

DIONISIO M. RABOR, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 111812. May 31, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Dionisio M. Rabor is a Utility Worker in the Office of the Mayor, Davao City. He entered the government service as a Utility Worker on 10 April 1978 at the age of 55 years.

Sometime in May 1991,[1] Alma D. Pagatpatan, an official in the Office of the Mayor of Davao City, advised Dionisio M. Rabor to apply for retirement, considering that he had already reached the age of sixty-eight (68) years and seven (7) months, with thirteen (13) years and one (1) month of government service. Rabor responded to this advice by exhibiting a "Certificate of Membership"[2] issued by the Government Service Insurance System ("GSIS") and dated 12 May 1988. At the bottom of this "Certificate of Membership" is a typewritten statement of the following tenor: "Service extended to comply 15 years service reqts." This statement is followed by a non-legible initial with the following date "2/28/91."

Thereupon, the Davao City Government, through Ms. Pagatpatan, wrote to the Regional Director of the Civil Service Commission, Region XI, Davao City ("CSRO-XI"), informing the latter of the foregoing and requesting advice "as to what action [should] be taken on this matter."

In a letter dated 26 July 1991, Director Filemon B. Cawad of CSRO-XI advised Davao City Mayor Rodrigo R. Duterte as follows:

"Please be informed that the extension of services of Mr. Rabor is contrary to M.C. No. 65 of the Office of the President, the relevant portion of which is hereunder quoted:

'Officials and employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for extremely meritorious reasons in which case the retention shall not exceed six (6) months.'

IN VIEW WHEREFORE, please be advised that the services of Mr. Dominador [M.] Rabor as Utility Worker in that office, is already non- extend[i]ble."[3]

Accordingly, on 8 August 1991, Mayor Duterte furnished a copy of the 26 July 1991 letter of Director Cawad to Rabor and advised him "to stop reporting for work effective August 16, 1991."[4]

Petitioner Rabor then sent to the Regional Director, CSRO-XI, a letter dated 14 August 1991, asking for extension of his services in the City Government until he "shall have completed the fifteen (15) years service [requirement] in the Government so that [he] could also avail of the benefits of the retirement laws given to employees of the Government." The extension he was asking for was about two (2) years. Asserting that he was "still in good health and very able to perform the duties and functions of [his] position as Utility Worker," Rabor sought "extension of [his] service as an exception to Memorandum Circular No. 65 of the Office of the President."[5]

This request was denied by Director Cawad on 15 August 1991.

Petitioner Rabor next wrote to the Office of the President on 29 January 1992 seeking reconsideration of the decision of Director Cawad, CSRO-XI. The Office of the President referred Mr. Rabor's letter to the Chairman of the Civil Service Commission on 5 March 1992.

In its Resolution No. 92-594, dated 28 April 1992, the Civil Service Commission dismissed the appeal of Mr. Rabor and affirmed the action of Director Cawad embodied in the latter's letter of 26 July 1991. This Resolution stated in part:

"In his appeal, Rabor requested that he be allowed to continue rendering services as Utility Worker in order to complete the fifteen (15) year service requirement under P.D. 1146.

CSC Memorandum Circular No. 27, s. 1990 provides, in part:

'1. Any request for extension of service of compulsory retirees to complete the fifteen years service requirement for retirement shall be allowed only to permanent appointees in the career service who are regular members of the Government Service Insurance System (GSIS) and shall be granted for a period of not exceeding one (1) year.'

Considering that as early as October 18, 1988, Rabor was already due for retirement, his request for further extension of service cannot be given due course."[6] (Underscoring in the original)

On 28 October 1992, Mr. Rabor sought reconsideration of Resolution No. 92-594 of the Civil Service Commission this time invoking the Decision of this Court in *Cena v. Civil Service Commission*.^[7] Petitioner also asked for reinstatement with back salaries and benefits, having been separated from the government service effective 16 August 1991. Rabor's motion for reconsideration was denied by the Commission.

