

## GILBERT A. OJEDA, PETITIONER, VS. RAYMUNDO R. ESPINOSA AND FRANCISCO T. DUQUE, RESPONDENTS.

Ponente: BATO, JR., J.

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### BATO, JR., J.:

Assailed in this Petition for Review[1] under Rule 43 of the Rules of Court are the 02 November 2010 and 05 November 2012 Resolutions of the Civil Service Commission (CSC). The first assailed Resolution denied petitioner Gilbert A. Ojeda's request for the grant of immunity from administrative prosecution, while the second assailed Resolution denied his Motion for Reconsideration.

The antecedent facts are as follows:

Petitioner Ojeda was appointed as Acting Postmaster of the Philippine Postal Corporation, Mulanay, Quezon on 01 January 1998. On 04 January 2002, he was appointed as Postmaster I. In support of his appointment, he submitted a Career Professional Certificate of Eligibility showing that he passed the Career Service Professional Examination on 27 November 1994.

Sometime in the year 2004, private respondent Raymundo R. Espinosa requested the CSC to conduct an investigation on the allegation that another person took the Career Service Professional Examination in behalf of petitioner Ojeda. After the conduct of a fact-finding investigation, the CSC concluded that there is indeed a possible case of examination irregularity, particularly impersonation, involving petitioner Ojeda. The photo, date of birth and signature of the examinee named Gilbert A. Ojeda in the Picture Seat Plan (PSP) of the 27 November 1994 Professional Examination conducted in Sta. Cruz, Laguna, are dissimilar with the photo, date of birth and signature found in the Personal Data Sheet (PDS) of petitioner Ojeda.

On 05 November 2004, Azucena Perez-Esleta, Director IV, Examination, Recruitment and Placement Office (ERPO) of the CSC, issued a Show Cause Order[2] against petitioner Ojeda, giving him a chance to explain why he should not be held administratively liable for employing fraud in the acquisition of his career service eligibility and for declaring false statements in his PDS.

By way of an affidavit[3] dated 25 November 2004, petitioner Ojeda admitted that it was indeed another person, a certain Fernando Olicia, who took the Civil Service Professional Examination for him. He averred that sometime in October 1994, spouses Ruben and Preceva Villafranca, both employees of the Department of Agriculture, Malunay, Quezon, approached him and offered to help him secure a Certificate of Eligibility for a consideration of Fifty Thousand Pesos (Php50,000.00). Considering that the spouses Villafranca had already helped several persons in their town obtain Certificates of Eligibility, he agreed to pay the sum of Php50,000.00. He then manifested that he wants to avail of the CSC's Whistleblower Protection Program.

On 23 May 2005, petitioner Ojeda again manifested to Dir. Perez-Esleta his intention to avail of the CSC's Whistleblower Protection Program. In response thereto, Dir. Perez-Esleta wrote to petitioner Ojeda on 11 July 2005, informing him that his application for the Whistleblower Protection Program was still under consideration. Petitioner Ojeda was then requested to complete the attached "Undertaking of an Applicant for Whistleblower

Immunity” to express that he was sufficiently informed and would voluntarily comply with the obligations stated therein. He was also advised to redraft his affidavit, this time with the assistance of a lawyer of his choice. However, petitioner failed to submit within a reasonable period of time the completed “Undertaking of an Applicant for Whistleblower Immunity.”

On 23 November 2009 or more than four years from the time that the CSC directed him to submit the abovementioned undertaking, petitioner was formally charged with Serious Dishonesty, Grave Misconduct, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service. Petitioner filed his Answer[4] on 22 December 2009, and attached thereto the duly accomplished “Undertaking of an Applicant for Whistleblower Immunity.”[5] He attributed his failure to submit said undertaking in the year 2005 to “sheer inadvertence.”

On 02 November 2010, the CSC issued the first assailed Resolution, i.e., CSC Resolution No. 1000290,6 denying petitioner’s request for immunity on the ground that “he failed to comply with the requirements in the Grant of Immunity from Administrative Prosecution.” The dispositive portion of said Resolution reads:

“WHEREFORE, the request of Gilberto (sic) A. Ojeda for the grant of immunity from administrative prosecution, pursuant to the CSC Resolution No. 04-0275, the Policy Guidelines on Whistle-Blowers Immunity from Prosecution in Examination Irregularity Cases, is hereby DENIED. Accordingly, the Legal Concerns Unit-Examination, Recruitment and Placement Office, Civil Service Commission-Central Office, is hereby directed to proceed with the formal investigation of the administrative case against Ojeda without further delay.

A copy of this Resolution shall be furnished to Gilberto (sic) A. Ojeda at his known address and the Integrated Records Management Office (IRMO), this Commission.

Quezon City.”

Petitioner’s motion for reconsideration[7] was likewise not favorably acted upon by the CSC via Resolution No. 1201948[8] dated 05 November 2012. The CSC concluded that petitioner’s failure to immediately submit the accomplished Undertaking of an Applicant for Whistleblower Immunity shows his disinterest to avail of the program.

