

ANTONIO P. TORRES, PETITIONER, VS. OSCAR T. BORJA, ALEJO SANTOS, IN HIS CAPACITY AS ACTING DIRECTOR OF PRISONS, AND THE HONORABLE ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER...*G.R. No. L-31947. March 21, 1974*

Ponente: FERNANDO, J.

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There are constitutional overtones in this certiorari proceeding to set aside the appointment of respondent Oscar T. Borja to the position of penal supervisor of the Bureau of Prisons, the other respondents being Alejo Santos, then Acting Director of Prisons, and Abelardo Subido, the then Commissioner of Civil Service, with the then Secretary of Justice, now National Defense Secretary Juan Ponce Enrile, not being proceeded against. In effect, this is a quo warranto suit, petitioner asserting a right to the contested office, alleging that his failure to be thus chosen amounted to a clear and plain disregard of constitutional requirements, both substantive and procedural. As to the former, he would invoke the merit and fitness principle enshrined in the fundamental law.[1] As to the latter, he would rely on due process in administrative proceedings in accordance with the cardinal requirements as set forth by Justice Laurel in *Ang Tibay vs. Court of Industrial Relations*. [2] It is to the credit of petitioner's counsel, now Solicitor, Reynato S. Puno, that he could press such contention with learning and with vigor. At bottom, however, the question is really the acceptance or repudiation of the choice of a successor to a vacant position. As will be apparent, the matter was studied with care by three high-ranking public functionaries, precisely entrusted with such responsibility. It strains credulity to impute to them a failure to abide by what the Constitution commands as to the test of fitness. After all, even considering that academically petitioner had a more creditable background, respondent Borja had in his favor experience and seniority. It borders on the unorthodox, the service records of both aspirants being known, to cavil at the allegation of a lack of full-blown hearing concerning the choice of a successor to a vacancy. The standard of due process is fairness. What is proscribed by it is arbitrariness.[3] Reliance on the Constitution, whether substantively or procedurally, was thus in vain. The petition must fail.

The facts are not in dispute. As shown in the petition, on July 27, 1969, the position of penal supervisor in the Bureau of Prisons fell vacant. Eight days later, on August 4, 1969, respondent Santos, then its Acting Director, recommended to then Secretary of Justice Ponce Enrile that respondent Borja be the successor. Even before the retirement of the incumbent, however, on April 28, 1969, to be exact, petitioner, then training officer, had already protested the proposed promotion of respondent Borja, with the claim that he was academically better prepared as he had two degrees, Bachelor of Arts and Bachelor of Science and he had five civil service eligibilities. On July 23, 1969, there was a communication of the then Secretary Ponce Enrile to respondent Borja that the objection of petitioner to his proposed promotion as penal supervisor was well taken.[4] There was, however, a second indorsement of August 11, 1969 from respondent Santos to Secretary Ponce Enrile worded thus: "It may be stated in this connection the cases of retired Penal Supervisor Gil Ofina who only finished 2nd grade civil service eligibility, and retired Penal Supervisor Jose Gatmaitan who only finished 2nd Year High School with a 1st grade

civil service eligibility. Moreover, Mr. Magno Castillo, who is only a High School graduate with a 2nd grade civil service eligibility, proposed for promotion as Penal Supervisor, Iwahig Penal Colony, was allowed by that Office, and approved by the Commissioner of Civil Service not earlier than August 7, 1969." [5] On November 28, 1969, Secretary Ponce Enrile gave "due course to the appointment of Mr. Borja to the position of penal supervisor." [6] Its last sentence reads: "The letter of this Department dated July 23, 1969, is set aside accordingly." [7] After setting forth that neither petitioner nor respondent Borja were next in rank to the contested position, the Secretary made clear why it is the latter who should be preferred. Thus: "A review of the records of the case reveals that the Civil Service Commission had in the past approved the appointments of the following to positions of Penal Supervisor: 1. Gil Ofina (retired) — finished only second year high school and a second grade civil service eligible; 2. Jose Gatmaitan (retired) — finished only second year high school and first grade civil service eligible; and, 3. Magno Castillo — a high school graduate and second grade civil service eligible. Mr. Borja is a high school graduate and a second grade and prison guard eligible. The Complaints Committee of the Department of Justice took cognizance of his; outstanding performance as shown in the report of that Bureau. On the basis of the commendations and citations given him and his performance rating of outstanding, it is believed he is fit to perform the duties and responsibilities of penal supervisor." [8] The appointment of respondent Borja was appealed to the Civil Service Commission. [9] The decision of respondent Subido turning down the appeal of petitioner came on January 29, 1970. Why there should be no reversal of the appointment of respondent Borja was therein explained in these words: "Mr. Torres is a Bachelor of Arts and in addition, he is also a Bachelor of Science in Commerce. He is a Supervisor (First Grade) Chief of Police; General Clerical; Cooperative Officer; and Patrolman (City of Manila) eligible. He has been with the Bureau of Prisons since 1951, and has held various positions such as Driver, Prison Guard, Keeper, Supervising Prison Guard and finally as Security Officer I. He attended and completed the following in-service training courses and seminars: Executive Development and Public Administration; Law Enforcement Officer's Course; Special Security Officer's Course; Correctional Administration and Treatment; Supervision Techniques in Correctional Service; Seminar on Custodial Procedures; Seminar on Performance Rating System; Seminar on 'The Role of Law Enforcement Agencies in Crime Prevention and Seminar on the Treatment of Offenders.' He was the recipient of a citation of Merit Award for academic excellency and for leadership. His efficiency rating for the relevant period is very satisfactory. On the other hand, Mr. Borja is a high school graduate and a 3rd class Prison Guard and a second grade eligible. He started to work for the government in 1942 as a 3rd Class Guard in the Bureau of Prisons, then he was promoted to the positions of 2nd Class Guard; 1st Class Guard; Junior Inspector; Overseer; and Security Officer which position he holds to the present. He completed in-service training courses on Supervision Techniques on Correctional Service and on Custodial Procedures. His efficiency rating for the same period is outstanding." [10] There was a motion for reconsideration for petitioner dated March 4, 1970. Thereafter on March 20 of that year, it was denied. Again respondent Subido gave the reason of the absence of any justification for a reversal. Thus: "This refers to the petition filed by Mr. Antonio P. Torres for reconsideration of the action taken by this Office in a 4th Indorsement dated January 29, 1970, approving the appointment of Mr. Oscar T. Borja as Penal Supervisor in the New Bilibid Prison, Bureau of Prisons at P4404 per annum effective August 4, 1969, and ruling his protest without merit. After a careful re-study of the record of the case, this Office finds that petitioner has not submitted any new material evidence that would warrant modification of the action taken by this Office. Wherefore, the instant petition is hereby denied. In this connection, attention is invited to Section 14 of the Civil Service Memorandum Circular No. 13, series of 1963 which states in parts: 'Only one petition for reconsideration shall be entertained.'" [11] Hence this petition for certiorari before this Court.

The bare recital of the undeniable facts demonstrates well-nigh conclusively why this petition for certiorari, as set forth at the outset, is doomed to fail. In the light of the foregoing, it is apparent that the choice of respondent Borja was not contrary to but in accordance with the principle of merit and fitness. Nor do the circumstances disclose

any failure to accord petitioner all the opportunity to be heard on his claim that he was entitled to the promotion sought.

1. The plea that only merit and fitness should be the gauge of promotion in the public service finds support, as noted, in both the 1935 Constitution and the present Charter. That such should be the case is self-evident. It is a truism that a public office is a public trust. The test then should be, after being clear what kind of work is to be done, who can do it best. To that overmastering consideration, all else is subordinate. It cannot be too often stressed that the protection accorded a civil servant, while undoubtedly accruing to his benefit, is intended primarily to assure that with the security of tenure and rational basis for promotion, there is an inducement for individuals of the requisite skill and ability to enter public service. The standard in this specific case then should be who as between the two contenders met such criterion. It was the decision of the three administrative officials entrusted with such responsibility that respondent Borja was entitled to the promotion. It came about with the records of both being carefully scrutinized. The very petition with its annexes is indicative that there was not the slightest favoritism or discrimination shown. Respondent Borja appeared to have both experience and seniority on his side. Moreover, he is possessed of the ability to discharge the task incumbent on a penal supervisor. He had earned the promotion then. What is more, there was no disregard of the constitutional principle of merit and fitness. It may not be inappropriate at this stage to refer to *Orencia vs. Ponce Enrile*.^[12] There, after stressing that the essential requirement for a place in the public service is the possession of the requisite ability and competence, we upheld the right to the disputed position of assistant chief of the clerks of court division of respondent Guillermina M. Gener, a member of the bar, rather than petitioner whose educational attainment was merely that of a high school graduate. It is quite obvious there is no analogy. In that decision the disparity is rather plain, the position being one in which the possession of a legal background would certainly prove more than salutary. It is not so in the case before us where the contest is over who should be penal supervisor. Whatever advantage may inhere in petitioner having finished college work, with respondent Borja merely completing his high school, is more than offset by the latter's seniority of more than nine years and the experience that as his as a junior inspector, overseer and security officer. To repeat, no infringement of the constitutional requirement as to merit and fitness is discernible. The petition must fail.

2. The invocation of procedural due process by petitioner is equally unavailing. This is not to say that under all circumstances, the insistence on the right to be heard should be rejected outright. It is to be remembered that both under the 1935 Constitution and the present Charter, an officer or employee in the Civil Service is not to be suspended or removed except for cause as provided by law.^[13] It follows that for a provision of this character to be truly meaningful, and security of tenure to be really significant, the expected promotion of an employee is not excepted from the operation of the due process guarantee. There is to be no unfairness or arbitrariness. The right to be heard should not be ruled out. *Audi alteram partem*. The acceptance of this doctrine does not however aid petitioner. For if there is anything that is clear from the undisputed facts, it is that he was accorded full hearing. His very petition makes that clear. Included therein were his six-page protest registered as far back as April 28, 1969 to the proposed appointment of respondent Borja;^[14] his seventeen-page appeal to respondent Subido after the appointment made by the then Secretary Ponce Enrile of respondent Borja, dated January 6, 1970 with annexes of its own requiring twelve pages;^[15] his ten-page reply to answer dated February 23, 1970 reiterating his claim that he should be given the contested position;^[16] and lastly, his fourteen-page motion for reconsideration addressed to respondent Subido dated March 4, 1970.^[17] Parenthetically, it may be observed that in all communications, petitioner was understandably far from being unduly modest, stressing the virtues possessed by him. Moreover, again understandably, he was more than just deprecatory as to the fitness of respondent Borja. It would be an affront to reason therefore to hold that under such circumstances, petitioner was not given the hearing prior to the rejection of his claim to the position so fervently sought by him.

3. The constitutional objection thus being shown to be lacking in merit, the question really boils down as to whether, considering the facts on record, this Court should set aside the decision reached after due care and circumspection by the three high-ranking executive officials that respondent Borja rather than petitioner Torres should be the appropriate choice for the position of penal supervisor. The answer is supplied by *Reyes vs. Abeleda*.^[18] There is this relevant excerpt from that decision: "It would seem fairly obvious then that the law does not impose a rigid or mechanistic formula on the appointing power, compliance with which is inexorable and a deviation therefrom fatal. Far from it. If there be adherence to the concept that public office is a public trust, as there ought to be, the criterion should be what public welfare demands, what satisfies public interest. For it is axiomatic that public needs could best be attended to by officials about whose competency and ability there is no question. To that overmastering requirement, personal ambition must of necessity yield. Discretion if not plenary, at least sufficient, should thus be granted to those entrusted with the responsibility of administering the offices concerned, primarily the department heads. They are in the most favorable position to determine who can best fulfill the functions of the office thus vacated. Unless, therefore, the law speaks in the most mandatory and peremptory tone, considering all the circumstances, there should be, as there has been, full recognition of the wide scope of such discretionary authority. Happily, there is nothing in the Civil Service Act, which is fittingly concerned with protecting the rights of those in the career service, that, rightly construed, calls for a different conclusion. It is well worth repeating that the broad authority of a department head appears indisputable. Such is the policy of the law, a policy reflected with fidelity in the decisions of this Court."^[19] Such an approach has substantially been followed.^[20]

WHEREFORE, the petition for certiorari is denied. No costs.

Zaldivar, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.
Antonio, J., took no part.

[1] Article XII, Sec. 1 of the 1935 Constitution reads: "A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination." There is a reiteration of the above provision in the present Constitution, Article XII, B, Sec. 2.

[2] 69 Phil. 635 (1940).

[3] Cf. *Ermita-Malate Hotel and Motel Operators Asso. vs. City Mayor*, L--24693, July 31, 1967, 20 SCRA 849.

[4] Annex B to Petition.

[5] Annex C to Petition.

[6] Annex F to Petition.

[7] *Ibid.*

[8] *Ibid.*

[9] Annex G to Petition.

[10] Annex K to Petition.

[11] Annex M to Petition.

[12] L-28997, February 22, 1974.

[13] "According to Article XII, Section 4 of the 1935 Constitution: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." This provision is reproduced in Article XII, B, Sec. 3 of the present Constitution, with the wording slightly different, "suspended or dismissed" being used.

[14] Annex A to Petition.

[15] Annex G to Petition.

[16] Annex J to Petition.

[17] Annex L to Petition.

[18] L-25491, February 27, 1988, 22 SCRA 825.

[19] Ibid, 830-831.

[20] Cf. Villegas vs. Subido, L-26534, November 28, 1969, 30 SCRA 498; Del Rosario vs. Subido, L-30091, January 30, 1970, 31 SCRA 382; Aguilar vs. Nieva, L-28422, July 29, 1971, 40 SCRA 113.

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