

THE SECRETARY OF JUSTICE SERAFIN R. CUEVAS, EXECUTIVE SECRETARY RONALDO B. ZAMORA, AND ATTY. CARINA J. DEMAISIP, PETITIONERS, VS. ATTY. JOSEFINA G. BACAL, RESPONDENT.

G.R. No. 139382. December 06, 2000

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-139382/>

MENDOZA, J.:

This case involves the appointment and transfer of career executive service officers (CESOs). More specifically, it concerns the "appointment" of respondent Josefina G. Bacal, who holds the rank of CESO III, to the position of Chief Public Attorney in the Public Attorney's Office, which has a CES Rank Level I, and her subsequent transfer, made without her consent, to the Office of the Regional Director of the PAO.

In its decision[1] rendered on March 25, 1999, the Court of Appeals declared respondent Josefina G. Bacal entitled to the position of Chief Public Attorney in the Public Attorney's Office. Petitioners moved for a reconsideration, but their motion was denied by the appeals court in its resolution dated July 22, 1999. Hence this petition for review on certiorari. Petitioners contend that the transfer of respondent to the Office of the Regional Director of the PAO is appropriate considering her rank as CESO III.

The background of this case is as follows:

Respondent Josefina G. Bacal passed the Career Executive Service Examinations in 1989. On July 28, 1994, she was conferred CES eligibility and appointed Regional Director of the Public Attorney's Office. On January 5, 1995, she was appointed by then President Fidel V. Ramos to the rank of CESO III. On November 5, 1997, she was designated by the Secretary of Justice as Acting Chief Public Attorney. On February 5, 1998, her appointment was confirmed by President Ramos so that, on February 20, 1998, she took her oath and assumed office.

On July 1, 1998, petitioner Carina J. Demaisip was appointed "chief public defender" by President Joseph Estrada. Apparently because the position was held by respondent, another appointment paper was issued by the President on July 6, 1998 designating petitioner Demaisip as "chief public defender (formerly chief public attorney), PUBLIC DEFENDER'S OFFICE, DEPARTMENT OF JUSTICE vice ATTY. JOSEFINA G. BACAL, effective July 1, 1998." [2] On the other hand, respondent was appointed "Regional Director, Public Defender's Office" by the President.

On July 7, 1998, petitioner Demaisip took her oath of office. President Estrada then issued a memorandum, dated July 10, 1998, to the personnel of the "Public Defender's Office" announcing the appointment of petitioner Demaisip as "CHIEF PUBLIC DEFENDER." Petitioner Secretary of Justice was notified of the appointments of petitioner Demaisip and respondent Bacal on July 15, 1998.

On July 17, 1998, respondent filed a petition for quo warranto questioning her replacement as Chief Public Attorney. The petition, which was filed directly with this Court, was dismissed without prejudice to its refiling in

the Court of Appeals. Accordingly, respondent brought her case in the Court of Appeals which, on March 25, 1999, ruled in her favor, finding her to be lawfully entitled to the Office of Chief Public Attorney.

Petitioners seek the reversal of the decision of the Court of Appeals on the following grounds ¾

- THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT JOSEFINA G. BACAL, A CAREER EXECUTIVE SERVICE OFFICER, HAS A VALID AND VESTED RIGHT TO THE POSITION OF CHIEF PUBLIC ATTORNEY AND, AS SUCH, CANNOT BE REASSIGNED OR TRANSFERRED TO THE POSITION OF REGIONAL DIRECTOR, PUBLIC ATTORNEY'S OFFICE, DEPARTMENT OF JUSTICE.
- THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT BACAL, WHO HOLDS A CES RANK LEVEL III, WAS REASSIGNED OR TRANSFERRED TO A POSITION WHICH DOES NOT CORRESPOND TO HER PRESENT RANK LEVEL INASMUCH AS THE POSITION OF BUREAU REGIONAL DIRECTOR CARRIES A CES RANK LEVEL V ONLY. CONTRARY TO THE CONCLUSIONS OF THE COURT OF APPEALS, SAID POSITION OF REGIONAL DIRECTOR, PUBLIC ATTORNEY'S OFFICE, THE POSITION TO WHICH RESPONDENT BACAL WAS REASSIGNED OR TRANSFERRED, CARRIES A CES RANK LEVEL III WHICH CORRESPONDS TO HER CES RANK III LEVEL. AS AN OFFICER WITH A RANK III LEVEL, RESPONDENT BACAL IS NOT THEREFORE ELIGIBLE FOR THE POSITION OF CHIEF PUBLIC ATTORNEY WHICH CARRIES A CES RANK LEVEL I.
- UPON HER REASSIGNMENT OR TRANSFER TO THE POSITION OF REGIONAL DIRECTOR, RESPONDENT BACAL DID NOT LOSE HER CES RANK III AND HER RIGHT TO RECEIVE THE SALARY CORRESPONDING TO HER PRESENT RANK.
- RESPONDENT BACAL FAILED TO SHOW THAT SHE HAS A CLEAR RIGHT TO THE POSITION OF CHIEF PUBLIC ATTORNEY.
- RESPONDENT BACAL FAILED TO FULLY EXHAUST THE ADMINISTRATIVE REMEDIES AVAILABLE TO HER BEFORE FILING THE PETITION FOR QUO WARRANTO WITH THE COURT OF APPEALS.[3]

I. Exhaustion of Administrative Remedies

We first consider petitioners' contention that respondent's quo warranto suit should have been dismissed for failure of respondent to exhaust administrative remedies by appealing to the Office of the President.

The contention has no merit. If, as has been held, no appeal need be taken to the Office of the President from the decision of a department head because the latter is in theory the alter ego of the former,[4] there is greater reason for not requiring prior resort to the Office of the President in this case since the administrative decision sought to be reviewed is that of the President himself. Indeed, we have granted review in other cases involving the removal of the Administrator of the Philippine Overseas Employment Administration[5] and the Executive Director of the Land Transportation Office[6] without requiring the petitioners to exhaust administrative remedies considering that the administrative actions in question were those of the President.

In any event, the doctrine of exhaustion of administrative remedies does not apply when the question raised is purely legal.[7] In this case, the question is whether respondent's transfer to the position of Regional Director of the Public Attorney's Office, which was made without her consent, amounts to a removal without cause. This brings us to the main issue in this appeal.