Petitioner Rabor sent another letter dated 16 April 1993 to the Office of the Mayor, Davao City, again requesting that he be allowed to continue rendering service to the Davao City Government as Utility Worker in order to complete the fifteen (15) years service requirement under P.D. No. 1146. This request was once more denied by Mayor Duterte in a letter to petitioner dated 19 May 1993. In this letter, Mayor Duterte pointed out that, under *Cena*, grant of the extension of service was discretionary on the part of the City Mayor, but that he could not grant the extension requested. Mayor Duterte's letter, in relevant part, read:

"The matter was referred to the City Legal Office and the Chairman of the Civil Service Commission, in the advent of the decision of the Supreme Court in the *Cena vs. CSC, et al.* (G.R. No. 97419 dated July 3, 1992), for legal opinion. Both the City Legal Officer and the Chairman of the Civil Service Commission are one in these opinion that extending you an appointment in order that you may be able to complete the fifteen-year service requirement is discretionary [on the part of] the City Mayor.

Much as we desire to extend you an appointment but circumstances are that we can no longer do so. As you are already nearing your 70th birthday may no longer be able to perform the duties attached to your position. Moreover, the position you had vacated was already filled up.

We therefore regret to inform you that we cannot act favorably on your request."[8] (Italics supplied)

At this point, Mr. Rabor decided to come to this Court. He filed a Letter/Petition dated 6 July 1993 appealing from Civil Service Resolution No. 92-594 and from Mayor Duterte's letter of 10 May 1993.

The Court required petitioner Rabor to comply with the formal requirements for instituting a special civil action of certiorari to review the assailed Resolution of the Civil Service Commission. In turn, the Commission was required to comment on petitioner's Letter/Petition.^[9] The Court subsequently noted petitioner's Letter of 13

September 1993 relating to compliance with the mentioned formal requirements and directed the Clerk of Court to advise petitioner to engage the services of counsel or to ask for legal assistance from the Public Attorney's Office (PAO).[10]

The Civil Service Commission, through the Office of the Solicitor General, filed its comment on 16 November 1993. The Court then resolved to give due course to the Petition and required the parties to file memoranda. Both the Commission and Mr. Rabor (the latter through PAO counsel) did so.

In this proceeding, petitioner Rabor contends that his claim falls squarely within the ruling of this Court in *Cena v. Civil Service Commission*.^[11]

Upon the other hand, the Commission seeks to distinguish this case from *Cena*. The Commission, through the Solicitor General, stressed that in *Cena*, this Court had ruled that the employer agency, the Land Registration Authority of the Department of Justice, was vested with discretion to grant to *Cena* the extension requested by him. The Land Registration Authority had chosen not to exercise its discretion to grant or deny such extension. In contrast, in the instant case, the Davao City Government did exercise its discretion on the matter and decided to deny the extension sought by petitioner Rabor for legitimate reasons.

While the *Cena* decision is barely three (3) years old, the Court considers that it must reexamine the doctrine of *Cena* and the theoretical and policy underpinnings thereof.^[12]

We start by recalling the factual setting of *Cena*.

Gaudencio *Cena* was appointed Registrar of the Register of Deeds of Malabon, Metropolitan Manila, on 16 July 1987. He reached the compulsory retirement age of sixty-five (65) years on 22 January 1991. By the latter date, his government service would have reached a total of eleven (11) years, nine (9) months and six (6) days. Before reaching his 65th birthday, *Cena* requested the Secretary of Justice, through the Administrator of the Land Registration Authority ("LRA") that he be allowed to extend his service to complete the fifteen-year service requirement to enable him to retire with the full benefit of an Old-Age Pension under Section 11 (b) of P.D. No. 1146. If *Cena's* request were granted, he would complete fifteen (15) years of government service on 15 April 1994, at the age of sixty-eight (68) years.

The LRA Administrator sought a ruling from the Civil Service Commission on whether or not *Cena's* request could be granted considering that *Cena* was covered by Civil Service Memorandum No. 27, Series of 1990. On 17 October 1990, the Commission allowed *Cena* a one (1) year extension of his service from 22 January 1991 to 22 January 1992 under its Memorandum Circular No. 27. Dissatisfied, *Cena* moved for reconsideration, without success. He then came to this Court, claiming that he was entitled to an extension of three (3) years, three (3) months and twenty-four (24) days to complete the fifteen-year service requirement for retirement with full benefits under Section 11 (b) of P.D. No. 1146.

