

CIVIL SERVICE COMMISSION, PETITIONER, VS. PEDRO O. DACOYCOY, RESPONDENT.

G.R. No. 135805. April 29, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before us is an appeal via certiorari interposed by the Civil Service Commission from a decision of the Court of Appeals ruling that respondent Pedro O. Dacoycoy was not guilty of nepotism and declaring null and void the Civil Service Commission's resolution dismissing him from the service as Vocational School Administrator, Balicuatro College of Arts and Trade, Allen, Northern Samar.

The facts may be succinctly related as follows:

On November 29, 1995, George P. Suan, a Citizens Crime Watch Vice-President, Allen Chapter, Northern Samar, filed with the Civil Service Commission, Quezon City, a complaint against Pedro O. Dacoycoy, for habitual drunkenness, misconduct and nepotism.[1]

After the fact-finding investigation, the Civil Service Regional Office No. 8, Tacloban City, found a prima facie case against respondent, and, on March 5, 1996, issued the corresponding formal charge against him.[2] Accordingly, the Civil Service Commission conducted a formal investigation, and, on January 28, 1997, the Civil Service Commission promulgated its resolution finding no substantial evidence to support the charge of habitual drunkenness and misconduct. However, the Civil Service Commission found respondent Pedro O. Dacoycoy guilty of nepotism on two counts as a result of the appointment of his two sons, Rito and Ped Dacoycoy, as driver and utility worker, respectively, and their assignment under his immediate supervision and control as the Vocational School Administrator Balicuatro College of Arts and Trades, and imposed on him the penalty of dismissal from the service.[3]

On February 25, 1997, respondent Dacoycoy filed a motion for reconsideration;[4] however, on May 20, 1997, the Civil Service Commission denied the motion.[5]

On July 18, 1997, respondent Dacoycoy filed with the Court of Appeals a special civil action for certiorari with preliminary injunction[6] to set aside the Civil Service Commission's resolutions.

On July 29, 1998, the Court of Appeals promulgated its decision reversing and setting aside the decision of the Civil Service Commission, ruling that respondent did not appoint or recommend his two sons Rito and Ped, and, hence, was not guilty of nepotism. The Court further held that it is "the person who recommends or appoints who should be sanctioned, as it is he who performs the prohibited act." [7]

Hence, this appeal.

On November 17, 1998, we required respondent to comment on the petition within ten (10) days from notice.[8] On December 11, 1998, respondent filed his comment

We give due course to the petition.

The basic issue raised is the scope of the ban on nepotism.

We agree with the Civil Service Commission that respondent Pedro O. Dacoycoy was guilty of nepotism and correctly meted out the penalty of dismissal from the service.

The law defines nepotism[9] as follows:

"Sec. 59. Nepotism. - (1) All appointments to the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

"As used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(2) The following are exempted from the operations of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission."

Under the definition of nepotism, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following:

- a) appointing authority;
- b) recommending authority;
- c) chief of the bureau or office, and
- d) person exercising immediate supervision over the appointee.

Clearly, there are four situations covered. In the last two mentioned situations, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative within the third civil degree of consanguinity or affinity of the chief of the bureau or office, or the person exercising immediate supervision over the appointee.

Respondent Dacoycoy is the Vocational School Administrator, Balicuatro College of Arts and Trades, Allen, Northern Samar. It is true that he did not appoint or recommend his two sons to the positions of driver and utility worker in the Balicuatro College of Arts and Trades. In fact, it was Mr. Jaime Daclag, Head of the Vocational Department of the BCAT, who recommended the appointment of Rito. Mr. Daclag's authority to recommend the appointment of first level positions such as watchmen, security guards, drivers, utility workers, and casuals and emergency laborers for short durations of three to six months was recommended by respondent Dacoycoy and approved by DECS Regional Director Eladio C. Dioko, with the provision that such positions shall be under Mr. Daclag's immediate supervision. On July 1, 1992, Atty. Victorino B. Tirol II, Director III, DECS Regional Office VIII, Palo, Leyte, appointed Rito Dacoycoy driver of the school. On January 3, 1993, Mr. Daclag also appointed Ped Dacoycoy casual utility worker. However, it was respondent Dacoycoy who certified that "funds are available for the proposed appointment of Rito Dacoycoy" and even rated his performance as "very satisfactory". On the other hand, his son Ped stated in his position description form that his father was "his next higher supervisor". The circumvention of the ban on nepotism is quite obvious. Unquestionably, Mr. Daclag was a subordinate of respondent Pedro O. Dacoycoy, who was the school administrator. He authorized Mr. Daclag to recommend the appointment of first level employees under his immediate supervision. Then Mr. Daclag recommended the

appointment of respondent's two sons and placed them under respondent's immediate supervision serving as driver and utility worker of the school. Both positions are career positions.

To our mind, the unseen but obvious hand of respondent Dacoycoy was behind the appointing or recommending authority in the appointment of his two sons. Clearly, he is guilty of nepotism.

