

ORLANDO G. UMOZO, PETITIONER, VS. HON. CIVIL SERVICE COM-MISSION, AND SEVERINO G. CARONAN, RESPONDENTS.*G.R. No. 110276. July 29, 1994*

Ponente: MENDOZA, J.

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This is a petition for certiorari to set aside the Resolution[1] of respondent Civil Service Commission (CSC), dismissing petitioner Orlando Umoso's appeal from the decision of the Merit System Protec-tion Board[2], upholding the appointment of private respondent Severino Caronan as Supervising Civil Engi-neer I by the Secretary of the Department of Public Works and Highways.

Petitioner is a Senior Civil Engineer who was promoted to the position of Supervising Civil Engineer I in the office of the District Engineer, Cagayan South Engineering District, of the Department of Public Works and Highways (DPWH) by the Regional Director, DPWH Regional Office No. 2, Tuguegarao, Cagayan.[3]

Private respondent Severino G. Caronan, Senior Civil Engineer in the Design and Planning section of the Cagayan South Engineering District, protested the appointment in a letter[4] addressed to the Regional Director of the DPWH, in which he com-plain-ed that the candidates for promotion had not been fairly evaluated by the DPWH Central Review Board as their direct supervisors were never consulted. Private respondent claimed that he was entitled to preferential consideration, being the employee next in rank in the Planning and Design Section where the contested posi-tion belongs.

The letter/protest of private respondent was referred to the complaints committee of the DPWH which, on May 7, 1990, issued a Memorandum[5] for the DPWH Department Secretary, recommending that Caronan's protest be upheld and petitioner Umoso be appointed to the position of Senior Civil Engineer to be vacated by the respondent Caronan.[6]

The Secretary of DPWH approved the recommen-dation. Petitioner moved for a reconsideration but his motion was denied in a resolution dated October 5, 1990. Petitioner then appealed to the Merit System Protection Board (MSPB) of the Civil Service. He alleged that the complaints committee of the DPWH erred in (1) its interpretation of the next-in-rank princi-ple, in considering protestant/private respondent as more senior than the protestee/petitioner in the service and (2) in failing to give due consideration to the recommendation of the District Engineer's placement and evaluation committee.

The MSPB made a comparative study of the qualifications of Umoso and Caronan, on the basis of which it rendered a decision on June 28, 1991,[7] dis-missing the appeal of petitioner Umoso for lack of merit. In its decision it stated:

Considering, therefore, that Caronan is the choice of the Secre-tary, DPWH, having taken cognizance of Caronan's nine (9) years of direct exposure/experience in the Planning and Design Section where the contested position is located, the appointment of Caronan as Supervising Civil Engineer I must be upheld.[8]

Petitioner Umoso moved a second time for reconsideration of the MSPB decision. He alleged that the appointing authority in the regional sector is lodged in the Regional Director and not in the Department Head/Secretary; therefore his appointment by the Regional Director should be upheld.

On January 31, 1992, the MSPB denied petitioner's motion for lack of merit and sustained the appointment of private respondent Caronan to the position of Supervising District Engineer. It held that the Secretary has administrative supervision and control over the entire department including the power to review appointments issued by the DPWH Regional Director.[9]

Petitioner Umoso then appealed[10] to the Civil Service Commission (CSC), raising as sole issue whether or not the DPWH Secretary has the authority to set aside an appointment made by the Regional Director of an appointee who meets the qualifications required by the position.

In its Resolution No. 93-748[11] dated February 26, 1993, the CSC ruled that the Secretary of Public Works and Highways has ultimate power to appoint:

The power of the Secretary to appoint can however be delegated to the Regional Directors. The authority of the Regional Director to appoint is merely a delegated function. As such, the action of the Regional Director can be reviewed and set aside by the Secretary who is the source of the delegated power. To hold the view that the Secretary has no authority to review the appointment issued by a Regional Director to second level position in a Department would create a false impression that the Secretary and the Regional Director are of the same rank.

Thus, when Caronan protested the appointment of Umoso to the position of SCE I issued by the Regional Director and the DPWH Secretary gave due course to the protest by ordering the appointment of protestant Caronan in lieu of Umoso, the Secretary of DPWH is merely exercising his power and authority as Head of the Department. Inherent in his position is the power, among others, of administrative control and supervision over the personnel thereat including appointment. Contrary to the allegation of Umoso, the approval of his appointment to the said position has not reached a semblance of finality which may vest in him the right to a security of tenure, in view of the timely protest of Caronan.

As protestant Caronan, who is the choice of the Secretary of DPWH, clearly meets the requirements for permanent appointment to the contested position, his appointment to the contested position should not be disturbed. This is in line with a number of Supreme Court decisions upholding the discretion of the appointing authority on matters of appointment.[12]

Petitioner alleges grave abuse of discretion on the part of the Civil Service Commission. He claims that he is qualified and that he is the "next-in-rank." Above all he contends that in fact his appointment was endorsed by the Selection and Placement Committee and the Central Review Board, whose recommendations were approved by the Regional Director.

We find this petition without merit.

First of all, it has been declared time and again that even if petitioner occupies a "next-in-rank" position, that fact alone does not impose on the appointing authority the duty to appoint petitioner.[13]

While preferential consideration is accorded the "next-in-rank" employee in the event of a vacancy for a higher position, such consideration does not serve to ensure appointment in his favor. The rule neither grants a vested right to the holder nor imposes a ministerial duty on the part of the appointing authority to promote such person to the next higher position.[14]

Secondly, the appointing power is vested in the Department Head/Secretary. Such power, however, may be

delegated to the regional director subject, however, to the approval, revision, modification and reversal of the Department Secretary.[15] Thus, even if petitioner was recommended to the contested position by the Selection and Placement Committee and the Central Review Board, which recommendations were upheld by the Regional Director, such recommendation was nonetheless subject to review and approval by the Department Secretary. Indeed, the DPWH Review Board, pursuant to the Reorganization Guidelines, prepared a manning list of recommendees for the positions in the Regional Offices of Region II and had to submit the list to the DPWH Secretary for approval.[16] In the analogous case of *Ernesto Perez v. Merit System Protection Board*,[17] this Court stated:

The determination of the DPWH Regional Office in Sorsogon that petitioner was qualified for the contested position did not preclude the Committee from overturning the same. The determinations of both bodies as delegates of the DPWH Secretary in the matter of personnel actions are tentative in nature. It is the Secretary's adoption of the Committee's endorsement in favor of private respondent which constituted the authoritative determination or choice of the employee who will occupy the contested position.

The rule in the civil service is that appointment, which is essentially within the discretionary power of whosoever it is vested, is subject only to the condition that the appointee should possess the qualifications required by law. In the case at bar, the Qualification Standards of the DPWH prescribes the following minimum requirements for the contested position (Supervising Civil Engineer I)[18], to wit:

EDUCATION - Bachelor's degree in Civil Engineering

EXPERIENCE - One (1) year of responsible experience in professional civil engineering work

ELIGIBILITY - R.A. 1080 (Civil Engineer)

Based on these qualifications, the MSPB, in its decision, prepared a comparative study of the qualifications of the contestants Umoso and Caronan, showing the following:

EDUCATION:

Appellant Umoso is a Bachelor of Science in Civil Engineering graduate, while protestee Caronan is Bachelor of Science in Civil Engineering graduate with 24 units leading to Master in Public Administration (MPA).

ELIGIBILITY:

Appellant Umoso possesses R.A. 1080 (Civil Engineer) eligibility. Appellee Caronan has R.A. 1080 (Civil Engineer) eligibility.

EXPERIENCE:

Appellant Umoso has been in the government service for eighteen (18) years, holding these positions for specified periods, to wit: Laborer (3/16/66-12/31/66), Survey Aide (1/1/67-2/15/70) at the National Irrigation Administration, Civil Engineer Aide I (9/16/74-6/30/75), Civil Engineer II (7/1/75-12/31/75), Construction Foreman (1/1/76-11/30/78), Associate Civil Engineer (12/1/78-12/31/80), Civil Engineer (1/1/81-9/30/82), and Senior Civil Engineer (10/1/82-1/1/89) at the DPWH.

Appellee Caronan, on the other hand, has been in the government service for ten (10) years during which period he held the following positions in the DPWH: Associate Civil Engineer (6/8/78-1/7/79), Civil Engineer (1/8/79-1/15/80) and Senior Civil Engineer (1/16/80-present)[19].

It is evident that both aspirants sufficiently meet the qualification requirements for permanent appointment to the contested position. However, since between Caronan and Umoso the former was chosen by the Department

Secretary of the DPWH, the Civil Service Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission, under P.D. No. 807, may only approve or disapprove the appointment after determining whether or not the appointee possesses the appropriate Civil Service eligibility and the required qualifications.[20] The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position.[21] Correctly then did the CSC, in dismissing the appeal of petitioner Umoso, hold:

As protestant Caronan, who is the choice of the Secretary of DPWH, clearly meets the requirements for permanent appointment to the con-tested position, his appointment to the contested position should not be disturbed. This is in line with a number of Supreme Court decisions upholding the discretion of the appointing authority on matters of appointment.[22]

WHEREFORE, the petition for certiorari is hereby DISMISSED for lack of merit. The resolution issued by the Civil Service Commission dated February 26, 1993 is AFFIRMED.

SO ORDERED.

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

[1] Rollo, p. 20.

[2] Id., p. 35

[3] Annex C, Petition; Rollo, p. 23.

[4] Annex D, Private Respondent's Comment; Rollo, p. 73.

[5] Annex G, Petition; Rollo, p. 31.

[6] Annex H, Petition; Rollo, p. 33.

[7] Annex I, Petition; Rollo, p. 34.

[8] Id., p. 38.

[9] Annex J, Petition; Rollo, p. 39.

[10] Annex N, Petition; Rollo p. 45.

[11] Annex B, Petition; Rollo p. 20.

[12] Id., pp. 21-22.

[13] *Lusterio v. Intermediate Appellate Court*, G.R. No. 74814, July 16, 1991, 199 SCRA 255; *Abila v. Civil Service Commission*, G.R. No. 92573, June 3, 1991, 198 SCRA 102.

[14] *De la Cruz v. Civil Service Commission*, G.R. No. 88333, Dec. 2, 1991, 204 SCRA 419.

[15] LOI No. 448, Aug. 18, 1976 as amended by LOI No. 895, July 25, 1979 and LOI No. 1324, May 9, 1983.

[16] Annex F, petition; Rollo, pp. 28-30.

[17] G.R. No. 98930, Oct. 17, 1991.

[18] Rollo, p. 36

[19] Id.

[20] *Luego v. Civil Service Commission*, G.R. No. 69137, Aug. 5, 1986, 143 SCRA 328.

[21] *Patagoc v. Civil Service Commission*, G.R. No. 90229, May 14, 1990, 185 SCRA 411; *Medenilla v. Civil Service Commission*, G.R. No. 93868, Feb. 19, 1991, 194 SCRA 278; *Abila v. Civil Service Commission*, *supra*.

[22] *Civil Service Commission Decision*, Rollo, pp. 21-22.

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