This Court granted *Cena's* petition in its Decision of 3 July 1992. Speaking through Mr. Justice Medialdea, the Court held that a government employee who has reached the compulsory retirement age of sixty-five (65) years, but at the same time has not yet completed fifteen (15) years of government service required under Section 11 (b) of P.D. No. 1146 to qualify for the Old-Age Pension Benefit, may be granted an extension of his government service for such period of time as may be necessary to "fill up" or comply with the fifteen (15)-year service requirement. The Court also held that the authority to grant the extension was a discretionary one vested in the head of the agency concerned. Thus the Court concluded:

"Accordingly, the Petition is GRANTED. The Land Registration Authority (LRA) and Department of Justice has the discretion to allow petitioner Gaudencio *Cena* to extend his 11 years, 9 months and 6 days of

government service to complete the fifteen-year service so that he may retire with full benefits under Section 11, paragraph (b) of P.D. 1146."[13] (Italics supplied)

The Court reached the above conclusion primarily on the basis of the "plain and ordinary meaning" of Section 11 (b) of P.D. No. 1146. Section 11 may be quoted in its entirety:

"Sec. 11. Conditions for Old-Age Pension. -- (a) Old-Age Pension shall be paid to a member who

(1) has at least fifteen (15) years of service;

(2) is at least sixty (60) years of age; and

(3) is separated from the service.

(b) unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service; Provided, that if he has less than fifteen (15) years of service, he shall be allowed to continue in the service to complete the fifteen (15) years." (Italics supplied)

The Court went on to rely upon the canon of liberal construction which has often been invoked in respect of retirement statutes:

"Being remedial in character, a statute granting a pension or establishing [a] retirement plan should be liberally construed and administered in favor of persons intended to be benefitted thereby. The liberal approach aims to achieve the humanitarian purposes of the law in order that efficiency, security and well-being of government employees may be enhanced."[14] (Citations omitted)

While Section 11 (b) appeared cast in verbally unqualified terms, there were (and still are) two (2) administrative issuances which prescribe limitations on the extension of service that may be granted to an employee who has reached sixty-five (65) years of age.

The first administrative issuance is Civil Service Commission Circular No. 27, Series of 1990, which should be quoted in its entirety:

"TO :

ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL/LOCAL GOVERNMENTS INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS

SUBJECT :

Extension of Service of Compulsory Retiree to Complete the Fifteen Years Service Requirement for Retirement Purposes

Pursuant to CSC Resolution No. 90-454 dated May 21, 1990, the Civil Service Commission hereby adopts and promulgates the following policies and guidelines in the extension of services of compulsory retirees to complete the fifteen years service requirement for retirement purposes:

1. Any request for the extension of service of compulsory retirees to complete the fifteen (15) years service requirement for retirement shall be allowed only to permanent appointees in the career service who are regular members of the Government Service Insurance System (GSIS), and shall be granted for a period not exceeding one (1) year.

2. Any request for the extension of service of compulsory retiree to complete the fifteen (15) years service

requirement for retirement who entered the government service at 57 years of age or over upon prior grant of authority to appoint him or her, shall no longer be granted.

3. Any request for the extension of service to complete the fifteen (15) years service requirement of retirement shall be filed not later than three (3) years prior to the date of compulsory retirement.

4. Any request for the extension of service of a compulsory retiree who meets the minimum number of years of service for retirement purposes may be granted for six (6) months only with no further extension.

This Memorandum Circular shall take effect immediately." (*Italics supplied*)

The second administrative issuance — Memorandum Circular No. 65 of the Office of the President, dated 14 June 1988 — provides:

"x x x x x x x x

WHEREAS, this Office has been receiving requests for reinstatement and/or retention in the service of employees who have reached the compulsory retirement age of 65 years, despite the strict conditions provided for in Memorandum Circular No. 163, dated March 5, 1968, as amended.