At this point, we have necessarily to resolve the question of the party adversely affected who may take an appeal from an adverse decision of the appellate court in an administrative civil service disciplinary case. There is no question that respondent Dacoycoy may appeal to the Court of Appeals from the decision of the Civil Service Commission adverse to him.[10] He was the respondent official meted out the penalty of dismissal from the service. On appeal to the Court of Appeals, the court required the petitioner therein, here respondent Dacoycoy, to implead the Civil Service Commission as public respondent[11] as the government agency tasked with the duty to enforce the constitutional and statutory provisions on the civil service.[12]

Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant George P. Suan, who was merely a witness for the government.[13] Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court.[14] By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office"[15] and not included are "cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary"[16] or "when the respondent is exonerated of the charges, there is no occasion for appeal."[17] In other words, we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges" enunciated in *Paredes v. Civil Service Commission*;^[18] *Mendez v. Civil Service Commission*;^[19] *Magpale v. Civil Service Commission*;^[20] *Navarro v. Civil Service Commission and Export Processing Zone Authority*^[21] and more recently *Del Castillo v. Civil Service Commission*^[22]

The Court of Appeals' reliance on *Debulgado vs. Civil Service Commission*,^[23] to support its ruling is misplaced. The issues in *Debulgado* are whether a promotional appointment is covered by the prohibition against nepotism or the prohibition applies only to original appointments to the civil service, and whether the Commission had gravely abused its discretion in recalling and disapproving the promotional appointment given to petitioner after the Commission had earlier approved that appointment. *Debulgado* never even impliedly limited the coverage of the ban on nepotism to only the appointing or recommending authority for appointing a relative. Precisely, in *Debulgado*, the Court emphasized that Section 59 "means exactly what it says in plain and ordinary language: x x x The public policy embodied in Section 59 is clearly fundamental in importance, and the Court had neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there."^[24]

Nepotism is one pernicious evil impeding the civil service and the efficiency of its personnel. In *Debulgado*, we stressed that "[T]he basic purpose or objective of the prohibition against nepotism also strongly indicates that the prohibition was intended to be a comprehensive one."^[25] "The Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive."^[26] If not within the exceptions, it is a form of corruption that must be nipped in the bud or bated whenever or wherever it raises its ugly head. As we said in an earlier case "what we need now is not only to punish the wrongdoers or reward the 'outstanding' civil servants,

but also to plug the hidden gaps and potholes of corruption as well as to insist on strict compliance with existing legal procedures in order to abate any occasion for graft or circumvention of the law." [27]

WHEREFORE, the Court hereby GRANTS the petition and REVERSES the decision of the Court of Appeals in CA-G.R. SP No. 44711.

ACCORDINGLY, the Court REVIVES and AFFIRMS the resolutions of the Civil Service Commission dated January 28, 1998 and September 30, 1998, dismissing respondent Pedro O. Dacoycoy from the service.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Kapunan, Panganiban, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Romero, J., please see dissenting opinion.

Melo, J., concurs and dissent in separate opinion.

Puno, J., please see concurring opinion.

Vitug, and Quisumbing, JJ., join the concurring and dissenting opinion of Justice Melo.

Mendoza, J., join the concurring opinion of Justice Puno.

[1] CSC Rollo, pp. 261-262.

[2] Report of Investigation, CSC, Rollo, pp. 154-162.

[3] Resolution No. 970684, dated January 28, 1997, CSC Rollo, pp. 108-115.

[4] CSC Rollo, pp. 82-92.

[5] Resolution No. 972881, dated May 20, 1997, Rollo, pp. 44-46.

[6] Petition, CA-G.R. SP No. 44711.

[7] Decision CA-G.R. SP No. 44711, Rollo, pp. 17-22.

[8] Resolution, dated November 17, 1998, Rollo, p. 39.

[9] Section 59, Executive Order 292, dated July 25, 1987.

[10] Rule 43, Section 1, 1997 Rules of Civil Procedure; R.A. No. 7902.

[11] Resolution adopted on July 23, 1997, in CA-G.R. SP No. 44711.

[12] Article IX (B), Constitution; Section 12, par. 1, Book V, Executive Order No. 292, dated July 25, 1987.

[13] Paredes vs. Civil Service Commission, 192 SCRA 84, 99, citing Gonzalo vs. D. Roda, 64 SCRA 120.

[14] Rule 45, Section 1, 1997 Rules of Civil Procedure.

[15] Mendez vs. Civil Service Commission, 204 SCRA 965, 967.

[16] Paredes vs. Civil Service Commission, 192 SCRA 84, 85.

[17] Mendez vs. Civil Service Commission, 204 SCRA 965, 968.

[18] 192 SCRA 84.

[19] 204 SCRA 965.

[20] 215 SCRA 398.

[21] 226 SCRA 207.

[22] 241 SCRA 317..

[23] 237 SCRA 184.

[24] On page 198.

[25] On page 195.

[26] On page 197.

[27] Callanta vs. Office of the Ombudsman, 285 SCRA 648, 669.

DISSENTING AND CONCURRING OPINION

MELO, J.:

Although I completely agree with the result and likewise with the wisdom in which the issues relating to nepotism are threshed out in the majority opinion, I do not agree with the majority opinion stating that the Civil Service Commission may appeal a judgment of exoneration in an administrative case involving nepotism. And Mr. Justice Puno would go further by allowing even a private complainant - and by implication, a complainant office, to appeal a decision exonerating or absolving a civil service employee of charges against, or even imposing a penalty upon him. This totally contravenes our well-settled ruling in *Paredes vs. Civil Service Commission* (192 SCRA 84 [1990]), faithfully and consistently reiterated by the Court En Banc in *Mendez vs. Civil Service Commission* (204 SCRA 965 [1991]); *Magpale vs. Civil Service Commission* (215 SCRA 398 [1992]); *Navarro vs. Civil Service Commission and Export Processing Zone Authority* (226 SCRA 522 [1993]); *University of the Philippines vs. Civil Service Commission* (228 SCRA 207 [1993]); and more recently in *Del Castillo vs. Civil Service Commission* (241 SCRA 317 [1995]); that, the Philippine Civil Service Law does not contemplate a review of decisions exonerating officers and employees from administrative charges.

The Court of Appeals exonerated respondent Dacoycoy of the charge of nepotism. From such "adverse decision", the Civil Service Commission, through its Office for Legal Affairs, interposed the present appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court. Under existing laws and jurisprudence this is not allowed, so this Court ruled in the above-cited cases. If this point is not stressed by the Court, the present decision might be misconstrued as a watering down of the settled doctrine.