II. Merits of the Case

In holding that respondent's transfer amounted to a removal without cause, the Court of Appeals said:

. . . Her appointment as Regional Director was in effect a removal in the guise of transfer, to repeat, without her consent. Having been validly appointed Chief Public Defender by the President on February 8, 1998, would naturally entitle her to security of tenure since on the basis of the appointment, she was appointed, not merely assigned, to a particular station. Her involuntary transfer, through appointment, to that of a mere Regional Director, did not either conform to the rules on the constitutional protection of security of tenure. Above all, her supposed appointment as a Regional Director is not only temporary but is on the other hand permanent wherein she lost her position as Chief Public Attorney, or her connection with the previous position being severed.

. . . .

In the case of the petitioner, there is certainly a diminution in duties and responsibilities when she was downgraded through the July 6, 1998 appointment, involuntarily made, from that of Chief Public Attorney to a mere Regional Director. To repeat, the rank equivalent to a Bureau Director is Rank III while that of a mere Bureau Regional Director is Rank V. Diminution in duties and responsibilities, certainly becomes apparent and then in the matter of salary, the basic salary of a Chief Public Attorney together with all the perks, would amount to P575,199.00. In the case of a Regional Director, his basic salary together with all the perks, would only amount to P341,479.96. Admittedly, when a CESO is assigned or made to occupy a position with a lower salary grade, he shall supposedly continue to be paid his salary that attaches to his CES rank. It cannot, on the other hand, be denied that the moment a non-CESO is appointed to a CES position, he shall receive, at the same time, the salary of his CES position. There is merit in the petitioner's argument that allowing the Regional Director to receive continuously the salary rate of Chief Public Attorney in effect would amount to an illegal consequence since the disbursement of public funds, as budgeted, provides funding for only one Chief Public Attorney. The dilemma arises when both the petitioner and respondent Demaisip would be claiming the salary of a Chief Public Attorney. There is no pretension either in the Brief of the public respondents that there has been a supplemental budget for the petitioner, now downgraded to a mere Regional Director, to be receiving continuously the salary scale of a Chief Public Attorney.

. . . .

Changing a CESO, Rank III, with a non-CESO eligible nor a CESO defies the recruitment, selection and appointment process of the Career Executive Service. As a matter of fact, as a rule (1997 Revised Edition, Handbook, Career Executive Service), the appointment to most positions in the CES is supposed to be made by the President only from the list of CES eligibles, but recommended by the CES Board. Admittedly, an incumbent of a CES position may qualify for appointment to a CES rank, only upon the confirming of a CES Eligibility and compliance with the other requirements being prescribed by the Board (Ibid. p. 5). Precisely, the CES was created pursuant to PD No. 1 (adopting the Integrated Reorganizational Plan, dated September 24, 1972), if only to form a continuing pool of well-selected and development-oriented career administrators who shall provide competent and faithful service (Ibid. p. 2). We cannot see this from that of the petitioner then being replaced by a non-CESO.[8]

The appealed decision will not bear analysis.

First. What should be emphasized in this case is that respondent Josefina G. Bacal is a CESO III and that the position of Regional Director of the PAO, to which she was transferred, corresponds to her CES Rank Level III and Salary Grade 28. This was her position before her "appointment" on February 5, 1998 to the position of Chief Public Attorney of the PAO, which requires a CES Rank Level I for appointment thereto. Respondent Bacal therefore has no ground to complain. She may have been considered for promotion to Rank I to make her appointment as Chief Public Attorney permanent. The fact, however, is that this did not materialize as petitioner Carina J. Demaisip was appointed in her place. If respondent was paid a salary equivalent to Salary Grade 30

while she was holding that office, it was only because, under the law, if a CESO is assigned to a position with a higher salary grade than that corresponding to his/her rank, he/she will be allowed the salary of the CES position.

As respondent does not have the rank appropriate for the position of Chief Public Attorney, her appointment to that position cannot be considered permanent, and she can claim no security of tenure in respect of that position. As held in *Achacoso v. Macaraig*:^[9]

It is settled that a permanent appointment can be issued only "to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed." *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and "at a moment's notice," conformably to established jurisprudence. . . .

The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated. . . .

It is contended, however, that respondent is qualified for the position of Chief Public Attorney because this position has a CES Rank Level III, while that of Regional Director, Public Attorney's Office, has a CES Rank Level V. This is not so. The position of Chief Public Attorney has a CES Rank Level I and a Salary Grade 30, while that of Regional Director of the PAO has a CES Rank Level III and a Salary Grade 28. This is shown by the following:^[10]

- Certification, dated April 6, 1999, issued by the Secretary of the Department of Budget and Management (DBM), which states that "the position of the head of Public Attorney's Office (PAO) is classified as Chief Public Attorney at Salary Grade 30" (Annex A of Annex M, Petition).
- Certification, dated April 15, 1999, issued by Elmor D. Juridico, then Executive Director of the CES Board, which states that "the Rank equivalent to the position of Chief Public Attorney and Regional Public Attorney are CESO Rank I and CESO Rank III respectively" (Annex B of Annex M, Petition); and
- Certification, dated July 8, 1998, previously issued to respondent Bacal by then Executive Director Juridico of the CES Board, stating that the position of Chief Public Attorney has a CES rank equivalent of Rank I. (vide Annex C of Annex M, Petition). The certification reads:

This is to certify that Atty. JOSEFINA G. BACAL, Chief Public Attorney, Public Attorney's Office was conferred CES Eligibility on July 28, 1994 per Board Resolution No. 94-4620 and was appointed Career Executive Service Officer (CESO) Rank III by then President Fidel V. Ramos on January 5, 1995. She is yet to fulfill the requirements for an adjustment of her CES rank (from CES Rank III to Rank I) to a level equivalent to her present position.

This certification is issued upon the request of Atty. Bacal for whatever purpose it may serve best.

Second. The Court of Appeals held that respondent Bacal had acquired security of tenure as Chief Public Attorney by the mere fact of her appointment to that position. This is likewise the point of the dissent of Justice Gonzaga-Reyes who contends that a CES eligibility is all that a person needs in order to acquire security of tenure in any position embraced in the Career Executive service; that a CESO rank is only necessary to differentiate a CESO's general managerial duties/responsibilities, personal qualifications, and demonstrated competence; and that no other CES examination is required for appointment to a higher rank.

Appointments, assignments, reassignments, and transfers in the Career Executive Service are based on rank. On this point, the Integrated Reorganization Plan cannot be any clearer. It provides:[11]

c.

Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.

At the initial implementation of this Plan, an incumbent who holds a permanent appointment to a position embraced in the Career Executive Service shall continue to hold his position, but may not advance to a higher class of position in the Career Executive Service unless or until he qualifies for membership in the Career Executive Service.

