Supreme Court E-Library

G.R. Nos. L-38969-70, February 9, 1989, 170 SCRA 107. Notwithstanding Our previous finding that the aggravating circumstance of band is not present in this case, the proper penalty is *still reclusion perpetua*.

ACCORDINGLY, the decision appealed from is hereby AFFIRMED, subject to the MODIFICATION that the trial court's appreciation of the aggravating circumstance of band is deleted and the civil indemnity for the death of the victim is increased to ₱50,000.00.

SO ORDERED.

Narvasa (Chairman), Cruz, and *Griño-Aquino, JJ*., concur.

SECOND DIVISION

[G.R. No. 96016. October 17, 1991]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE COURT OF APPEALS and EFREN P. CASTAÑEDA,** *respondents.*

SYLLABUS

TAXATION; WITHHOLDING TAX; TERMINAL LEAVE PAY, NOT SUBJECT THEREIN. — The Court has already ruled that the terminal leave pay received by a government official or employee is not subject to withholding (income) tax. In the recent case of *Jesus N. Borromeo vs. The Hon. Civil Service Commission, et al.*, G.R. No. 96032, 31 July 1991, the Court explained the *rationale* behind the employee's entitlement to an exemption from withholding (income) tax on his terminal leave pay as follows: x x x commutation of leave credits, more commonly known as terminal leave, is applied for by an officer or employee who retires, resigns or is separated from the service through

Supreme Court E-Library

> no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrimpy. A modest nest egg which the senior citizen may look forward to is thus avoided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits."

APPEARANCES OF COUNSEL

Leovigildo Monasterial for private respondent.

R E S O L U T I O N

PADILLA, *J.*:

The issue to be resolved in this petition for review on *certiorari* is whether or not terminal leave pay received by a government official or employee on the occasion of his compulsory retirement from the government service is subject to withholding (income) tax.

We resolve the issue in the negative.

Private respondent Efren P. Castañeda retired from the government service as Revenue Attache in the Philippine Embassy in London, England, on 10 December 1982 under the provisions of Section 12 (c) of Commonwealth Act 186, as amended. Upon retirement, he received, among other benefits, terminal leave pay from which petitioner Commissioner of Internal Revenue withheld ₱12,557.13 allegedly representing income tax thereon.

Castañeda filed a formal written claim with petitioner for a refund of the ₱12,557.13, contending that the cash equivalent of his terminal leave is exempt from income tax. To comply with the two-year prescriptive period within which claims for refund may be filed, Castañeda filed on 16 July 1984 with the

Supreme Court E-Library

Court of Tax Appeals a Petition for Review, seeking the refund of income tax withheld from his terminal leave pay.

The Court of Tax Appeals found for private respondent Castañeda and ordered the Commissioner of Internal Revenue to refund Castañeda the sum of ₱12,557.13 withheld as income tax. (Annex "C", petition).

Petitioner appealed the above-mentioned Court of Tax Appeals decision to this Court, which was docketed as G.R. No. 80320. In turn, we referred the case to the Court of Appeals for resolution. The case was docketed in the Court of Appeals as CA-G.R. SP No. 20482.

On 26 September 1990, the Court of Appeals dismissed the petition for review and affirmed the decision of the Court of Tax Appeals. Hence, the present recourse by the Commissioner of Internal Revenue.

The Solicitor General, acting on behalf of the Commissioner of Internal Revenue, contends that the terminal leave pay is income derived from employer-employee relationship, citing in support of his stand Section 28 of the National Internal Revenue Code; that as part of the compensation for services rendered, terminal leave pay is actually part of gross income of the recipient. Thus —

"x x x It (terminal leave pay) cannot be viewed as salary for purposes which would reduce it. x x x there can thus be no 'commutation of salary' when a government retiree applies for terminal leave -because he is not receiving it as salary. What he applies for is a 'commutation of leave credits.' It is an accumulation of credits intended for old age or separation from service. x x x."

The Court has already ruled that the terminal leave pay received by a government official or employee is not subject to withholding (income) tax. In the recent case of *Jesus N. Borromeo vs. The Hon. Civil Service Commission, et al.*, G.R. No. 96032, 31 July 1991, the Court explained the *rationale* behind the employee's entitlement to an exemption from withholding (income) tax on his terminal leave pay as follows:

Supreme Court E-Library

"x x x commutation of leave credits, more commonly known as terminal leave, is applied for by an officer or employee who retires, resigns or is separated from the service through no fault of his own. (Manual on Leave Administration Course for Effectiveness published by the Civil Service Commission, pages 16-17). In the exercise of sound personnel policy, the Government encourages unused leaves to be accumulated. The Government recognizes that for most public servants, retirement pay is always less than generous if not meager and scrimpy. A modest nest egg which the senior citizen may look forward to is thus avoided. Terminal leave payments are given not only at the same time but also for the same policy considerations governing retirement benefits."

In fine, not being part of the gross salary or income of a government official or employee but a retirement benefit, terminal leave pay is not subject to income tax.

ACCORDINGLY, the petition for review is hereby DENIED.

SO ORDERED.

Paras and *Regalado, JJ.*, concur.

Melencio-Herrera, J. (*Chairperson*), on leave.

THIRD DIVISION

[G.R. Nos. 96368-69. October 17, 1991]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERUBIEN Z. NABAYRA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES. — Legitimate self-defense is