Although in *Mendez*, what was particularly assailed was the authority of the Civil Service Commission (CSC) to review decisions of the Merit System Promotion Board (MSPB), the Court nevertheless spelled out the rule regarding appeal from decisions where officers and employees are exonerated of the administrative charges leveled against them. Thus, we held:

It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law (*Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs*, 153 SCRA 318).

A cursory reading of P.D. 807, otherwise known as "The Philippine Civil Service Law" shows that said law does not contemplate a review of decisions exonerating officers or employees from administrative charges.

Section 37 paragraph (a) thereof, provides:

The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. x x x. (Italics supplied) (p. 7 Rollo)

Said provision must be read together with Section 39 paragraph (a) of P.D. 805 (should be 807) which contemplates:

Appeals, where allowable, shall be made by the party adversely affected by the decision x x x. (italics supplied) (p. 104, Rollo)

The phrase "party adversely affected by the decision" refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office. In the instant case, Coloyan who filed the appeal cannot be considered an aggrieved party because he is not the respondent in the administrative case below.

Finally, pursuant to Section 37 paragraph (b) of P.D. 807, the city mayor, as head of the city government, is empowered to enforce judgment with finality on lesser penalties like suspension from work for one month and forfeiture of salary equivalent to one month against erring employees.

By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges against him. But when the respondent is exonerated of said charges, as in the case, there is no occasion for appeal.

(pp. 967-968.)

The Mendez ruling was a reiteration of Paredes wherein we said:

Based on the above provision of law, appeal to the Civil Service Commission in an administrative case is extended to the party adversely affected by the decision, that is, the person or the respondent employee who has been meted out the penalty of suspension for more than thirty days; or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. The decision of the disciplining authority is even final and not appealable to the Civil Service Commission in cases where the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. Appeal in cases allowed by law must be filed within fifteen days from receipt of the decision.

Here the MSPB after hearing and the submission of memoranda exonerated private respondent Amor of all charges except for habitual tardiness. The penalty was only a reprimand so that even private respondent Amor, the party adversely affected by the decision, cannot even interpose an appeal to the Civil Service Commission.

As correctly ruled by private respondent, petitioner Paredes the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose as appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness (Gonzalo v. D. Roda, 64 SCRA 120). Even if she is the Head of the Administrative Services Department of the HSRC as a complainant she is merely a witness for the government in an administrative case. No private interest is involved in an administrative case as the offense is committed against the government.

(pp. 98-99.)

It is true that as early as Paredes, this Court was already aware of the fact that in an administrative case, any offense, not only that involving nepotism as intimated in the majority opinion, is committed against the

government. As rightly pointed out in Mr. Justice Puno's Separate Opinion, the charges in Paredes and the other subsequent cases were as serious, if not more serious than the present charge of nepotism. In fact, there might even be instances when the unlawful and nepotistic act may prove to be beneficial to the government, as in the case where the appointed employee is more than qualified for the position. Surely, charges of abuse of authority or of graft and corruption are more serious than an accusation of nepotism, for the acts therein involved cannot but cause injury to government. If the complainant is allowed to appeal in cases involving nepotism, then with more reason should appeals be allowed in the dismissal of, or in the imposition of lighter penalties in, the charges mentioned. How about sexual harassment? Malversation? Where will this end up in except allowing appeal in all cases. The Court shall then be legislating or, at least, abandoning settled doctrines for no compelling reasons. Taking the case of nepotism as the exception to the rule would not be justified considering that, despite the greater seriousness of the charges in the earlier cases, we still did not rule therein that the government may take the appeal as the "party adversely affected".

There is more cogent reason, therefore, for the Court to adhere to the general rule in an administrative case involving nepotism. Besides, the law cannot be clearer on the matter. It made no distinction as regards the charge of nepotism. When the law does not distinguish, the Court should not distinguish.

It should also be noted that Presidential Decree No. 807 has not undergone any pertinent amendment since the Court applied the law in Paredes. From the time of its passage on October 6, 1975 until the present, appeals by the government in cases of exoneration in an administrative case had been disallowed. It was not only the result of this Court's "interpretation" of the law in Paredes that made it so. It was rather the real and definite intention of the Philippine Civil Service law. If it was the intention of Legislature to allow appeals as the majority holds or as Mr. Justice Puno suggests, then, an amendment to that effect could have been introduced and passed. Then President Marcos who had full legislative power could have easily amended the said law. The records show that he did not. The fact that no such amendment has been introduced even after the re-institution of a legislative body, the Batasang Pambansa, and later in 1987, the Congress of the Philippines, signifies that, at the very least our interpretation in Paredes and the other subsequent cases sits well with Congress. It is my submission that the prerogative to now determine whether this practice of disallowing appeals in cases of exoneration should still continue or not, exclusively belongs to Legislature. The Court cannot and should not arrogate this policy-making power of Congress unto itself, not even in the guise of the exercise of its expanded power of judicial review under the 1987 Constitution. Only Congress has authority to remedy inadequacies in the wisdom of a law, should it find any, especially when the definite intention of the existing law was to disallow the State to appeal from judgments of exoneration. Any attempt by the Court to transgress this most basic principle in the separation of powers between these two branches of government would to my mind, result in the abhorrent act of judicial legislation, if not outright disregard of Article 7 of the Civil Code which states that:

ART. 7. Laws are repealed only by subsequent ones, and their violations or non-observance shall not be excused by disuse, or custom or practice to the contrary.