. . . .

e.

Assignments, Reassignments and Transfers. Depending upon their ranks, members of the Service shall be assigned to occupy positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Board on the basis of the members' functional expertise. . . .

The rules and regulations promulgated by the CES Board[12] to implement the Integrated Reorganization Plan are equally clear in providing that —

Career Executive Service Eligibility

Passing the CES examination entitles the examinee to a conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Conferment of CES eligibility is done by the Board through a formal Board Resolution after an evaluation of the examinee's performance in the four stages of the CES eligibility examinations.

. . . .

Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

There are six (6) ranks in the CES ranking structure. The highest rank is that of a Career Executive Service Officer I (CESO I), while the lowest is that of CESO VI.

The appropriate CESO rank to which a CES eligible may be appointed depends on two major qualification criteria, namely: (1) level of managerial responsibility; and, (2) performance.

Performance is determined by the official's performance rating obtained in the annual CESPES. On the other

hand, managerial responsibility is based on the level of the general duties and responsibilities which an eligible is performing, as follows:

Levels of Duties and
Responsibilities

Rank Equivalent

if level of managerial responsibilities
are comparable to that of an Under-
secretary

I

if comparable to that of an Assistant
Secretary

II

if comparable to that of a Bureau
Director or a Department Regional
Director

III

if comparable to that of an Assistant
Bureau Director, Department
Assistant Regional Director or
Department Service Chief

IV

if comparable to that of a Bureau
Regional Director

V

if comparable to that of a Bureau
Assistant Regional Director

VI

As a general rule, a CES eligible will be recommended for appointment to the rank equivalent of the level of his managerial responsibility if his performance rating is Satisfactory or higher. If the performance rating is Outstanding, he will be recommended one rank higher than his level of managerial responsibility.

Security of tenure in the career executive service is thus acquired with respect to rank and not to position. The guarantee of security of tenure to members of the CES does not extend to the particular positions to which they may be appointed — a concept which is applicable only to first and second-level employees in the civil service — but to the rank to which they are appointed by the President. Accordingly, respondent did not acquire security of tenure by the mere fact that she was appointed to the higher position of Chief Public Attorney since she was not subsequently appointed to the rank of CESO I based on her performance in that position as required by the rules of the CES Board.

Indeed, to contend, as does the dissent of Justice Gonzaga-Reyes, that a CES eligibility was all that was required to make her appointment to the position of Chief Public Attorney permanent would give rise to an anomalous situation. Following such theory, even if respondent is not appointed CESO I because her performance as Chief Public Attorney does not warrant her appointment to such higher rank, she cannot be transferred to any other office to which her rank (CESO III) qualifies her. This theory of the dissent, i.e., that a CES eligibility gives the appointee security of tenure — not the ruling in this case that it is appointment to the appropriate rank that confers security of tenure — is what will undermine the Career Executive Service.

Third. Within the Career Executive Service, personnel can be shifted from one office or position to another without violation of their right to security of tenure because their status and salaries are based on their ranks and not on their jobs. To understand this, it is necessary to consider the reason for the creation of the Career Executive Service.

R.A. No. 5435,[13] as amended by R.A. Nos. 6076, 6172, and 6175, created a commission charged with the specific function of reorganizing the government "to promote simplicity, economy, and efficiency" in its operations. The result was the preparation of the Integrated Reorganization Plan which was adopted and declared part of the law of the land by P.D. No. 1 on September 24, 1972. A major feature of the Integrated Reorganization Plan was the creation of the Career Executive Service whose justification was explained by the Commission on Reorganization, thus:

The present Civil Service system is not geared to meet the executive manpower needs of the government. The filling of higher administrative positions is often based on considerations other than merit and demonstrated competence. The area of promotion is currently confined to the person or persons "next-in-rank" in the agency. Moreover, personnel classification and compensation are uniformly based on concepts and procedures which are suited to positions in the lower levels but not to managerial posts in the higher levels. To fill this crucial gap, it is recommended that a Career Executive Service be established. This group of senior administrators shall be carefully selected on the basis of high qualifications and competence. Skilled in both techniques and processes of management, these career executives will act as catalysts for administrative efficiency and as agents of administrative innovation.

The status and salary of the career executives will be based on their rank, and not on the job that they occupy at any given time In this sense, the rank status of the Career Executive Service is similar to that of the commissioned officers in the Armed Forces or members of the Foreign Service. Unlike these latter organizations, however, entrance to the Career Executive Service will not be generally at an early age in a relatively junior level but at a senior management level.

. . . .

The rank classification in the Service will allow for mobility or flexibility of assignments such that the government could utilize the services or special talents of these career executives wherever they are most needed or will likely create the greatest impact. This feature is especially relevant in a developing country which cannot afford to have its scarce executive manpower pegged to particular positions.

Mobility and flexibility in the assignment of personnel, the better to cope with the exigencies of public service, is thus the distinguishing feature of the Career Executive Service. To attain this objective, the Integrated Reorganization Plan provides:[14]

e. Assignments, Reassignments and Transferees. . . .

Any provision of law to the contrary notwithstanding, members of the Career Executive Service may be reassigned or transferred from one position to another and from one department, bureau or office to another; provided that such reassignment or transfer is made in the interest of public service and involves no reduction in rank or salary; provided, further, that no member shall be reassigned or transferred oftener than every two years; and provided, furthermore, that if the officer concerned believes that his reassignment or transfer is not justified, he may appeal his case to the President.

The implementing rules and regulations of the CES Board provide:

Salary of Career Executive Service Officers. A CESO is compensated according to his CES rank and not on the basis of the CES position he occupies. However, if a CESO is assigned to a CES position with a higher salary grade than that of his CES rank, he is allowed to receive the salary of the CES position.

Should he be assigned or made to occupy a CES position with a lower salary grade, he shall continue to be paid the salary attached to his CES rank.[15]

Petitioners are, therefore, right in arguing that respondent, "as a CESO, can be reassigned from one CES position to another and from one department, bureau or office to another. Further, respondent, as a CESO, can even be assigned or made to occupy a CES position with a lower salary grade. In the instant case, respondent, who holds a CES Rank III, was correctly and properly appointed by the appointing authority to the position of Regional Director, a position which has a corresponding CES Rank Level III." [16]

Indeed, even in the other branches of the civil service, the rule is that, unless an employee is appointed to a particular office or station, he can claim no security of tenure in respect of any office. This rule has been applied to such appointments as Director III or Director IV or Attorney IV or V in the Civil Service Commission since the appointments are not to specified offices but to particular ranks; [17] Election Registrars; [18] Election Officers, also in the Commission on Elections; [19] and Revenue District Officers in the Bureau of Internal Revenue. [20] Reiterating the principle in *Sta. Maria v. Lopez*, [21] this Court said:

. . . [T]he rule that outlaws unconsented transfers as anathema to security of tenure applies only to an officer who is appointed — not merely assigned — to a particular station. Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency. The use of approved techniques or methods in personnel management to harness the abilities of employees to promote optimum public service cannot be objected to. . . .

