

**LEAH Y. APURILLO, PETITIONER, VS. CIVIL SERVICE COMMISSION
AND VIRGINIA L. TALDE, RESPONDENTS.***G.R. No. 105112. October 13, 1993*

Ponente: BELLOSILLO, J.

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This is a petition to annul and set aside Resolution No. 92-555 of the Civil Service Commission[1] dated 10 April 1992 which affirmed the decision of the Secretary of Public Works and Highways dated 25 September 1990 sustaining the protest of private respondent Virginia L. Talde against the promotional appointment of petitioner Leah Y. Apurillo and reverting the latter to her previous position of Public Relations Officer.

On 1 July 1990, Engr. Isidro Mariano, as Officer-in-Charge (OIC) of Region VIII, Department of Public Works and Highways (DPWH), appointed petitioner to the position of Administrative Officer III of the Region. Upon learning of the appointment, private respondent filed a letter-protest with the DPWH Complaints Committee.

On 25 September 1990, the Committee submitted a memorandum for then DPWH Secretary Fiorello R. Estuar recommending that the protest of private respondent be upheld and that petitioner be reverted to her former position of Public Relations Officer. Secretary Estuar approved this recommendation.

On 21 November 1990, petitioner filed a motion for reconsideration of the Secretary's decision. On 5 March 1991, Undersecretary Teodoro T. Encarnacion, Officer-in-Charge of DPWH, denied the motion.[2]

On 19 June 1991, petitioner appealed to the Merit Systems Protection Board (MSPB). On 27 November 1991, MSPB dismissed the appeal for lack of merit.[3] It likewise denied petitioner's motion for reconsideration. Forthwith, petitioner went to the Civil Service Commission (CSC) for relief.

On 10 April 1992, CSC issued Resolution No. 92-555 dismissing the appeal. It ruled that protestant Virginia L. Talde was fully qualified for the contested position; that petitioner's appointment was voidable because the OIC DPWH Regional Director had no power to appoint her without authority of the DPWH Secretary; and, that pursuant to the Administrative Code of 1987, the Secretary had the power to nullify the appointment issued by the OIC Regional Director. Hence, the present recourse of petitioner.

Petitioner imputes several errors to CSC, namely: (1) in rating private respondent higher than she; (2) in holding that an appointment validly extended to one possessing all the required qualifications and eligibility can be nullified on the ground that someone else allegedly better qualified should be preferred; and, (3) in holding that petitioner's appointment is voidable.[4]

Considering that this is a petition for certiorari, the only issue to resolve is whether CSC committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing its disputed resolution.

The contested position is Administrative Officer III, Region VIII, DPWH, a second level position in the career service.[5] Under Sec. 7, par. (6), of the Administrative Code of 1987,[6] the Department Secretary has the power

to appoint employees to position in the second level in the regional offices of the Department. The CSC therefore did not commit any grave abuse of discretion in holding that the DPWH Secretary, not the OIC Regional Director, is the appointing authority.

Petitioner argues that on 5 January 1990 the DPWH Secretary issued Department Order No. 10 delegating the power to appoint personnel to the second level positions to the then OIC, Regional Director, DPWH Region VIII.[7] She vigorously insists that the real appointing authority is the OIC Regional Director otherwise the said delegation would be meaningless.

Her arguments are without basis. Department Order No. 10 reads:

"DESIGNATION OF ENGR. ISIDRO MARIANO AS

OFFICER-IN-CHARGE REGIONAL DIRECTOR

OF REGION VIII, TACLOBAN CITY

"In the interest of the service, you are hereby designated as Officer-in-Charge Regional Director of Region VIII, Tacloban City, vice Dir. Abdulbarri Ramos.

"By virtue of this Order, you are hereby authorized to perform the duties and assume the responsibilities appurtenant to the position of Regional Director thereat.

"This Order supersedes previous issuances to the contrary and shall take effect February 1, 1990.

FIORELLO R. ESTUAR
Secretary"

Nowhere in the aforequoted Order can we find any support for petitioner's allegations. While the law grants to the Regional Director the authority to appoint personnel in the Regional Office, such power only covers positions in the first level and casual and seasonal employees.[8]

Even granting arguendo that a delegated authority to appoint personnel to positions in the first level was given, such authority is not absolute. Any promotional appointment made pursuant to this authority is still subject to review by the DPWH Secretary. Section 28 of the Administrative Code of 1987 provides -

"Sec. 28. Review of Acts of Regional Director. - Nothing in the preceding Section shall be construed as a limitation on the power of the Secretary to review and modify, alter or reverse any action of the Regional Director, or to initiate promotions and transfers of personnel from one region to another."

