government personnel who are under preventive suspension or have been meted suspension without pay (basic salaries and wages) shall not likewise be paid additional benefits corresponding to their positions for the duration of their suspension. Otherwise presented, government personnel who are not paid their basic pay shall not likewise be paid their additional benefits."

personnel who are not paid their basic pay shall not likewise be paid their additional benefits."

OPINION : The subject employee who was found guilty and was meted a penalty of suspension without pay in FY 2000 is not entitled to receive the full amount of year-end bonus and cash gift during the year the decision was handed down.

Items 3.2 and 3.2.1 of BC No. 15 provide the rules on disqualification from the grant of year-end benefits, to wit:

"3.2 For 1997 onwards, government personnel who were preventively suspended during the year shall be entitled to YEB. Only those who were found guilty shall not be entitled to YEB in the year the decision was handed down. x x x

3.2.1 In this regard, if the penalty meted out is only reprimand, such penalty is not one that can be made the basis of disqualification to receive the YEB."

It should be noted that Items 2.1 and 2.2 of BC No. 15 contain the Compensation Policy Statement, a formal declaration of policy and is short of a preamble which sets the tone of the Circular and may be used with extreme caution to aid in the construction thereof only if the body of the Circular is ambiguous. On the other hand, the specific rules and regulations provided in Item 3 and sub-paragraphs thereof, BC No. 15, are controlling insofar as the substantive implementation of the same BC is concerned. Accordingly, inasmuch as the rules and regulations in BC No. 15 are clear and unambiguous, there is no necessity in resorting to the construction of the policy statement thereof.

Consequently, since it is expressly provided in Items 3.2 and 3.2.1 of BC No. 15 that for FYs 1997 onwards, those found guilty shall not be entitled to YEB in the year the decision was handed down with only one qualification that penalty of reprimand will not disqualify the convicted employee therefrom, the employee in the case at bar is covered by the disqualification. Further, such rule in BC No. 15 is strengthened in BC No. 2000-18 dated 06 September 2000 (covering the guidelines in the grant

2000-18 dated 06 September 2000 (covering the guidelines in the grant of YEB and advanced payment of 1/2 thereof for FY 2000 and years thereafter), which provides, among others, to wit:

"3.0 Exemptions

All government personnel under the following instances as of October 31 of each year shall not be entitled to the benefits authorized herein:

x x x

3.4 Those who are formally charged administrative cases as well as criminal cases which relate to acts or omissions in connection with their official duties and functions AND found guilty and/or meted penalties shall not be entitled to the benefits authorized herein in the year the decision was handed down.


3.4.2 In this regard, if the penalty meted out is only a reprimand, such penalty is not the one that can be made the basis of disqualification to receive the said benefits."

REFERENCE: Letter dated 27 April 2001 to Hon. Aurora P. Navarette-Recina, Chairperson, Commission on Human Rights

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary