

**KIERULF, RONALD T.**

Re: Conduct Grossly Prejudicial to the Best Interest of the Service;  
Motion for Reconsideration (CSC Resolution No.990114)

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**RESOLUTION NO. 991137**

Atty. Ronald T. Kierulf, BIR Revenue Region No. 1, Pangasinan, moves for the reconsideration of CSC Resolution No. 990114 dated January 12, 1999.

Pertinent portions of said Resolution read, as follows:

*"It is, therefore, clear, that the finding of conspiracy by the BIR between Attornyes Kierfulf and Monteclaro is not supported by the evidence on record. Atty. Monteclaro's acts were his alone and no factual basis exists to find Kierfulf similarly guilty of the offenses with which Monteclaro was found guilty of by the BIR.*

*"However, the Commission finds that Atty. Kierulf's conduct is not tatally commendable. Although initially, he had no knowledge that he and Monteclaro would be meeting with Geston and her lawyer, it is to be noted that he continued to be in their presence all throughout their questioned meeting. Such actuation denotes lack of good faith in his dealings with respect to such administrative case being handled by him as a BIR lawyer, and thereby makes him liable for Conduct Grossly Prejudicial to the Best Interest of the Service.*

*"WHEREFORE, the Appeal of Atty. Ronald T. Kierulf is hereby dismissed. The Commission finds him guilty only of Conduct Grossly Prejudicial to the Best Interest of the Service and imposes upon him the penalty of Suspension for one (1) year. Considering that he has been out of the service for more than a year, his reinstatement to his former position or to a substantially equivalent position in the BIR, it hereby ordered, without back*

salaries. The decision of then BIR Commissioner Vinzons-Chato is, thus, modified accordingly."

The material averments of Kierulf in his motion are, as follows:

*"The resolution of the Honorable Commission did not categorically state its legal position and opinion on the legality of the indefinite suspension of appellant as raised in the foruth issued of the appeal memorandum. It is on this basis that appellant moves for the reconsideration of the commission's decision not to award back salaries to appellant. Appellant believes that after the end of the ninety-day preventive suspension allowed under the Administrative Code of 1987, his continued suspension from the service became illegal up to the time the appeal of appellant to the Civil Service Commission (commission for brevity) was perfected on January 14, 1998. It was only after January 14, 1998 that the decision of the BIR Commissioner could be legally executed pending appeal. Hence, from February 8, 1996 when appellant reported for duty up to the time he perfected his appeal with the commission on January 14, 1998. Appellant should have been paid his back salaries. Appellant's continued suspension for the said period by reason of the arbitrary denial, by then Commissioner Chato, to lift the suspension order was a patent violation of the law."*

The issue to be resolved in the instant motion is whether or not back salaries should be awarded to Kierulf from the time his 90-day preventive suspension from the BIR has lapsed up to the time that the decision of then BIR Commissioner Chato finding Kierulf guilty of Dishonesty and Grave Misconduct became final and executory.

Records show that on November 6, 1995, Kierulf (together with co-respondent Monteclaro) was formally charged with Grave Misconduct and Dishonesty before the BIR. On the same day, he was issued a preventive suspension order by then BIR Commissioner Liwayway Vinzons-Chato in connection with the said offenses. On February 16, 1996, Kierulf wrote a leter to Commissioner Chato after the lapse of the 90-day preventive suspension, requesting for the formal lifting thereof. He, however, did not receive any

order from the BIR lifting his suspension from office.

Kierulf maintains that he should be awarded back salaries considering that from the time his preventive suspension has lapsed and there was no order for the lifting thereof, the BIR has unlawfully withheld his salaries.

After a careful evaluation of the records and the arguments presented, the Commission finds the instant motion for reconsideration without merit.

Squarely applicable is Section 27, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, which provides, as follows:

*"When the administrative case against a non-presidential officer or employee under preventive suspension is not finally decided by the disciplining authority within the period on ninety (90) days after the date of his preventive suspension, he shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar day period of preventive suspension."*  
(Emphasis supplied)

It is, therefore, clear that upon the expiration of the 90-day period of preventive suspension, a suspended employee is automatically reinstated to his office without the need of an order lifting such preventive suspension. The failure of the BIR to issue an order lifting the suspension of Kierulf should not have prevented him from assuming the duties of his office. His neglect to return to work, immediately after the 90-day period of suspension has expired, cannot be construed in his favor, so as to entitle him to back salaries corresponding to such period that he has not performed any functions relative to his position as Attorney IV. The Commission cannot give credence to Kierulf's self-serving allegation that he did report for duty on February 8, 1998, considering that the same is not substantiated by more concrete proof that he indeed reported for duty but was prevented from performing the functions of his office through no fault of his own. This is in line with the ruling of the Commission in the case of **GONZALES, Jesus R. (CSC**

**Resolution No. 983021 dated November 19, 1998)** which provides, as follows:

*"The evidence on record submitted by Gonzales failed to establish that he indeed reported for work within period stated x x x. His allegation that he was 'barred from entering his place of work' when he purportedly tried to report for work, deserves scant consideration , considering that no other evidence was submitted to corroborate such statement. As such, the Commission finds no sufficient basis to modify or set aside the Resolution sought to be reconsidered."(Emphasis supplied)*

Since nowhere in the records does it appear that Kierulf went back Work and performed the duties of his office upon the lapse of his 90-day period of preventive suspension, the Commission finds no reason to award him back salaries corresponding to such period.

WHEREFORE, the instant motion for reconsideration of Atty Ronald T. Kierulf of the Bureau of Internal Revenue (BIR) Revenue Region No. I, Pangasinan, is hereby denied. Accordingly, CSC Resolution No. 990114 dated January 12, 1999, stands.

` Quezon City.

**CORAZON ALMA G. DE LEON**  
Chairman

**THELMA P. GAMINDE**  
Commissioner

**JOSE F. ERESTAIN, JR**  
Commissioner

Attested by:

**ARIEL G. RONQUILLO**  
Director III

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