The afore-quoted provision underscores the Secretary's power of supervision and control of his department. The term "control" implies the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done and to substitute the judgment of the former for that of the latter.[9] This power is derived not only from the Administrative Code of 1987 but also mainly from a provision in the Constitution explicitly ordaining that the President shall have control of all the executive departments, bureaus and offices.[10] As alter egos of the President, the Department Secretaries exercise direct control and supervision over all bureaus and offices under their jurisdiction.[11]

It appears from the records that the DPWH Secretary treated the appointment issued by the OIC Regional Director as a recommendatory indorsement of petitioner for the contested position. In view of the protest of private respondent, the Secretary through the DPWH Complaints Committee made a meticulous review of the qualifications of the parties involved as they were the next-in-rank employees to the position of Administrative Officer III.

In its Memorandum to then Secretary Estuar dated 25 September 1990,[12] the Committee reported -

"The within papers show that Ms. Talde was first appointed as a permanent Training Officer on April 1, 1980, in the then MPW, Region VIII. She was reappointed to the same position during the MPW and MPH merger in 1982, and again retained the same after the 1987 reorganization effective July 1, 1988. On July 1, 1989, her position was retitled as Human Resource Management Officer I under the Standardization Law. Her services in other government agencies include: Social Worker (Permanent) 2-1-78 to 3-31-80, MSSD, Region VIII; and Census Enumerator (Contractual), NCSO, May 2 to October 1975, Tacloban.

"Talde holds the degrees in BSSW, LLB, and a graduate in BSE. Likewise, she has earned 6 units in Master Management. In addition, Ms. Talde is credited with 12 government trainings attended. Aside from her Career Subprofessional and Professional CSC examinations, Ms. Talde passed the Social Work Licensure, and Professional Board Examinations for Teachers. Her performance rating under MORE for the period concerned is Very Satisfactory.

"Protestee Apurillo, on the other hand, joined the service on August 1, 1973 as a Secondary School Teacher (permanent) at the Leyte National High School. She transferred to the MPW, Region VIII, and was extended the regular position of Public Relations Officer I, effective April 1, 1980. She retained the same position in the past two DPWH reorganizations, and was promoted to Administrative Officer III on July 1, 1990.

"A BSE graduate, Ms. Apurillo has earned as well, 30 units in MA in Literature; 33 units in English; and 12 units in Public Administration. Moreover, aside from her ten (10) relevant seminars attended, Ms. Apurillo is credited with 432 hours of training in Executive Development (DAP), and 648 hours in the Future Leaders' Program (NDC-CSC). Protestee Apurillo is a Teachers' Board Examination eligible and has been rated Very Satisfactory on her performance for the period concerned.

x x x x

"As HRMO I, protestant Talde belongs to the Training Section under the Administrative Division. Whereas, protestee Apurillo as a former PRO, is identified with and under the direct supervision of the Regional Director. Both positions though being on the same grade level (11) may be considered next-in-rank to the contested position for purposes of selection on an agency-wide basis as required by the Civil Service Law and Rules.

"Hence, under the circumstances, both contestants being qualified and competent next-in-rank employees, the following provision of Rule V, Section 9, of the CSC Rules on Personnel Actions and Policies is hereby quoted, 'Whenever there are two or more employees who are next-in-rank, preference shall be given to the employee who is most competent and qualified and has the appropriate civil service eligibility. In cases where all meet the requisites for the position, preference shall be given to the employee in the organizational unit where the vacant position is or in the Department or agency where the vacancy is, in the case of second level positions.' Hence, protestant Talde being the employee next-in-rank, qualified and competent, in the Administrative Division where the contested position belongs, has the better claim of preference for appointment to the position in question, pursuant to said provision."

It then recommended that the protest of private respondent be sustained and petitioner reverted to her former position as Public Relations Officer.

Further, the Committee, upon petitioner's motion for reconsideration, went as far as conducting another system of rating the contenders. However, the same result adverse to petitioner surfaced -

"On the issue of the alleged erroneous ratings given by the Regional Promotion Board, the Committee in fairness to protestee/appellant Apurillo re-rated the contestants with the use of the Personnel Evaluation and Rating System under Department Order No. 30, s. 1987. Under the rating system, Talde got 67.93%, and

Apurillo obtained 67.78%.