For the foregoing reasons, we hold that respondent's appointment to the position of Chief Public Attorney was merely temporary and that, consequently, her subsequent transfer to the position of Regional Director of the same office, which corresponds to her CESO rank, cannot be considered a demotion, much less a violation of the security of tenure guarantee of the Constitution.

Fourth. On the other hand, Justice Puno makes much of the fact that petitioner Carina J. Demaisip is not a CES eligible. Suffice it to say the law allows in exceptional cases the appointment of non-CES eligibles provided that the appointees subsequently pass the CES Examinations. Thus Part III, Chap. I, Art. IV, par. 5(c) of the Integrated Reorganization Plan provides that

the President may, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualified in such examination.

For the same reason that the temporary appointment of respondent Josefina G. Bacal as Chief Public Attorney is valid under this provision of the law despite the fact that she does not hold the rank of CESO I, so is the appointment to the same position of petitioner Carina J. Demaisip. The question in this case is not the validity of the appointment to such position but whether the appointee acquires security of tenure even if he does not possess the requisite rank. There is no claim that petitioner Demaisip has a right to remain in the position of Chief Public Attorney permanently.

On the other hand, as respondent herself does not have the requisite qualification for the position of Chief Public Attorney, she cannot raise the lack of qualification of petitioner. As held in *Carillo v. Court of Appeals*,^[22] "in a quo warranto proceeding the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial."^[23] Indeed, this has been the "exacting rule"^[24] since it was first announced, 95 years ago, in *Acosta v. Flor*.^[25] As at present embodied in Rule 66, §5 of the Rules of Civil Procedure, the rule is that "a person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

WHEREFORE, the decision of the Court of Appeals is REVERSED and the petition for quo warranto filed by respondent is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Pardo, Buena, Ynares-Santiago and De Leon, Jr., JJ., concur.

Puno J., see separate opinion.

Vitug J., join Justice Puno in his separate opinion.

Panganiban and Quisumbing, JJ., join the dissent of J. Reyes.

Gonzaga-Reyes J., see dissenting opinion.

[1]Per Justice Bernardo Ll. Salas and concurred in by Justices Quirino D. Abad Santos, Jr. and Candido V. Rivera.

[2]It is unnecessary to determine whether the Public Attorney's Office has been renamed "Public Defender's Office" by reason of such appellation in R.A. No. 8194 (General Appropriations Act of 1996). It is sufficient to point out that petitioner Secretary of Justice himself, in an opinion dated October 5, 1998, stated that "the correct and official name of [the] office and its senior officers are still those stated in the Administrative Code of 1987," because the General Appropriations Act cannot amend the Administrative Code.

[3]Petition, pp. 7-8; Rollo, pp. 15-16.

[4]E.g., *Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihan Bayan ng Muntinglupa, Inc. v. Dominguez*, 205 SCRA 92 (1992).

[5]*Achacoso v. Macaraig*, 195 SCRA 235 (1991).

[6]*Pangilinan v. Maglaya*, 225 SCRA 512 (1993).

[7]*NDC v. Collector*, 9 SCRA 429 (1963); *Mangubat v. Osmeña*, 105 Phil. 1308 (1959).

[8]CA Decision, pp. 14-16, 20-21; Rollo, pp. 53-55, 59-60 (emphasis by the Court of Appeals).

[9]195 SCRA 235, 239-240 (1991).

[10]Memorandum for Petitioners, dated Sept. 18, 2000, pp. 9-10.

[11]Part. III, Chap. I, Art. IV, par. 5(c) (emphasis added).

[12]CES Handbook, pp. 5-6 (emphasis added).

[13]An act authorizing the President of the Philippines with the help of a Commission on Reorganization, to reorganize the different executive departments, bureaus, offices, agencies, and instrumentalities of the government including banking or financial institutions and corporations owned or controlled by its subject to certain conditions and limitations.

[14]Part. III, Chap. I, Art. IV, par. 5(e).

[15]CES Handbook, p. 8.

[16]Petition, pp. 11-12; Rollo, pp. 19-20.

[17]Fernandez v. Sto. Tomas, 242 SCRA 192 (1995).

[18]Ibañez v. Commission on Elections, 19 SCRA 1002 (1967).

[19]De Guzman, Jr. v. Commission on Elections, G.R. No. 129118, July 19, 2000.

[20]244 SCRA 787 (1995).

[21]31 SCRA 637, 653 (1970).

[22]Carillo v. Court of Appeals, 77 SCRA 170 (1977). Accord, Santiago v. Guingona, 298 SCRA 756 (1998).

[23]Id. at 177. Accord, Santiago v. Guingona, 298 SCRA 756 (1998).

[24]Garcia v. Perez, 99 SCRA 628, 634 (1980).

[25]5 Phil. 18 (1905).

SEPARATE OPINION

PUNO, J.:

The facts are well established. In 1978, respondent Josefina Bacal started as a trial attorney of the Public Attorney's Office.[1] After eight years or in July 1986, she was promoted as Regional Public Attorney, Region X, Cagayan de Oro City. In 1989, she passed the Career Executive Service Examination given by the Career Executive Service Board (CESB) and was conferred eligibility on July 28, 1994. She was given CESO Rank III on January 5, 1985. On November 5, 1997 after eleven years as PAO Regional Public Attorney, she was designated Acting Chief Public Attorney. On February 5, 1998, she was appointed by former President Fidel V. Ramos as Chief Public Attorney. On February 20, 1998, she assumed the position.

Then came the May 1998 elections. Then Vice President Joseph Ejercito Estrada was elected President. On July 1, 1998, President Estrada appointed petitioner Carina Demaisip Chief Public Defender, viz.:

"Madam:

You are hereby appointed Chief Public Defender, Public Defender's Office, Department of Justice.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office."

She took her oath of office on July 7, 1998.