Effective June 1, 1995, Revised Administrative Circular No. 1-95 ordained that, appeals from awards, judgments or final orders or resolutions of or authorized by any quasi-judicial agency (which includes the Civil Service Commission) in the exercise of its quasi-judicial functions shall be taken by filing a verified petition for review with the Court of Appeals. Although in general, appeal by certiorari from a judgment or final order or resolution of the Court of Appeals may be filed via a verified petition for review on certiorari with this Court (where pure questions of law, distinctly set forth therein, may be duly raised), an appeal involving a judgment or final order of the Court of Appeals exonerating a government employee in an administrative case, in particular, falls within the ambit of the provisions of Section 39, paragraph (a) of Presidential Decree No. 807. It is elementary that a special

law such as Presidential Decree No. 807 takes precedence over general rules of procedure such as Rule 45 of the Rules of Court. No appeal may, therefore, be taken under Rule 45.

Moreover, it is recognized in our jurisdiction that an administrative case which could result in the revocation of license, or similar sanctions like dismissal from office, constitutes a proceeding which partakes of a criminal nature (cf. *Pascual vs. Board of Medical Examiners*, 28 SCRA 345 [1969]). Being such, provisions of law pertaining thereto must perforce be construed strictly against the State, just as penal laws are strictly construed strictly against the State (*People vs. Manantan*, 5 SCRA 684 [1962]). Any ambiguity, should there be any, must be resolved in favor of the respondent in the administrative case. The term "party adversely affected" should not be construed as to include the State in administrative charges involving nepotism.

To allow appeals from decisions, be they exonerative or otherwise, against civil service employees would, to my mind, be stocking the stakes too much against our civil servants. It should be noted in this regard that the greater bulk of our government workers are ordinary people, working under supervision and, more often than not, exposed to political pressure and the influence of peddlers of power. Their simple status notwithstanding, they are not easily cowed and intimidated. Many, though, are threatened with complaints, transfer of station, or demotion, if they refuse to do the bidding of some unscrupulous superiors or politicians. I can, therefore, understand why the law and our jurisprudence disallow appeal by the complainant from decisions in administrative cases, be they exonerative or otherwise. Verily, an employee may be hounded into spending up to his last resources and losing his self-respect and honor by successive appeals.

What will happen, if for instance, the respondent government employee is initially exonerated or given a light penalty, and the complainant may appeal, insisting that the employee is guilty or that he deserves a heavier penalty? And, if the Civil Service Commission thereafter metes out a penalty not to the liking of the complainant, the matter may still be elevated to the Court of Appeals or even this Court? Where else will all this end, if not in the physical and financial exhaustion of the respondent civil servant? Again, I wish to stress that I speak here of the ordinary employees. The big shots in government who commit wrongs may somehow hereby benefit, but then we shall be content in concluding that we decided in favor of the many, that the good of the majority prevailed.

A judgment of exoneration by the Court of Appeals, as in the case of a judgment of exoneration by the Civil Service Commission or the now defunct Merit System Protection Board, may indeed prove to be truly adverse to the government agency concerned and eventually to the State as a whole. This is especially so when there had been lapses in the interpretation and/or application of the law as in the present case. This notwithstanding, the right to appeal, which is merely statutory may not be invoked, much less exercised, when the law does not provide any. Again, until and unless Congress exercises its prerogative to amend such law, this Court is bound by it and has no other recourse except to apply the same. Fortunately for petitioner but not so for respondent, the latter failed to invoke the foregoing general rule. In a similar case, we held that the party favored by such law who fails to interpose any objection to an appeal may be deemed to have waived this right. The Court En Banc, speaking through Mr. Justice Camilo D. Quason in *Mendoza vs. Civil Service Commission* (233 SCRA 657 [1994]), held:

We decided this case with full awareness of the decisions in *Paredes v. Civil Service Commission*, 192 SCRA 84 (1990) and *Mendez vs. Civil Service Commission*, 204 SCRA 965 (1991), where we held that only the respondent in the administrative disciplinary case, not the complainant, can appeal from a decision of the Merit Systems Protection Board (See also *Magpale vs. Civil Service Commission*, 215 SCRA 398 [1992]). These decisions were anchored on the interpretation of Section 39(a) of P.D. No. 807, the "Philippine Service Law," which provide that appeals to the CSC shall be made by the "party adversely affected by the decision." We interpreted the quoted phrase as referring to the respondent in the administrative case.

When private respondent appealed the decision of the MSPB to the CSC, petitioner never questioned the

propriety of the appeal and preferred to defend the correctness of the decision. Likewise, petitioner failed to question before this Court the right of private respondent to appeal from the decision of the MSPB. A law limiting the right to appeal to the respondent in the administrative case is a rule of procedure, not of substantive law. Failure to invoke timely a rule of procedure in favor of a party constitutes a waiver thereof (Republic vs. Judge Villanueva, G.R. No. 83333, February 13, 1989, En Banc, Minute Resolution).

(pp. 663-664.)

As a final observation, it may well be noted that the result in the present case may already be achieved by the application of this Court's ruling in Mendoza. It might not be necessary to step over board by institutionalizing the case of nepotism as an exception to Paredes, or, as Mr. Justice Puno proposes, abandoning Paredes altogether. I believe that it will do our justice system more good than harm if we abide by the principle of stare decisis in the present case. This case, I humbly submit is not the proper vehicle to review and abandon doctrines of long standing, for nonetheless, the appeal by the complainant is allowed there being no objection thereto by respondent Dacoycoy. We need not disturb at this time our old rulings. We need not enter uncertain and mined fields, for the result sought to be accomplished by the majority can well be achieved by simply following and applying our previous rulings on the matter.

Premises considered and with the above observations, I vote to grant the petition as stated in the dispositive thereof.

DISSENTING OPINION

ROMERO, J.:

Does the Civil Service Commission have the legal personality to appeal a decision of the Court of Appeals exonerating an employee charged in an administrative case, which decision, in effect, reversed and nullified the Commission's finding that the respondent employee is guilty as charged?

