



OM No. 27 s, 2008

**OFFICE MEMORANDUM**

**TO : ALL HEADS OF CENTRAL, REGIONAL AND FIELD OFFICES**

**SUBJECT : Guidelines on Processing of Appointments to Positions Above Division Chief Level Performing Executive and Managerial Functions**

For years, the Commission has promulgated several policies and issuances identifying positions in the Career Service above Division Chief Level performing executive and managerial functions as belonging to the Third Level covered by the Career Executive Service (CES) and those outside the CES, thus, requiring third level eligibility for purposes of permanent appointment and security of tenure.

However, the issue as to whether a particular position belongs to the Third level has been settled by jurisprudence enshrined in *Home Insurance and Guaranty Corporation vs. Civil Service Commission, G.R. No. 95450 dated March 19, 1993* and *Office of the Ombudsman (OMB) vs. Civil Service Commission, G.R. No. 162215 dated July 30, 2007*, where the Honorable Supreme Court ruled citing the provision of *Section 7 (3), Chapter 2, Title I-A, Book V of Administrative Code of 1987*, that the Third Level shall cover positions in the Career Executive Service (CES). Positions in the Career Executive Service consists of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board (CESB), all of whom are appointed by the President. To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either in: (1) vesting the appointing power for non-CES positions in the President, in violation of the Constitution; or, (2) including in the CES a position not held by presidential appointee, contrary to the Administrative Code.

Notwithstanding the pronouncement of the Supreme Court, CSC Office Memorandum (OM) No. 6, series of 2008 was issued on January 14, 2008, directing all Regional and Field Offices to approve the appointments of Directors II in the Office of the Ombudsman (OMB) who possess, a "*Career Service Professional/Relevant Eligibility for Second Level Position*", which in effect, restricted the application of the said ruling only to the OMB and not to other government agencies or constitutional offices.

While the above-cited rulings of the Supreme Court refer to particular positions in the OMB and HIGC, it is clear, however, that the intention was to make the doctrine

enunciated therein applicable to similar and comparable positions in the bureaucracy. To reiterate, the third level covers only the positions in the CES as enumerated in the Administrative Code of 1987 and those identified by the CESB as of equivalent rank, all of whom are appointed by the President of the Philippines. Consequently, the doctrine enshrined in these Supreme Court decisions has *ipso facto* nullified all resolutions, qualification standards, pronouncements and/or issuances of the Commission insofar as the requirement of third level eligibility to non-CES positions is concerned.

In view thereof, OM No. 6, series of 2008 and all other issuances of the Commission inconsistent with the afore-stated law and jurisprudence are likewise deemed repealed, superseded and abandoned. Accordingly, CSC Central, Regional and Field Offices are hereby directed to approve appointments to non-CES positions in any agency or department even without third level eligibility, subject to the applicable Civil Service Law, rules and regulations.

For strict compliance.

  
CESAR D. BUENAFLOR  
Acting Chairman

April 9, 2008  
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