WHEREAS, the President has recently adopted a policy to adhere more strictly to the law providing for compulsory retirement age of 65 years and, in extremely meritorious cases, to limit the service beyond the age of 65 years to six (6) months only.

WHEREFORE, the pertinent provision of Memorandum Circular No. 163 on the retention in the service of officials or employees who have reached the compulsory retirement age of 65 years, is hereby amended to read as follows

'Officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for extremely meritorious reasons in which case the retention shall not exceed six (6) months.'

All heads of departments, bureaus, offices and instrumentalities of the government including government-owned or controlled corporations, are hereby enjoined to require their respective offices to strictly comply with this circular.

This Circular shall take effect immediately.

By authority of the President

(Sgd.)

CATALINO MACARAIG, JR.
Executive Secretary

Manila, June 14, 1988."[15] (*Italics supplied*)

Medialdea, J. resolved the challenges posed by the above two (2) administrative regulations by, firstly, considering as invalid Civil Service Memorandum No. 27 and, secondly, by interpreting the Office of the President's Memorandum Circular No. 65 as inapplicable to the case of Gaudencio T. Cena.

We turn first to the Civil Service Commission's Memorandum Circular No. 27. Medialdea, J. wrote:

"The Civil Service Commission Memorandum Circular No. 27 being in the nature of an administrative regulation, must be governed by the principle that administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions (*People v. Maceren*, G.R. No. L-32166, October 18,

1977, 79 SCRA 450; *Teoxon v. Members of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585; *Manuel v. General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660; *Deluao v. Casteel*, L-21906, August 29, 1969, 29 SCRA 350). x x x. The rule on limiting to one year the extension of service of an employee who has reached the compulsory retirement age of sixty-five (65) years, but has less than fifteen (15) years of service under Civil Service Memorandum Circular No. 27, S. 1990, cannot likewise be accorded validity because it has no relationship or connection with any provision of P.D. 1146 supposed to be carried into effect. The rule was an addition to or extension of the law, not merely a mode of carrying it into effect. The Civil Service Commission has no power to supply perceived omissions in P.D. 1146."*[16]* (Italics supplied)

It will be seen that *Cena*, in striking down Civil Service Commission Memorandum No. 27, took a very narrow view on the question of what subordinate rule-making by an administrative agency is permissible and valid. That restrictive view must be contrasted with this Court's earlier ruling in *People v. Exconde*,*[17]* where Mr. Justice J.B.L. Reyes said:

"It is well established in this jurisdiction that, while the making of laws is a non-delegable activity that corresponds exclusively to Congress, nevertheless, the latter may constitutionally delegate authority and promulgate rules and regulations to implement a given legislation and effectuate its policies, for the reason that the legislature often finds it impracticable (if not impossible) to anticipate and provide for the multifarious and complex situations that may be met in carrying the law into effect. All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it, but conform to the standards that the law prescribes."*[18]* (Italics supplied)

In *Tablarin v. Gutierrez*,*[19]* the Court, in sustaining the validity of a MECS Order which established passing a uniform admission test called the National Medical Admission Test (NMAT) as a prerequisite for eligibility for admission into medical schools in the Philippines, said:

"The standards set for subordinate legislation in the exercise of rule making authority by an administrative agency like the Board of Medical Education are necessarily broad and highly abstract. As explained by then Mr. Justice Fernando in *Edu v. Ericta* (35 SCRA 481 [1970]) -?