After an exhaustive and careful scrutiny of P.D. No. 807 (otherwise known as the Civil Service Law), Executive Order No. 292 (otherwise known as the Revised Administrative Code of 1987) as well as the Omnibus Rules Implementing Book V of Executive Order No. 292, I find no legal basis to support the contention of the majority that the Commission has that legal personality.

The Civil Service Commission is the central personnel agency of the government.[1] Corollarily, it is equipped with the power and function to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and the agencies attached to it.[2] This is in consonance with its authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees except as otherwise provided by the Constitution or by law.[3] Sitting en banc, it is composed of a Chairman and two Commissioners[4] who shall decide by a majority vote of all its Members any case or matter brought before it for resolution.[5]

It is thus clear that the Civil Service Commission has been constituted as a disciplining authority. Such has always been the intent of the 1987 Constitution, the Revised Administrative Code of 1987 on the Civil Service Commission, as well as the Civil Service Law. In fact, the Proposed Civil Service Code of the Philippines seeks to provide that the Commission shall have concurrent original disciplinary jurisdiction over officials and employees, including Presidential appointees of the departments, agencies, bureaus, provinces, cities, municipalities, state colleges and universities, and instrumentalities, including government-owned or controlled corporations with original charters. Pursuant to its quasi-judicial function, it acts as an impartial tribunal in the resolution of the

cases brought before it.

Section 34, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 provides the answer as to who may appear before the Commission, thus:

"Administrative proceedings may be commenced against a subordinate officer or employee by the following officials and employees:

- (a) Secretary of department;
 - (b) Head of Office of Equivalent rank;
 - (c) Head of Local Government Unit;
 - (d) Chief of Agency;
 - (e) Regional Director; or
 - (f) Upon Sworn, Written complaint of Any other Person."
- [6] (Underscoring supplied)

Consequently, the complainant can either be the Secretary of department, head of office of equivalent rank, head of a local government unit, chief of agency, regional director or any other person or party. "The phrase 'any other party' has been understood to be a complainant other than the head of department or office of equivalent rank or head of local government or chiefs of agencies or regional directors." [7] As further illustrated in Sec. 37 of P.D. No. 807:

"x x x . A complaint may be filed directly with the Commission by a private citizen against a government official or employee x x x".

The respondent, on the other hand, is any subordinate officer or employee. Nowhere can be found, expressly or impliedly, in Section 34 of Rule XIV of Omnibus Rules Implementing Book V of E.O. No. 292, the Commission as one of the parties, either as complainant or respondent in an administrative case. Logically and by necessary implication, it cannot be considered either a complainant or a respondent. Expressio unius est exclusio alterius. The express mention of one person, thing or consequence implies the exclusion of all others. [8] Based on the foregoing, there is no other conclusion but that the Civil Service Commission is not a party to an administrative proceeding brought before it. As provided by Supreme Court Administrative Circular 1-95, decisions, orders or rulings of the Commission may be brought to the Supreme Court, now to the Court of Appeals, on certiorari by the aggrieved party. [9] By inference, an aggrieved party is either the one who initiated the complaint before the Commission or the respondent, the person subject of the complaint. In fact, the question as to who is an "aggrieved party" has long been settled in a litany of cases. An aggrieved party in an administrative case is the government employee against whom an administrative complaint is filed. The Civil Service Commission is definitely not a government employee. Neither is it an agency against whom an administrative charge is filed. While it may be argued that, in a sense, the government is an "aggrieved party" in administrative proceedings before the Commission, it nevertheless is not the "aggrieved party" contemplated under P.D. No. 807 or the Civil Service Law.

Having established that the Civil Service Commission is not a party, much less an aggrieved party, then indubitably, it has no legal personality to elevate the case to the appellate authority. The Commission, therefore, has no legal standing to file the instant petition.

While admittedly, the Civil Service Commission is considered a nominal party when its decision is brought before the Court of Appeals, such is only a procedural formality. As with appellate processes, a nominal party is not the

aggrieved party. Its inclusion as a party is based primarily on the fact that the decision, order or ruling it issued is being contested or assailed and secondarily, for purposes of enforcement. By analogy, the Commission in the performance of its quasi-judicial functions is just like a judge who should "detach himself from cases where his decision is appealed to a higher court for review. The *raison d'être* for such doctrine is that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and for the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way ceased to be judicial and has become adversarial instead." [10]

I dissent from the ponencia's conclusion that the Commission may appeal a judgement of exoneration in an administrative case involving nepotism in light of the foregoing disquisition.

[1] Article IX-B, Sec. 3, 1987 Constitution.

[2] Chapter 3, Sec. 12 (11), The Revised Administrative Code of 1987 on the Civil Service Commission.

[3] Rule XIV, Sec. 31, Omnibus Rules Implementing Book V of Executive Order No. 292.

[4] Article IX-B, Sec. 1, 1987 Constitution.

[5] Article IX-A, Sec. 7, 1987 Constitution.

[6] Sec. 38 (a), of the Civil Service Law, Sec. 48 (1) Chapter 7 of the Revised Administrative Code of 1987 on the Civil Service Commission.

[7] P.D. No. 807, Sec. 38 (g).

[8] Agpalo, Ruben E., *Statutory Construction*, Second Ed., 1990, p. 160.

[9] Chapter 3, Sec. 12, The Revised Administrative Code of 1987 on the Civil Service Commission in accordance with Sec. 7, Article IX-A of the 1987 Constitution.

[10] *Judge Calderon v. Solicitor General*, 215 SCRA 876 [1992].