Hence, petitioner filed the instant petition for review raising the lone issue for Our resolution:

“THE CIVIL SERVICE COMMISSION GRAVELY ERRED IN DENYING PETITIONER GILBERT OJEDA’S APPLICATION FOR THE GRANT OF IMMUNITY FROM ADMINISTRATIVE PROSECUTION UNDER THE WHISTLEBLOWER PROTECTION PROGRAM.”[9]

In the main, petitioner prays that the assailed Resolutions of the CSC denying his application for immunity against administrative prosecution be set aside and for the Court to render judgment approving his application for immunity.

In its Comment,[10] the Office of the Solicitor General counters that the decision on when, how and who to grant or deny admission into the CSC’s Whistleblower Immunity Program is an executive function. Thus, the CSC should be afforded much leeway in choosing whom to admit into the program.

The petition must fail.

Petitioner wishes to be exempt from administrative prosecution pursuant to CSC Resolution No. 04-0275, otherwise known as “Policy Guidelines on Whistle-Blowers’ Immunity from Prosecution in Examination Irregularity Cases,” and its Supplemental Resolution, CSC Res. No. 05-0127. However, the CSC denied his

application.

The CSC's decision to deny petitioner's application for the grant of immunity must be sustained by the Court. The authority to grant immunity is not an inherent judicial function.[11] The authority to choose the individual to whom immunity would be granted is essentially an executive function.[12] The Supreme Court's ruling in *Mapa, Jr. vs. Sandiganbayan*[13] is instructive on this point:

"The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense."

The Court can only intervene when a clear and grave abuse of the exercise of discretion is shown,[14] which is clearly wanting in the present case. Petitioner attributes his 4-year delay in submitting the requisite "Undertaking of an Applicant for Whistleblower Immunity" due to "sheer inadvertence." Such reasoning is too flimsy which reflects his lack of sincerity.

Besides, it must be stressed that CSC Resolution No. 040275 dated 16 March 2004, otherwise known as the Policy Guidelines On Whistle-Blowers' Immunity From Prosecution In Examination Irregularity Cases, was issued "to intensify the discovery and prosecution of unscrupulous civil service officials and employees as well as private individuals" involved in irregularities in Civil Service examination. Thus, "to encourage whistle-blowers to expose and help curb such transgression of the Civil Service examination and other Civil Service law and rules, the Commission deems it just and equitable to assure these individuals who are victims or witnesses immunity from prosecution and shield them from possible retaliation." [15] Nonetheless, the immunity from administrative prosecution should not be accorded to a public official or employee who in consideration of the sum of Php50,000.00 allowed another person to impersonate him in the Civil Service examination in order to secure the required Certificate of Eligibility needed for his appointment or promotion in the government service. Likewise, the immunity from administrative prosecution should not be granted to a public official or employee who through misrepresentation and/or dishonesty deceived the Civil Service Commission by allowing another person to take the Civil Service examination for and on his behalf. Stated differently, granting immunity to petitioner Ojeda would in effect condone his egregious act and absolve him of the administrative offense he committed in gross violation of the Civil Service Rules and Regulations. As stated in the CSC Resolution promulgated on 02 November 2010, "[I]mpersonation in the Career Service Examination undermines the sanctity and integrity of the examination and constitutes the administrative offense of Serious Dishonesty pursuant to Section 1 of the CSC Resolution No. 061009 dated June 5, 2006." Dishonesty is a grave offense and the penalty even for the first offender is dismissal from the service.<sup>16</sup> Granting him immunity would create an anomalous situation wherein petitioner Ojeda is allowed to continue in the public service despite the commission of a serious administrative offense to the prejudice of the government service.

ACCORDINGLY, the petition is DENIED for lack of merit. The assailed CSC Resolutions dated 02 November

2010 and 05 November 2012 are hereby AFFIRMED.

**SO ORDERED.**

**C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Zalameda and Diy, JJ., concur.

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[1] Rollo, pp. 22-40.

[2] Rollo, pp. 57-58.

[3] Rollo, pp. 59-60.

[4] Rollo, pp. 85-90.

[5] Rollo, p. 99.

[6] Rollo, pp. 16-21.

[7] Rollo, pp. 107-115.

[8] Rollo, pp. 49-56.

[9] Petition, p. 10; Rollo, p. 31.

[10] Rollo, pp. 198-202.

[11] Sec. Guingona, Jr. vs. Court of Appeals, 354 Phil. 415, 430 (1998).

[12] Quarto vs. Ombudsman, G.R. No. 169042, October 5, 2011.

[13] G.R. No. 100295, April 26, 1994.

[14] Supra, at note 12.

[15] Rollo, pp. 149-154.

[16] See Section 36 of PD No. 807, Civil Service Decree of the Philippines; Handbook On Investigation Of Administrative Disciplinary Cases In The Philippine Civil Service, Angelito G. Grande 1999 ed., p. 57; Section 22, Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, as amended by CSC Memo Circular No. 19, s. 1999.

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