"The standards may be either expressed or implied. If the former, the non-delegation objection is easily met. The standard though does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole. In the *Reflector Law*, clearly the legislative objective is public safety. What is sought to be attained in *Calalang v. William* is "safe transit upon the roads." "

We believe and so hold that the necessary standards are set forth in Section 1 of the 1959 Medical Act: 'the standardization and regulation of medical education' and in Section 5 (a) and 7 of the same Act, the body of the statute itself, and that these considered together are sufficient compliance with the requirements of the non-delegation principle."*[20]* (Citations omitted; underscoring partly in the original and partly supplied)

In *Edu v. Ericta*,*[21]* then Mr. Justice Fernando stressed the abstract and very general nature of the standards which our Court has in prior caselaw upheld as sufficient for purposes of compliance with the requirements for validity of subordinate or administrative rule-making:

"This Court has considered as sufficient standards, 'public welfare,' (*Municipality of Cardona v. Municipality of Binangonan*, 36 Phil. 547 [1917]); 'necessary in the interest of law and order,' (*Rubi v. Provincial Board*, 39 Phil. 660 [1919]); 'public interest,' (*People v. Rosenthal*, 68 Phil. 328 [1939]); and 'justice and equity and substantial merits of the case,' (*International Hardwood v. Pangil Federation of Labor*, 17 Phil. 602 [1940])."*[22]* (Italics supplied)

Clearly, therefore, *Cena* when it required a considerably higher degree of detail in the statute to be implemented,

went against prevailing doctrine. It seems clear that if the governing or enabling statute is quite detailed and specific to begin with, there would be very little need (or occasion) for implementing administrative regulations. It is, however, precisely the inability of legislative bodies to anticipate all (or many) possible detailed situations in respect of any relatively complex subject matter, that makes subordinate, delegated rule-making by administrative agencies so important and unavoidable. All that may be reasonably demanded is a showing that the delegated legislation consisting of administrative regulations are germane to the general purposes projected by the governing or enabling statute. This is the test that is appropriately applied in respect of Civil Service Memorandum Circular No. 27, Series of 1990, and to this test we now turn.

We consider that the enabling statute that should appropriately be examined is the present Civil Service law — found in Book V, Title I, Subtitle A, of Executive Order No. 292 dated 25 July 1987, otherwise known as the Administrative Code of 1987 — and not alone P.D. No. 1146, otherwise known as the "Revised Government Service Insurance Act of 1977." For the matter of extension of service of retirees who have reached sixty-five (65) years of age is an area that is covered by both statutes and not alone by Section 11 (b) of P.D. No. 1146. This is crystal clear from examination of many provisions of the present civil service law.

Section 12 of the present Civil Service law set out in the 1987 Administrative Code provides, in relevant part, as follows:

"Sec. 12. Powers and Functions. — The [Civil Service] Commission shall have the following powers and functions:

x x x x x x x x

(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

x x x x x x x x

(10) Formulate, administer and evaluate programs relative to the development and retention of a qualified and competent work force in the public service;

x x x x x x x x

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of service beyond retirement age;

x x x x x x x x

(17) Administer the retirement program for government officials and employees, and accredit government services and evaluate qualifications for retirement;

x x x x x x x x

(19) Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law." (Italics supplied)

It was on the bases of the above quoted provisions of the 1987 Administrative Code that the Civil Service Commission promulgated its Memorandum Circular No. 27. In doing so, the Commission was acting as "the central personnel agency of the government empowered to promulgate policies, standards and guidelines for efficient, responsive and effective personnel administration in the government." [23] It was also discharging its

function of "administering the retirement program for government officials and employees" and of "evaluat[ing] qualifications for retirement."

In addition, the Civil Service Commission is charged by the 1987 Administrative Code with providing leadership and assistance "in the development and retention of qualified and efficient work force in the Civil Service" (Section 16 [10]) and with the "enforcement of the constitutional and statutory provisions, relative to retirement and the regulation for the effective implementation of the retirement of government officials and employees" (Section 16 [14]).