CONCURRING OPINION

PUNO, J.:

I

The far reaching fall-out effects of the majority opinion on the merit and fitness philosophy of our civil service system compel the submission of this humble concurring opinion. The doctrine barring appeal in exoneration cases was first enunciated in the 1990 case of *Paredes*, where this Court held:[1]

"As regards G.R. No. 89530, the crucial issue to be resolved is whether or not petitioner *Paredes* has the legal personality to appeal the decision of the MSPB absolving private respondent *Amor* of all charges except for habitual tardiness for which the latter was reprimanded.

"Appeal in judicial proceedings is a statutory right that must be exercised only in the manner and in accordance with the provisions of law (*Ozaeta v. Court of Appeals*, G.R. 83281, December 4, 1989; *Velasco v. Court of Appeals*, 51 SCRA 439). This doctrine is also applicable in quasi-judicial proceedings so that one must first ascertain the law applicable to determine whether or not the party can appeal the order or decision.

"Section 37 of Presidential Decree No. 807, provides, viz:

SEC. 37. - (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may depute any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other actions to be taken.

(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head.

(c) An investigation may be entrusted to the regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department, within the period specified in Paragraph (d) of the following Section.

(d) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.'

Section 39 thereof also provides, viz:

SEC. 39. - (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

(b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, that only one petition for reconsideration shall be entertained.'

"Based on the above provisions of law, appeal to the Civil Service Commission in an administrative case is extended to the party adversely affected by the decision, that is, the person of the respondent employee who has been meted out the penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. The decision of the disciplining authority is even final and not appealable to the Civil Service Commission in cases where the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. Appeal in cases allowed by law must be filed within fifteen days from receipt of the decision.

"Here, the MSPB, after hearing and submission of memoranda, exonerated private respondent Amor of all charges except for habitual tardiness. The penalty was only a reprimand so that even private respondent Amor, the party adversely affected by the decision, cannot even interpose an appeal to the Civil Service Commission.

"As correctly ruled by private respondent, petitioner Paredes the complainant is not the party adversely affected

by the decision so that she has no legal personality to interpose an appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness (*Gonzales v. De Roda*, 64 SCRA 120). Even if she is the Head of the Administrative Services Department of the HSRC, as a complainant she is merely a witness for the government in an administrative case. No private interest is involved in an administrative case as the offense is committed against the government."

Paredes was reiterated a year later or in 1991 in *Mendez*, where, again with Mr. Justice Paras as ponente, this Court held:[2]

"The petitioner filed a motion for reconsideration, assailing the reversal of the city mayor's decision by the MSPB and the CSC on the ground that Coloyan is not an aggrieved party or 'party adversely affected by the decision' allowed by law to file an appeal. Moreover, the petitioner claimed that his exoneration by the city mayor is unappealable pursuant to Section 37, paragraph (b) of P.D. 807.

"The CSC, however, denied said motion for reconsideration ruling that there is nothing in the said law which precludes an appeal from the decision of the disciplining authorities to determine, among others, whether the decision rendered is supported by the facts on record and the law."

"Hence, the present petition.

"We find merit in the petition.

"It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law. (*Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs*, 153 SCRA 318).

"A cursory reading of P.D. 807, otherwise known as "The Philippine Civil Service Law," shows that said law does not contemplate a review of decisions exonerating officers or employees from administrative charges.

"Section 37 paragraph (a) thereof, provides:

'The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. x x x' (italics supplied) (p. 7, Rollo)

"Said provision must be read together with Section 39, paragraph (a) of P.D. 805 which contemplates:

"Appeals, where allowable, shall be made by the party adversely affected by the decision x x x. " (italics supplied) (p. 104, Rollo)

"The phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office. In the instant case, Coloyan who filed the appeal cannot be considered an aggrieved party because he is not the respondent in the administrative case below.

"Finally, pursuant to Section 37, paragraph (b) of P.D. 807, the city mayor, as head of the city government, is empowered to enforce judgment with finality on lesser penalties like suspension from work for one month and forfeiture of salary equivalent to one month against erring employees.

"By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges filed against him. But when the respondent is exonerated of said charges, as in this case, there is no occasion for appeal."

Again a year later or in 1992, in *Magpale, Jr.*, this time with Mr. Justice Melo as ponente, the Court reiterated the Paredes doctrine, viz:[3]

"After *Mendez vs. Civil Service Commission* (204 SCRA 965) [1991], the extent of the authority of respondent CSC to review the decisions of the MSPB is now a settled matter.

The Court, in said case held:

`It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law. (*Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs*, 153 SCRA 318).

`A cursory reading of PD 807, otherwise known as `The Philippine Civil Service Law,' shows that said law does not contemplate a review of decision exoneration (sic) officers or employees from administrative charges.

`Section 37, paragraph (a) thereof, provides:

`The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. x x x' (italics supplied) (p. 7, Rollo)

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`The phrase `party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office. In the instant case, Coloyan who filed the appeal cannot be considered an aggrieved party because he is not the respondent in the administrative case below.

`Finally, pursuant to Section 37, paragraph (b) of P.D. 807, the city mayor, as head of the city government, is empowered to enforce judgment with finality on lesser penalties like suspension from work for one month and forfeiture of salary equivalent to one month against erring employees.

`By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges filed against him. But when the respondent is exonerated of said charges, as in this case, there is no occasion for appeal.' (pp. 967-968)

The above ruling is a reiteration of the earlier pronouncement in *Paredes v. Civil Service Commission* (192 SCRA 84 [1990]) cited by petitioner, x x x

x x x

"While it is true, as contended by respondent Civil Service Commission, that under Section 12 (Par. 11), Chapter 3, Subtitle A, Book V of Executive Order 292, the CSC does have the power to -

`Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x'

the exercise of the power is qualified by and should be read together with the other sections of the same sub-title and book of Executive Order 292, particularly Section 49 which prescribes the following requisites for the exercise of the power of appeal, to wit:

(a) the decision must be appealable;

(b) the appeal must be made by the party adversely affected by the decision;

(c) the appeal must be made within fifteen days from receipt of the decision, unless a petition for reconsideration is seasonably filed; and

(d) the notice of appeal must be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any.

