

Twice Punishment for the Same Disciplinary Offence*

Supreme Administrative Court Judgment No. A. 7/2557, dated 31st January B.E. 2557 (2014)

Flight Sergeant First Class., Eak Peumphon (P) v. Chief Executive of the Bangplakod Subdistrict Administrative Organization (D1), and Committee on Subdistrict Administrative Organization Officer, Nakhon Nayok Province (D2)

According to the general principle of law “*Non Bis in Idem*”, no one shall be twice punished for the same offence regardless of criminal, administrative, or disciplinary punishment. The punishment instituting twice for the same offence is the restriction on explicit or implied constitutional rights and liberties of individuals more than necessary to maintain the public interest and against Section 29 of Constitution of the Kingdom of Thailand B.E. 2550 (2007). Any legal action instituting the twice punishment is against the general principle of law and the Constitution.

Legal Principles : *The Revocation of an Unlawful Administrative Order*

General Principle of Law (Non Bis in Idem)

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative*

Court Procedure B.E. 2542 : Section 9 Paragraph 1 (1)

Legal Provisions : *Constitution of the Kingdom of Thailand B.E. 2550 (2007) : Section 29*

Organic Act on Counter Corruption, B.E. 2542 (1999) : Sections 91, 92 paragraph one, and 93

Civil Service Act, B.E. 2535 (1992) : Section 82 paragraph three and Section 85 paragraph two

Administrative Procedure Act, B.E. 2539 (1996) : Chapter 2 Part 6

Royal Decree on Subdistrict Administrative Organization Officer, B.E. 2539 (1996) : Sections 4 and 6

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Judgment (Summary)

The Plaintiff filed a case to the Administrative Court that the Chairman of Executive Committee of Cha-Om Subdistrict Administrative Organization (SAO) issued an order dated 18th June B.E. 2546 (2003) for 5% deduction of the Plaintiff's salary since the Plaintiff, the Chief Administrator of the Bangplakod SAO (General Administrative Officer, Level 4) Nakhon Nayok Province, neglected his duty on inspecting 4 construction projects while being appointed as the President of Committee on Procurement Construction Inspection. The Plaintiff had already served the punishment. When the Plaintiff was the Chief Administrator of the Bangplakod SAO (SAO Executive Officer, Level 6), Nakhon Nayok Province, the Defendant No.1 issued an order dated 16th November B.E. 2550 (2007), according to the resolution of the Defendant No.2 and charge of the National Anti-Corruption Commission, to dismiss the Plaintiff from the office for the offences of malfeasance in official duty and intentional violation of laws and regulations resulting in severe detriment to State while being appointed as the President of Committee on Procurement Construction Inspection. The latter punishment order was issued on the same offence of the former punishment order that the Plaintiff had already served the punishment – 5% salary deduction. The Plaintiff then filed an appeal against the order to the Defendant No. 2, but the appeal was dismissed. The Plaintiff requested the Court to revoke the order dated 16th November B.E. 2550 (2007) and the resolution on the Plaintiff's appeal dismissal.

The Supreme Administrative Court held that under the general principle of law “*Non Bis in Idem*” no one shall be twice punished for the same offence regardless of criminal, administrative, or disciplinary punishment. Moreover, such punishment restricts rights and liberties in life, body, or property of an offender. The punishment instituting twice for the same offence is the restriction on explicit or implied constitutional rights and liberties of an individual more than necessary to maintain the public interest, and is against Section 29 of Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Chairman of Executive Committee of the Cha-Om SAO decided that, under the advice of Commission of Discipline Inquiry, the Plaintiff's offence in neglecting his duty on inspecting the construction projects while being appointed as the President of Committee on Procurement Construction Inspection was non-gross breach of discipline, and issued the order dated 18th June B.E. 2546 (2003) for 5% deduction of the Plaintiff's salary from June to August B.E. 2546 (2003). Later, the Defendant No.1 determined that, subject to the resolution of the Defendant No.2 in the meeting on 26th October B.E. 2550 (2007) and charge of the National Anti-Corruption Commission, the action of the Plaintiff in neglecting his duty on inspecting the construction projects while being appointed as

the President of Committee on Procurement Construction Inspection caused gross damage to State and was gross breach of discipline. The Defendant No.1 issued an order dated 16th November B.E. 2550 (2007) to dismiss the Plaintiff from the office since 16th November B.E. 2550 (2007) in the offence of corruption and malfeasance in official duty, the offence of unlawful or malfeasant performance or omission of official duty to acquiring undue benefits for his own or for other persons, and the offence of intentional violation of laws and regulations, the cabinet's resolutions and government policy resulting in severe detriment to State pursuant to Section 82 paragraph three, Section 85 paragraph two of Civil Service Act B.E. 2535 (1992) and with Sections 4 and 6 of Royal Decree on Subdistrict Administrative Organization Officer, B.E. 2539 (1996). The order dated 16th November B.E. 2550 of the Defendant No.1 instituted twice punishment for the same disciplinary offence as found in the order of Cha-Om SAO dated 18th June B.E. 2546 (2003), and was against the general principle of law and constitutional provisions. In addition, the general principle of law "Non Bis in Idem" is not exempted or revoked by Sections 91, 92 paragraph one and 93 of Organic Act on Counter Corruption, B.E. 2542 (1999); Section 29 paragraph one of Constitution of the Kingdom of Thailand B.E. 2550 (2007) prohibits the restriction on rights and liberties more than necessary to maintain the public interest. Furthermore, under Chapter 2 Part 6 of Administrative Procedure Act, B.E. 2539 (1996) the Defendant No.1 was empowered to revoke the order of Cha-Om SAO dated 18th June B.E. 2546 (2003) with the retroactivity since the date of the issuance to annul the disciplinary punishment of the previous order of Cha-Om SAO, 5% deduction of Plaintiff's salary from June to August B.E. 2546 (2003), before issuing the order dated 16th November B.E. 2550 (2007) to dismiss the Plaintiff from the office. Therefore, the order of Defendant No.1 instituted twice punishment for the same disciplinary offence to the Plaintiff, and is against the general principle of law "Non Bis in Idem" and the Constitution.