On July 15, 1998, the Hon, Leonora Vasquez de Jesus, then Head, Presidential Management Staff and Cabinet Secretary, transmitted to Secretary Serafin R. Cuevas, then Secretary of Justice, the appointment of respondent Bacal as Regional Public Defender of Region X.

At the time of her appointment, respondent Demaisip as Chief Public Defender, was occupying the position of Public Attorney III, PAO, which was four (4) levels below the position of Chief Public Defender. She had no CESO eligibility. She had no personnel to manage. Up to this date, it does not appear on record that she has taken any CES examination despite the lapse of one year.

On July 22, 1998, respondent Bacal filed a petition in the Court denominated as a petition for quo warranto with preliminary injunction and temporary restraining order. The petition assailed her removal as Chief Public Defender and sought the nullity of the appointment of petitioner Demaisip to the position.

With due respect, I submit the following theses:

FIRST. I agree with the well-reasoned ponencia that respondent Bacal was not permanently appointed as PAO Chief. At the time of her appointment, respondent Bacal possessed only the rank of CESO III while the rank equivalent to the position of PAO Chief is CESO I. Under the CES Handbook, a CES eligible incumbent of a CESO position is appointed or conferred by the President the CESO rank equivalent to his position, after an evaluation is made of his performance on the job conducted by the CES Board.[2] To hold that respondent was extended a permanent appointment as PAO Chief would, in effect, assure her of the position for life, irrespective of her subsequent performance evaluation on the job. This would deprive the appointing power and the CES Board of the discretion to assign a more competent officer in the position and would not promote utmost efficiency in the service. Thus, I concur that respondent's security of tenure pertains only to rank.

SECOND. Be that as it may, it is my submission that the appointment of petitioner Demaisip was made with grave abuse of discretion, in violation of the Career Executive Service law and rules, and hence should not be given any legal effect. Reasons:

(2.A)

The position of chief Public Defender belongs to the career Executive Service and its occupant needs a CESO eligibility. Petitioner Demaisip has no CESO eligibility, then and now.

(2.B)

In addition to a CES eligibility, an appointee to the position of Chief Public Defender must have three (3) years of supervisory experience. The Qualifications Standards for the Career Executive Service provides the following requirements:

Education

-

Bachelor of Laws

Experience

-

Three (3) years of supervisory experience

Training

-

None required.

Eligibility

-

Career Service Executive Eligibility (CSEE)

Career Executive Service

As Public Attorney III, petitioner Demaisip was not a supervisory lawyer. She was the one under supervision for she was four levels below the Chief Public Defender.

(2.C)

Part III, Chapter I, Article IV, par. 5c) of the Integrated Reorganization Plan which states:

Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices an equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.

At the initial implementation of this Plan, an incumbent who holds a permanent appointment to a position embraced in the Career Executive Service shall continue to hold his position, but may not advance to a higher class of position in the Career Executive Service unless or until he qualifies for membership in the Career Executive Service.

cannot justify the appointment of petitioner Demaisip. Her appointment paper does not show that she was appointed Chief Public Defender as an "exceptional" case. Respondent Bacal, on July 13, 1998, even wrote to the President protesting the appointment of Demaisip and urged its recall. Neither the President nor any of his alter egos justified the appointment as an "exceptional" case.

(2.D)

Even assuming arguendo that the appointment of petitioner Demaisip is an "exceptional" case, it is subject to the condition that she "shall subsequently take the required Career Executive Service examination..." It does not appear that petitioner Demaisip has taken the required examination. For failure to fulfill this condition, she has forfeited any semblance of a right to continue acting as Chief Public Defender.

(2-E)

In truth, petitioner Demaisip, was not in a position, from the very beginning, to comply with the condition that she must subsequently take the required Career Executive Service Examination. As a mere Public Attorney III, a position four (4) levels below the position of Chief Public Defender, she was not even qualified to take the CES examination because it takes a Division Chief to qualify (CESB Manual) and she has not reached that level. She accepted the position in bad faith well knowing it was legally impossible to fulfill said condition.

(2-F)

In any event, petitioner Demaisip has not taken said Career Executive Service Examination until now despite the lapse of a reasonable time from her appointment. Circular No. 13, Series of 1997 (March 17, 1997) of the Civil Service Commission provides in 3.3. "The appointment of a non CES eligible to a CES position shall be temporary in no time and shall not exceed twelve (12) months." Such an unexplained failure is a mockery of the Career Executive Service raison d'être in light of the presence within the PAO of lawyers with CES eligibility. As held in *Achacoso v. Macaraig*,^[3] a ponencia of Mr. Justice Isagani Cruz, "a person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles."

(2-G)

The amicus curiae brief of the Career Executive Service Board written by Professor Samuel N. Barlongay explains the rationale of the career executive service as follows:

"The career executive service, which constitutes the third level of the career service, was intended to establish a pool of well-trained and development-oriented career executives in the government who are conferred by the President career executive service eligibility and are appointed to ranks (Ranks I, II, III, IV and V) as Career Executive Service Officers (CESO). While they enjoy security of tenure, in the sense that they cannot be removed, suspended or otherwise disciplined except for cause and after due process, the essence of the system, however, is that they can be reassigned or moved from time to time from one office or position to another in the interest of the public service and as the need arises without violating their security of tenure. The career executive service thus established was therefore intended to provide for flexibility or mobility, government-wide, in the assignment of career executives for a more dynamic, responsive and effective service at the third level or higher ranks of our bureaucracy. This system was a reaction from the past experience wherein holders of career executive positions cannot be transferred or reassigned without their consent to other departments or offices even if their talents or expertise were badly needed there just because they were deemed to be permanently appointed to specific positions."

The appointment paper of respondent Bacal can be read over and over again but nothing says it was done "in the interest of the public service." There is nothing in Region X which will justify her "transfer" thereto in the interest of public service. In fact, respondent Bacal's case is not a case of transfer. Her appointment as Chief Public Attorney was cancelled and she was extended another appointment as Regional Director.

(2-H)

Respondent Bacal was denied fundamental fairness when she was not given reasonable time and opportunity to upgrade her CESO III rank to CESO I so she could qualify for the position of Chief Public Defender. In this regard, the pertinent law provides:^[4]

"Section 7 - Career Service. The Career Service shall be characterized by (1) entrance based on merit and

fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; (3) security of tenure.

The Career Service shall include:

(3) Positions in the Career Executive Service, namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board all of whom are appointed by the President.

Section 8 - Classes of Positions in the Civil Service. - (1) Classes of positions in the career service, appointment to which requires examinations shall be grouped into three major level as follows:

- (a) The first level etc.
- (b) The second level etc.
- (c) The third level shall cover positions in the Career Executive Service.