"Under Section 47 of the same Code, the CSC shall decide on appeal all administrative disciplinary cases involving the imposition of:

- (a) a penalty of suspension for more than thirty days; or
- (b) fine in an amount exceeding thirty days salary; or
- (c) demotion in rank or salary or transfer; or
- (d) removal or dismissal from office.

"The February 5, 1990 decision of the MSPB did not involve dismissal or separation from office, rather, the decision exonerated petitioner and ordered him reinstated to his former position. Consequently, in the light of our pronouncements in the aforecited cases of *Mendez vs. Civil Service Commission* and *Paredes vs. Civil Service Commission*, the MSPB decision was not proper subject of appeal to the CSC.

"Settled is the rule that a tribunal, board, or officer exercising judicial functions acts without jurisdiction if no authority has been conferred by law to hear and decide the case (*Acena v. Civil Service Commission*, 193 SCRA 623 [1991])."

In 1994, in *Mendoza vs. Civil Service Commission*, the Court, with Mr. Justice Quason as ponente, avoided the *Paredes* rule by holding:[4]

"x x x

"We decided this case with full awareness of the decisions in *Paredes v. Civil Service Commission*, 192 SCRA 84 (1990) and *Mendez v. Civil Service Commission*, 204 SCRA 965 (1991), where we held that only the respondent in the administrative disciplinary case, not the complainant, can appeal from a decision of the Merit Systems Protection Board (See also *Magpale v. Civil Service Commission*, 215 SCRA 398 [1992]). These decisions were anchored on the interpretation of Section 39(a) of P.D. No. 807, the 'Philippine Civil Service Law,' which provides that appeals to the CSC shall be made by 'the party adversely affected by the decision.' We interpreted the quoted phrase as referring to the respondent in the administrative case.

"When private respondent appealed the decision of the MSPB to the CSC, petitioner never questioned the propriety of the appeal and preferred to defend the correctness of the decision. Likewise, petitioner failed to question before this Court the right of private respondent to appeal from the decision of the MSPB. We treat such inactions of petitioner as a waiver on his part to question the authority of the CSC to review the decision of the MSPB. A law limiting the right to appeal to the respondent in the administrative case is a rule of procedure, not of substantive law. Failure to invoke timely a rule of procedure in favor of a party constitutes a waiver thereof (*Republic v. Judge Villanueva*, G.R. No. 83333, February 13, 1989, En Banc, Minute Resolution)."

II

With humility, I make the submission that is time to strike down the doctrine disallowing appeals to the Civil Service Commission when the decision exonerates a government official or employee from an administrative charge. The doctrine is principally based on a constricted interpretation of Section 39 of P.D. No. 807 (Civil Service Law) which states:

"Sec. 39. (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition

shall be decided within fifteen days. x x x"

According to Paredes, Mendez and Magpale, the phrase "party adversely affected by the decision" refers alone to the respondent government official or employee against whom the administrative case is filed. They excluded from its compass the party complainant whose charge is dismissed. Hence, when the respondent government official or employee is exonerated, the decision is deemed final as the party complainant is precluded from appealing.

I find it difficult to agree with the above interpretation which is not only too narrow but is subversive of the essence of our civil service law. In the case at bar, private respondent is the Vocational Administrator of the Balicuatro College of Arts and Trades. He is charged with the offense of nepotism for the appointment of two sons as driver and utility worker under his immediate control and supervision. It is beyond argument that nepotism is prohibited by our civil service law for it breeds inefficiency, if not corruption, in government service. The critical question, therefore, is: who has the standing to prevent the violation of this law and protect public interest? I submit that a taxpayer has the standing to bring suit to void nepotistic acts for he has an interest that "appointments in the civil service shall be made only according to merit and fitness x x x." [5] A taxpayer has a right to good government and good government cannot result from appointments determined by bloodlines. The Civil Service Law itself recognizes that there are offenses which can be the subject of a complaint by any private citizen. Thus, Section 37 of the law allows any private citizen to file a complaint against a government official or employee directly with the Commission. Section 38 also recognizes that "administrative proceedings may be commenced against a subordinate officer or employee by the head of the department or office of equivalent rank, or head of local government or chiefs of agencies, or regional directors or upon sworn written complaint of any other persons." The general rule is that one who has a right to be heard has standing to seek review of any ruling adverse to him. Hence, if a private citizen has the right to file an administrative complaint, he must also have the right to appeal a dismissal of his complaint, unless the law clearly precludes his right of appeal for indubitable policy reasons. A contrary rule will diminish the value of the right to complain. The cases of Paredes, Mendez and Magpale do not give any policy reasons why the dismissal of a charge of nepotism cannot be appealed. They merely resort to doubtful inferences in justifying the bar to appeals. Such an approach goes against the rule that "preclusions of judicial review of administrative action . . . is not lightly to be inferred." [6]

In truth, the doctrine barring appeal is not categorically sanctioned by the Civil Service Law. For what the law declares as "final" are decisions of heads of agencies involving suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary. But there is a clear policy reason for declaring these decisions final. These decisions involve minor offenses. They are numerous for they are the usual offenses committed by government officials and employees. To allow their multiple level appeal will doubtless overburden the quasi-judicial machinery of our administrative system and defeat the expectation of fast and efficient action from these administrative agencies. Nepotism, however, is not a petty offense. Its deleterious effect on government cannot be over-emphasized. And it is a stubborn evil. The objective should be to eliminate nepotistic acts, hence, erroneous decisions allowing nepotism cannot be given immunity from review, especially judicial review. It is thus non sequitur to contend that since some decisions exonerating public officials from minor offenses can not be appealed, ergo, even a decision acquitting a government official from a major offense like nepotism cannot also be appealed.