We find it very difficult to suppose that the limitation of permissible extensions of service after an employee has reached sixty-five (65) years of age has no reasonable relationship or is not germane to the foregoing provisions of the present Civil Service Law. The physiological and psychological processes associated with ageing in human beings are in fact related to the efficiency and quality of the service that may be expected from individual persons. The policy considerations which guided the Civil Service Commission in limiting the maximum extension of service allowable for compulsory retirees, were summarized by Griño-Aquino, J. in her dissenting opinion in *Cena*:

"Worth pondering also are the points raised by the Civil Service Commission that extending the service of compulsory retirees for longer than one (1) year would: (1) give a premium to late-comers in the government service and in effect discriminate against those who enter the service at a younger age; (2) delay the promotion of the latter and of next-in-rank employees; and (3) prejudice the chances for employment of qualified young civil service applicants who have already passed the various government examinations but must wait for jobs to be vacated by 'extendees' who have long passed the mandatory retirement age but are enjoying extension of their government service to complete 15 years so they may qualify for old-age pension." [24] (Italics supplied)

Cena laid heavy stress on the interest of retirees or would be retirees, something that is, in itself, quite appropriate. At the same time, however, we are bound to note that there should be countervailing stress on the interests of the employer agency and of other government employees as a whole. The results flowing from the striking down of the limitation established in Civil Service Memorandum Circular No. 27 may well be "absurd and inequitable," as suggested by Mme. Justice Griño-Aquino in her dissenting opinion. An employee who has rendered only three (3) years of government service at age sixty-five (65) can have his service extended for twelve (12) years and finally retire at the age of seventy-seven (77). This reduces the significance of the general principle of compulsory retirement at age sixty-five (65) very close to the vanishing point.

The very real difficulties posed by the *Cena* doctrine for rational personnel administration and management in the Civil Service, are aggravated when *Cena* is considered together with the case of *Toledo v. Civil Service Commission*. [25] *Toledo* involved the provisions of Rule III, Section 22, of the Civil Service Rules on Personnel Action and Policies (CSRPA) which prohibited the appointment of persons fifty-seven (57) years old or above in government service without prior approval of the Civil Service Commission. Civil Service Memorandum Circular No. 5, Series of 1983 provided that a person fifty-seven (57) years of age may be appointed to the Civil Service provided that the exigencies of the government service so required and provided that the appointee possesses special qualifications not possessed by other officers or employees in the Civil Service and that the vacancy cannot be filled by promotion of qualified officers or employees of the Civil Service. Petitioner *Toledo* was appointed Manager of the Education and Information Division of the Commission on Elections when he was almost fifty-nine (59) years old. No authority for such appointment had been obtained either from the President of the Philippines or from the Civil Service Commission and the Commission found that the other conditions laid down in Section 22 of Rule III, CSRPA, did not exist. The Court nevertheless struck down Section 22, Rule III on the same exceedingly restrictive view of permissible administrative legislation that *Cena* relied on. [26]

When one combines the doctrine of Toledo with the ruling in Cena, very strange results follow. Under these combined doctrines, a person sixty-four (64) years of age may be appointed to the government service and one (1) year later may demand extension of his service for the next fourteen (14) years; he would retire at age seventy-nine (79). The net effect is thus that the general statutory policy of compulsory retirement at sixty-five (65) years is heavily eroded and effectively becomes unenforceable. That general statutory policy may be seen to embody the notion that there should be a certain minimum turn-over in the government service and that opportunities for government service should be distributed as broadly as possible, specially to younger people, considering that the bulk of our population is below thirty (30) years of age. That same general policy also reflects the life expectancy of our people which is still significantly lower than the life expectancy of, e.g., people in Northern and Western Europe, North America and Japan.

Our conclusion is that the doctrine of Cena should be and is hereby modified to this extent: that Civil Service Memorandum Circular No. 27, Series of 1990, more specifically paragraph (1) thereof, is hereby declared valid and effective. Section 11 (b) of P.D. No. 1146 must, accordingly, be read together with Memorandum Circular No. 27. We reiterate, however, the holding in Cena that the head of the government agency concerned is vested with discretionary authority to allow or disallow extension of the service of an official or employee who has reached sixty-five (65) years of age without completing fifteen (15) years of government service; this discretion is, nevertheless, to be exercised conformably with the provisions of Civil Service Memorandum Circular No. 27, Series of 1990.