"Moreover, a review of the system of ranking positions in this Department, shows the following positions as next in rank to Administrative Officer III in DPWH Regional Office No. VIII:

- HRMO I - Regional Office
- HRMO II - District Office/RES

"Hence, Ms. Talde being the employee considered next-in-rank to the contested position, may claim preference for appointment thereto pursuant to the CS Law and Rules." [13]

Acting upon all these findings, the DPWH Secretary approved the above recommendations.

We find no evidence of irregularity or arbitrariness in the action taken by the then DPWH Secretary. The head of an agency who is the appointing power is the one most knowledgeable to decide who can best perform the functions of the office. [14] The Secretary's decision therefore must be respected.

Petitioner however contends that she is better qualified than private respondent because she readily meets the minimum qualification requirements without resorting to the process of substitution. She adds that the process of offsetting deficiencies has been disallowed by no less than the CSC in its Memorandum Circular No. 42, Series of 1991, which states that "Effective January 1, 1993: a. No substitution shall be allowed for the education and experience requirements of specific positions in government. If graduation from a college course is necessary for appointment to positions in the second level (Professional), deficiencies in college education may no longer be substituted with experience or vice-versa." [15]

We note that the effectivity date of Memorandum Circular No. 42, Series of 1991, is 1 January 1993. This case came up in 1990 yet. Consequently, the rule on substitution could still be availed of by the DPWH Secretary. He alone has the discretion to decide when to resort to the necessity of interchanging education with experience and vice versa since he is in the best position to determine the needs of his department and how to satisfy those needs. [16]

Finally, petitioner submits that her appointment was already approved by the CSC and that, in view thereof, she already assumed office and discharged the duties and responsibilities of the position. She then concludes that the CSC could no longer disturb her appointment since to do so would violate the security of tenure provision in the Constitution. [17]

While petitioner asserts that her appointment was already approved by CSC, and by virtue of which she had already assumed the contested position, she has not presented any copy of such appointment to support the meat of her contention. We have searched the records and not even a machine copy thereof can be found. Under the circumstances, we cannot help being drawn to the conclusion that if presented it would negate her cause. As adverted to earlier, petitioner's appointment was irregular and inefficacious as the same was not issued or approved by the DPWH Secretary. As a result, she cannot claim the right to a security of tenure for want of legal basis.

In fine, we find no valid reason to reverse the CSC resolution dated 10 April 1992, it being shown that the same is in full accord with our ruling enunciated in *Luego v. Civil Service Commission*, [18] penned by Senior Associate Justice Isagani A. Cruz, that appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. Indeed, this is a prerogative of the appointing authority

which he alone can decide, absent any grave abuse in the exercise thereof.

WHEREFORE, finding no grave abuse of discretion, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Melo, Quiason, Puno, and Vitug, JJ., concur.

Griño-Aquino, J., on official leave.

[1] Rollo, p. 22.

[2] Rollo, p. 51.

[3] Ibid., p. 60.

[4] Ibid., p. 7.

[5] Sec. 7, Art. IV, PD 807, otherwise known as the "Civil Service Decree of the Philippines."

[6] Bk. IV, Chap. 2, E.O. 292.

[7] Rollo, p. 78.

[8] Bk. IV, Chap. 5, Sec. 27, par. (4), E.O. 292.

[9] Uichanco v. Secretary of Agriculture and Natural Resources, L-17328, 30 March 1963, 7 SCRA 547, 551.

[10] Ibid.; See Sec. 17, Art. VII, 1987 Constitution.

[11] Ibid.

[12] Rollo, pp. 29-31.

[13] Rollo, p. 51.

[14] Lopez v. Civil Service Commission, G.R. No. 92140, 19 February 1991, 194 SCRA 269, 276, citing Ocampo v. Subido, 72 SCRA 433 (1976); Torres v. Borja, 56 SCRA 47 (1974); Santiago v. Civil Service Commission, 178 SCRA 733 (1989).

[15] Rollo, p. 77.

[16] See Torio v. Civil Service Commission, G.R. No. 99336, and Espanola v. Civil Service Commission, et al., G.R. No. 100178, both prom. 9 June 1992, 209 SCRA 677, 688-689.

[17] Sec. 2, par. (3), Art. IX-B, 1987 Constitution, and Sec. 46, par. (a), Chap. 6, Bk. V, E.O. 292.

[18] G.R. No. 69137, 5 August 1986, 143 SCRA 327, 332.

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