(2) x x x Entrance in the third level shall be prescribed by the Career Executive Service Board".

Respondent Bacal was appointed by President Ramos Chief Public Attorney on February 5, 1988. After three (3) months, she was replaced in May 1998. Clearly, she was not given the fair opportunity to perform so she could earn CESO rank I. Her job was given instead to a non CESO. This is no way to encourage professionalism in the career executive service.

THIRD. The Civil Service Commission (CSC) owed its existence merely to enactment of a law[5] as the 1935 Constitution laid down only the basic principles of a civil service system. It was only in the 1973 Constitution where an express provision was adopted creating the CSC. The move is not marginally significant. The 1973 Constitutional Convention realized the imperative need for a system to insulate the public service from the evils of the spoils system. In the words of Delegate Gunigundo, "xxx the Civil Service created by law has not been able to eradicate the ills and evils envisioned by the framers of the 1935 Constitution; xxx the Civil Service created by law is beholden to the creators of that law and is therefore not politics-free, not graft-free and not corruption-free; xxx that as long as the law is the reflection of the will of the ruling class, the Civil Service that will be created and recreated by the law will not serve the interest of the people but only the personal interest of the few and the enhancement of family power, advancement and prestige." [6] As entrenched in the 1987 Constitution, the enhanced status of the civil service, with its attributes of independence and impartiality, is intended to make it the engine of good government. Our implementing civil service laws were designed to eradicate the system of making appointments primarily from political considerations [7] with its attendant evils, [8] to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments, [9] to establish a merit system of fitness and efficiency as the basis of appointments, [10] and to prevent discrimination in appointments to public service based on any consideration other than fitness to perform the duties. [11]

It cannot be gainsaid that the precipitate and irregular replacement of respondent Bacal as PAO Chief by petitioner Demaisip who was not a CES eligible and did not come from the rank of middle managers effectively eroded and undermined the morale, not only of respondent, but the other CESOs as well, who rose to rank by proven competence and dedication to the service. A healthy respect for the civil service provisions of our Constitution dictates that a CES eligible who has rendered long and honorable service to the government should not be sacrificed in favor of non-eligibles or left at the mercy of political changes. Integrity and pride in civil service, as goals yet to be achieved, demand that the appointment or replacement of CESOs be based on merit and fairness. [12] Positive efforts must be exerted at all times to continue to attract the best qualified for the position. Indeed, the reality is that conditions of government work are less attractive than those obtaining in private

employment. Hence, there is the need to ensure that the rise of career men to top positions in the government should be strictly based on demonstrated capability in order to serve as an inspiration to others in the government service.

FOURTH. I respectfully submit that the appointment of the petitioner who is patently unqualified nay, even disqualified for the position of PAO Chief should not be given force and effect. I am not unaware of the case law that "in a quo warranto proceeding the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial." I posit the thesis, however, that respondent Bacal has at least a temporary right to stay as PAO Chief until she is replaced by a qualified appointee properly appointed. It is granted that the Constitution vests in the President the power to appoint and that the exercise of the powers involves a wide swath of discretion. Be that as it may, the Constitution eschews arbitrariness and it never intended that the power to appoint should be exercised with grave abuse of discretion. The exercise of the power has a set limit, the limit that it should not be exercised to violate any of the various norms spelled out in the Constitution. In the case at bar, it should not infringe the merit and fitness principle which is the heart of the civil service system. The appointment of the petitioner clearly violates the ideal of meritocracy. We cannot turn a blind eye to the anomaly of this appointment on the technical ground that in a quo warranto proceeding, we should not focus on the lack of qualification or disqualification of the petitioner Demaisip. It is time we tone this doctrine in appropriate cases where its strict application will perpetuate to a high office a patently unqualified appointee at the expense of many who are highly qualified for the position.

I further respectfully submit that the bigger issue in the case at bar concerns the constitutional aspect of a quo warranto proceeding --- the need to check the exercise of the power of appointments so that it will not wreak havoc to the Career Executive Service. The court should uphold the rule of law by striking down and all arbitrary exercise of power. It should promote the reign of meritocracy by establishing the civil service as a politically neutral zone. It should encourage careerism and discourage the political pole vaulting of patently unqualified appointees. Towards these ends, the Court should not allow petitioner's appointment to prevail on the thin and technical ground that in quo warranto suit, her lack of qualification is irrelevant. Such ruling makes law a meaningless abstraction, technically neat but an intolerable anomaly on the effective workings of the civil service system.

Lest we forget, the office at the vortex of the controversy at bar is the Public Assistance Office. This is the lead office of the State in its effort to give effective legal assistance to the poor and powerless of our people. We can take judicial notice of the fact that it handles most of the death penalty cases involving the indigents in our society. Needless to state, the PAO is a vital cog in our system of equal justice and it cannot be allowed to fail in its noble mission. It can only succeed if its head office is the best of the available qualified eligibles.

Prescinding from these premises, I respectfully submit that while petitioner Bacal has no permanent right as Chief Public Defender, she has, nevertheless, a temporary right to stay as Chief Public Defender, until a qualified appointee is named by the President to the position. The appointment of petitioner Demaisip has absolutely no color of validity and cannot be given any effect on technical grounds.

I so vote.

[1]It was then known as citizens Legal Assistance Office (CLAO).

[2]P. 22, Performance and Evaluation.

[3]195 SCRA 235, 239.

[4]EO 292, Revised Administrative Code of 1987 on the Civil Service Commission.

[5]Republic Act 2260 (also known as the Civil Service Act of 1959), as amended by Republic Act 6040.

[6]Bernas' The 1973 Philippine Constitution, 1974 ed., Article XII (B), section 1, p. 523, citing the February 18, 1972 Session of the Constitutional Convention.

[7] Birmingham v. Wilkinson, 239 Ala 199, 194 So. 548; Hanley v. Murphy, 40 Cal 2d 575, 255 P2d 1; People ex rel. Balcom v. Mosher, 163 NY 32, 57 NE 88; State ex rel. Buckman v. Munson, 141 Ohio St. 319, 25 Ohio Ops 455, 48 NE2d 109; Knoxville v. Smith, 176 Tenn 73, 138 SW2d 422.

[8]Birmingham v. Wilkinson, supra; Fallon v. Nicholson, 136 Colo 238, 316 P2d 1054; People ex rel. Akin v. Kipley, 171 Ill 44, 49 NE 299, 170 US 182, 42 L. Ed 998, 18 S. Ct. 550; Gervais v. New Orleans Police Dept., 226 La 782, 77 So 2d 393.