We do not believe it necessary to deal specifically with Memorandum Circular No. 65 of the Office of the President dated 14 June 1988. It will be noted from the text quoted supra (pp. 11-12) that the text itself of Memorandum Circular No. 65 (and for that matter, that of Memorandum Circular No. 163, also of the Office of the President, dated 5 March 1968)[27] does not purport to apply only to officers or employees who have reached the age of sixty-five (65) years and who have at least fifteen (15) years of government service. We noted earlier that Cena interpreted Memorandum Circular No. 65 as referring only to officers and employees who have both reached the compulsory retirement age of sixty-five (65) and completed the fifteen (15) years of government service. Cena so interpreted this Memorandum Circular precisely because Cena had reached the conclusion that employees who have reached sixty-five (65) years of age, but who have less than fifteen (15) years of government service, may be allowed such extension of service as may be needed to complete fifteen (15) years of service. In other words, Cena read Memorandum Circular No. 65 in such a way as to comport with Cena's own conclusion reached without regard to that Memorandum Circular. In view of the conclusion that we today reached in the instant case, this last ruling of Cena is properly regarded as merely obiter.

We also do not believe it necessary to determine whether Civil Service Memorandum Circular No. 27 is fully compatible with Office of the President's Memorandum Circular No. 65; this question must be reserved for detailed analysis in some future justiciable case.

Applying now the results of our reexamination of Cena to the instant case, we believe and so hold that Civil Service Resolution No. 92-594 dated 28 April 1992 dismissing the appeal of petitioner Rabor and affirming the action of CSRO-XI Director Cawad dated 26 July 1991, must be upheld and affirmed.

ACCORDINGLY, for all the foregoing, the Petition for Certiorari is hereby DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

Padilla, J., vote to grant the petition for the same reasons stated in my concurring opinion in *Cena vs. CSC* reported in 211 SCRA 192.

Quiason, J., on leave.

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- [1] Annex "A," Letter/Petition, Rollo, p. 4.
[2] Annex "A-1," Letter/Petition, Rollo, p. 5.
[3] Annex "B," Letter/Petition, Rollo, p. 6.
[4] Annex "B-1," Letter/Petition, Rollo, p. 7.
[5] Annex "C," Letter/Petitioner, Rollo, p. 8.
[6] CSC Resolution No. 92-594, Rollo, pp. 11-12.

[7] 211 SCRA 179 (1992).

- [8] Rollo, p. 3.
[9] Supreme Court Resolution dated 24 August 1993, Rollo, p. 17.
[10] Rollo, p. 40-A.

[11] 211 SCRA 179 (1992).

- [12] Two (2) Justices dissented — Griño-Aquino and Romero, JJ. -- from the *Cena* decision.
[13] 211 SCRA at 192.
[14] 211 SCRA at 186.
[15] 211 SCRA at 200-201.
[16] 211 SCRA at 190.
[17] 101 Phil. 1125 (1957).
[18] 101 Phil. at 1129.

[19] 152 SCRA 730 (1987).

- [20] 152 SCRA at 740-741.

[21] 35 SCRA 481 (1970).

- [22] 35 SCRA at 497 (note 43).
[23] See Addendum to Comment filed by Civil Service Commission dated 5 August 1991; *Cena* Rollo, p. 91.
[24] 211 SCRA at 196.

[25] 202 SCRA 507 (1991). We are not here, of course, reexamining Toledo for this case is not, strictly speaking, involved at present. At the same time, we cannot disregard the intellectual relevance of the doctrine in Toledo to the issues that we are presently addressing.

[26] Toledo held:

"[Section 22, Rule III] is entirely a creation of the Civil Service Commission, having no basis in the law itself which it was meant to implement. It cannot be related to or connected with any specific provision of the law which it is meant to carry into effect, such as a requirement, for instance, that age should be reckoned as a factor in the employment or reinstatement of an individual, or a direction that there be a determination of some point in a person's life at which he becomes unemployable or employable [only] under specific conditions. x x x [S]ince there is no prohibition or restriction on the employment of fifty-seven (57) year old persons x x x there was nothing to carry into effect through an implementing rule on the matter." (202 SCRA at 513-514, per Paras, J.; underscoring supplied)

[27] 64 Official Gazette 3295 (1 April 1968).

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