Similarly, the doctrine barring appeal cannot be justified by the provision limiting the jurisdiction of the Civil Service Commission to review decisions involving: (1) suspension for more than thirty (30) days; (2) fine in an amount exceeding thirty (30) days salary; (3) demotion in rank or salary; and (4) transfer, removal or dismissal from office. Again, there is nothing in this provision indicating legislative intent to bar appeal from decisions

exonerating a government official or employee from nepotism. Statutory preclusion of appeals is the exception rather than the rule, for as stressed by Mr. Justice Douglas, "tolerance of judicial review has been more and more the rule against the claim of administrative finality." [7] Yet the cases of Paredes, Mendez and Magpale precisely barred all appeals despite lack of an explicit, positive provision in the Civil Service Law.

III

Moreover, the case at bar involves the right of a party adversely affected to resort to judicial review. This case does not involve the appellate jurisdiction of the Civil Service Commission, i.e., whether or not it has the power to review a decision exonerating a government official from a charge of nepotism. The facts show that it was the Civil Service Commission that at the first instance found Dacoycoy guilty of nepotism. It was Dacoycoy who appealed the decision of the Civil Service Commission to our regular court, more exactly, the Court of Appeals pursuant to the Rules of Court. As Dacoycoy only impleaded Suan as respondent, the Court of Appeals ordered that the Civil Service Commission should also be impleaded as party respondent. The Court of Appeals then reversed the Commission as it cleared Dacoycoy from the charge of nepotism. The question therefore is whether or not this Court is precluded from reviewing the decision of the Court of Appeals on a petition for certiorari under Rule 45. Again, I submit that this Court has jurisdiction to entertain this review. Indeed, under the Constitution, the jurisdiction of this Court has even been expanded "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government." [8] The question is not our lack of jurisdiction but the prudential exercise of power. In certiorari cases alleging grave abuse of discretion, our given task is to determine how much is too much of an abuse.

To my mind, it is also of de minimis importance that the petition of this Court was filed by the Civil Service Commission. The records will reveal that Suan, the original complainant, wrote to the Civil Service Commission urging it to make the appeal ostensibly for lack of means. But even without Suan, I submit that the nature of the issue in the case at bar and its impact on the effectiveness of government give the Civil Service Commission the standing to pursue this appeal. The issue in the case at bar is basically a legal one, i.e., the proper interpretation of who can be convicted of nepotism, and undoubtedly, this Court has the authoritative say on how to interpret laws. Administrative agencies have always conceded that the final interpretation of laws belongs to regular courts. And the issue has broad implications on the merit and fitness philosophy of our civil service system. Under Sec. 3, Article IX (B) of our Constitution, it is the Civil Service Commission that has oversight of our civil service system. It is thus the party better equipped to argue the diverse dimensions of the issue. It is also the most affected, for it has the duty not to stand still when nepotistic practices threaten the principle of meritocracy in our government. It seems to me self evident that this type of injury to public interest can best be vindicated by the Commission and not by a private person.

There are other disturbing implication if we do not junk the doctrine of non-reviewability of decisions exonerating government officials from charges of nepotism. For one, the doctrine unduly favors officials charged with nepotism, for while we allow further review of their conviction, we disallow review of their exoneration, regardless of the errors. This distorted rule contravenes our distaste against nepotism, a practice whose continuance can fatally erode faith in government. For another, perpetuating a nepotistic act, an evil that should be extirpated wherever found, can never be the intent of our legislators who crafted our Civil Service Law. For still another, completely cutting off access to judicial review goes against the spirit of the 1987 Constitution expanding the jurisdiction of this Court. Putting up borders of non-reviewability weakens the judiciary's checking power. Indeed, shielding abusive administrative actions and decisions from judicial oversight will ultimately erode the rule of law. As Justice Brandeis opined, "supremacy of law demands that there shall be an opportunity to have some court decide whether an erroneous rule of law was applied and whether the proceeding in which facts were adjudicated was conducted regularly." [9]

As we cross the new millennium, our people will find their lives more and more affected by orders and regulations coming from administrative agencies. Predictably, some of these orders, rules and regulations will devalue rights and violate policy polestars of our Constitution with greater velocity. It is for this reason and more that the 1987 Constitution mandated this Court to be a more active agent in checking abuse of power in government. We will default in this role if we continue to uphold the doctrine of non-reviewability of decisions exonerating government officials from nepotism. A government free from nepotism is a proclamation that needs no precis.

I join the majority opinion.

[1] Penned by J. Paras with Justices Fernan (CJ), Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea and Regalado, concurring. J. Feliciano was on leave.

[2] The vote shows: Narvasa (CJ), Melencio-Herrera, Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concurring. Gutierrez, Jr., J. concurred in the result. Nocon, J., did not take part in the deliberation.

[3] The vote shows Gutierrez, Jr., Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Campos, Jr., JJ., concurring. Narvasa (CJ) and Medialdea, J., were on leave.

[4] Op cit. The vote shows Narvasa, (CJ), Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug and Kapunan, JJ., concurring.

[5] Art. IX (B), Sec. 2(2) of the 1987 Constitution.

[6] *Barlow v. Collins*, 397 US 159 (1970).

[7] Dissenting Opinion in *Union Pacific Railroad Co. v. Price*, 360 US 601, 619 (1959).

[8] Section 1, Article VIII of the 1987 Constitution.

[9] Concurring Opinion in *St. Joseph Stock Yards Co. vs. US*, 298 US 38, 84, 56 S. Ct. 720, 740, 80 L. ed. 1033 (1936).

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