[9]Civil Service Board v. Warren, 74 Ariz 88, 244 P2d 1157; State ex rel. Kos v. Adamson, 226 Minn 177, 32 NW2d 281.

[10]Gervais v. New Orleans Police Dept., 226 La 782, 77 So 2d 393; Hawkes v. Unemployment Compensation Board of Review, 145 Pa Super 465, 21 A2d 485.

[11]Philips v. De Las Casas, 215 Mass 502, 102 NE 717.

[12]#3 Goals and Objectives, Career Executive Service Handbook, p. 4.

DISSENTING OPINION**GONZAGA-REYES, J.:**

I regret to dissent from the ponencia of J. Vicente V. Mendoza.

At the outset, it must be stressed that the position of Chief Public Attorney in the Public Attorney's Office is part of the Career Executive Service. By law,[1] Career Executive Service Officers, namely Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, are appointed by the President. The career executive service was created to develop a competent and professional executive work force in the government service. Implicit in the establishment of a career service in the third level of the civil service is the grant of tenurial protection to career executive service officers (CESOs).

No less than the Constitution guarantees the right of security of tenure of the employees of the civil service.[2] Specifically, Section 30 of P. D. No. 807, as amended, otherwise known as the Civil Service Decree of the Philippines, is emphatic that career service officers and employees who enjoy security of tenure may be removed only for any of the causes enumerated in said law.[3]

Appointment to a position belonging to the Career Service confers security of tenure on its occupant if he possesses the required qualifications; such right depends on his eligibility or lack of it. It is settled that a permanent appointment can be issued only to a person who meets all the requirements for the position to which he is being appointed including the appropriate eligibility required.[4]

Respondent Josefina G. Bacal passed the Career Executive Service Examination in 1989. On July 28, 1994, she

was conferred CES eligibility, and was appointed Regional Director of the Public Attorney's Office on January 5, 1995. She was appointed by then President Fidel Ramos to the rank of CESO III. On November 5, 1997, she was designated by the Secretary of Justice as Acting Chief Public Attorney. On February 5, 1998, her appointment was confirmed by President Ramos, and on February 20, 1998, she took her oath and assumed office. On July 1, 1998, petitioner Carina J. Demaisip was appointed "Chief Public Defender" (formerly Chief Public Attorney) by President Joseph Estrada. On July 6, 1998, petitioner was designated "Chief Public Defender" vice Atty. Josefina C. Bacal effective July 1, 1998. On July 7, 1998 petitioner took her oath of office. On the other hand, respondent Bacal was appointed Regional Director, Public Defender's Office.

At the time of her appointment by then President Ramos to the position of Chief Public Attorney, respondent Atty. Josefina Bacal possessed the requisite CES eligibility for the position. She had passed the examinations for the Career Executive Service, and had the appropriate CES eligibility for the third level of the career civil service. She had been conferred CESO Rank III. Although the position of Chief Public Attorney carries CESO Rank I (Chief of Office), she was eligible for appointment thereto without the need of passing another CES examination, as indeed there is only one appropriate eligibility, i.e. CESO eligibility, for any of the six levels in the Career Executive Service. By law, no civil service examination is required for promotion to a higher position within the same level^[5] as no other examination for promotion from one level to a higher level in the career executive service has been prescribed. Thus, the Executive Director of the Career Executive Service Board categorically stated in a certification dated April 15, 1999 as follows:

"This is to certify that the Rank equivalent to the position of Chief Public Attorney and Regional Public Attorney are CESO Rank I and CESO Rank III respectively. However, a Career Executive Service Officer (CESO) or a CES eligible need not be a CESO I or a CESO III to qualify for appointment to the position of Chief Public Attorney and Regional Public Attorney respectively.

x x x.

ELMOR D. JURIDICO, CESO II
Executive Director "

Similarly in a letter-reply addressed to respondent Bacal dated August 4, 1998 regarding respondent's "predicament" relative to her appointment as Chief Public Attorney, the Chairman of the Career Executive Service Board, Chairman Corazon Alma G. De Leon, wrote:

"ATTY. JOSEFINA G. BACAL
Bacal Building
Vamemta Boulevard

Carmen, Cagayan de Oro City

Dear Atty. Bacal:

xxx

Please be informed that the CES Board's policy on the security of tenure of Career Executive Service Officers (CESOs) and CES eligibles remains the same. That is, CESOs and eligibles like you are entitled to security of tenure because you have met all the requirements for the position to which you were appointed, including the appropriate eligibility required. This policy of the Board is based on solid constitutional and statutory grounds. Consequently, you and the other CESOs and eligibles can only be removed except for a valid cause and after due notice and hearing. And the phrase 'for a valid cause' in connection with removals of public officers has acquired a well-defined concept. 'It means for reason which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause and not merely causes which the appointing power in the

exercise of discretion may deem sufficient. (De los Santos vs. Mallare, 87 Phil. 280).

In the event, therefore, that you are removed or ousted without cause, due notice and hearing, the same shall constitute a violation of your constitutional and statutory rights to security of tenure which rightly calls for remedy or redress in the proper body or court of law.

Very truly yours,

CORAZON ALMA G. DE LEON

Chairman"

Again in a letter dated May 17, 1999 Atty. Bacal was assured by the CESB Executive Director that a CES eligible who is a Regional Director and who is subsequently promoted by the president, to a higher position (that of an Undersecretary) in the CES, becomes permanent in the latter position, viz:

"Please be informed that under existing law and rules, a Career Executive Service Eligibility is a requirement for a permanent appointment to any Career Executive Service position including those of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director and Department Service Chief. Please refer to the Supreme Court Decisions on Achacoso vs. Macaraig, et al G. R. No. 93023 and Pangilinan vs. Maglaya, et al G.R. No. 104216 for an elucidation on this issue. Thus, a CES eligible appointed to the position of Regional Director becomes permanent to the position more so if he was subsequently appointed to a rank in the CES by the President. The same eligible can also qualify for promotion to higher CES positions and if subsequently extended appointment to a higher CES position by the appointing authority, the CES eligible becomes permanent in that position. It goes without saying therefore, that a CES eligible who is a Regional Director and who subsequently gets appointed Undersecretary by the President becomes permanent in the position of Undersecretary."

It is accordingly difficult to understand why, despite the absence of any change in the pertinent law, the Career Executive Service Board should renege on its previous official position that respondent has no legal claim to security of tenure as Chief Public Attorney. The position it now espouses is that security of tenure is conferred only if the appointee has been conferred the rank corresponding to the CES position he is holding; otherwise stated, respondent Bacal who holds a CESO Rank III does not enjoy security of tenure in the position of Chief Public Attorney as she does not possess CESO Rank I.

The position is not tenable and distorts the concept of professionalization and careerism that animated the creation of the career executive service by extending the scope of the career civil service system to the highest managerial levels in the government bureaucracy. The creation of the Career Executive Service was not meant to disturb or disrupt the well-established concept in the Philippine Civil Service that extends tenurial protection to any person holding a permanent appointment in the career civil service who meets all the requirements for the position to which he is appointed, including the appropriate eligibility required.

The Qualification Standards for the Career Executive Service prescribes the following requirements for the position of Chief Public Attorney.:

Education -Bachelor of Laws

Experience- 3 years of supervisory experience

Training- None required

Eligibility- Career Service Executive Eligibility (CSEE)/Career Executive Service (CES)

Notably CES Rank is not one of the prescribed requirements for the position.

CES eligibility, which is conferred by the CESO Board, is a requisite for appointment to CES positions. On the

other hand, CESO Rank is granted by the President based on two criteria: (1) level of managerial responsibility, e.g. Rank I for Chief Public Attorney, Rank III for Regional Director; and (2) performance. Accordingly, a CESO promoted to a higher CES position may obtain the CESO Rank of the higher position only after an evaluation is made of his performance on the job by the CESB, which is the agency that recommends to the President the conferment of the higher CESO rank to the qualified incumbent thereof.[6]

The evaluation of the performance of a CES eligible in a given position is as a rule required to obtain an appointment to rank equivalent to the level of his managerial responsibility. Thus, respondent Bacal was conferred CESO Rank III after eleven years as PAO Regional Public Attorney (Regional Director). As above pointed out, being a CESO eligible, she possessed the necessary and appropriate eligibility for the position of Chief Public Attorney, a position to which she was regularly appointed by the President on February 5, 1998. Had she not been inordinately replaced, she would be eligible for appointment to CESO Rank I after evaluation of her performance in office.

The proposition that appointment to a position in the Career Executive Service requires that the appointee has the corresponding rank level of the position appears to be anchored on the following provision of the Integrated Reorganization Plan[7]

"c.

Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President, may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.

At the initial implementation of this Plan, an incumbent who holds a permanent appointment to a position embraced in the Career Executive Service shall continue to hold his position, but may not advance to a higher class of position in the Career Executive Service unless or until he qualifies for membership in the Career Executive Service.

xxx

e.

Assignments, Reassignments and Transfers. Depending upon their ranks, members of the Service shall be assigned to occupy positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Board on the basis of the members' functional expertise..."

The foregoing provisions, however, taken in the context of the pertinent provisions of law pertaining to the Career Executive Service, merely highlight or underscore the fact that appointment to a CES rank is entirely different from an appointment to a position embraced in the CES. As pointed out by then CES Executive Director Juridico, a CESO eligible, e.g. one who is a CESO Rank III, is qualified for permanent appointment to any position in the Career Executive Service- including a level I position like that of the Chief Public Attorney. All that is required to enjoy security of tenure in that position is that the appointee possessed the appropriate eligibility and that she was extended a permanent appointment.

A CESO Rank is conferred upon the CESO. His appointment to a CESO rank vests "security of tenure in the CES", which should be distinguished from security of tenure in the CES position. Although positions embraced in the Career Executive Service are classified according to level of management duties and responsibilities, i.e. Rank Equivalent I if level of managerial responsibilities is comparable to that of an undersecretary, level II to that of an Assistant Secretary, Level III to that of a Bureau Director, etc.,[8] a Career Executive Service Officer (CESO) need not, for purposes of appointment to a CES position, possess a rank corresponding to the Rank level of the position to which he is appointed. This concept is illustrated by the rule that a CESO who obtains a performance rating of "outstanding" may be recommended to a higher rank than that equivalent to the level of managerial responsibility corresponding to the position he is holding. Similarly, a CESO III occupying a CESO Level III position may be assigned to a position "where his special talents as career executive may be most needed or will likely create the greatest impact", which latter position need not belong to Rank Level III of the Career Executive Service, provided that the assignment involves no reduction in rank or salary.[9] Such mobility or flexibility of assignment of CESOs, which is a feature of the career executive service, does not in any way suggest or indicate that the CESO shall lose his security of tenure upon his assignment to a higher position unless he is conferred the CESO rank corresponding to the said higher position. As enunciated in the CES Handbook,[10] appointment to a CES rank which is made by the President upon the recommendation of the Board, "completes the official membership in the CES and most importantly, confers on him security of tenure in the CES." No reference is made nor is it intended to equate security of tenure in the Career Executive Service to security of tenure in the position.

The following features of the Career Executive Service also illustrate the distinction between membership in the CES and appointment to a CES position:

- 1) Membership in the Career Executive Service is acquired upon appointment to an appropriate class in the Career Executive Service; the law does not require appointment to a CES position to acquire membership in the CES.[11] When the law states that appointments to the CES shall be made on the basis of rank, it refers to appointments to the CES rank not appointments to CES position.[12]
- 2) The salary and status of membership of the CESO shall be based on rank "not on the position occupied at any given time." [13]
- 3) A CESO who obtains an Outstanding performance rating may qualify for promotion to the next higher rank but still remain in his position.[14]
- 4) A CESO may be reassigned or transferred from one position to another, in the interest of the service; such an assignment shall not result in reduction in rank or compensation.[15]

It is submitted that while appointment to rank confers security of tenure in the CES, it is a permanent appointment to a CES position for which one has the appropriate eligibility which confers on the appointee security of tenure in the said position. A contrary conclusion would disrupt the concept of careerism that is contemplated to pervade the career executive service when this was conceived and put into place in the Integrated Reorganization Plan. Respondent Bacal acquired security of tenure in the CES when she was appointed CESO Rank III. However, she acquired her security of tenure as Chief Public Attorney in 1998 when, possessing the requisite CESO eligibility, she was extended by the President a permanent appointment (not a temporary appointment or temporary designation) as Chief Public Attorney.

[1]PD No. 807, as amended, otherwise known as the Civil Service Decree of the Philippines; E.O. No. 292, otherwise known as the Administrative Code of 1987.

[2]Department of Education, Culture and Sports vs. Court of Appeals, 183 SCRA 555; Ibañez vs. COMELEC, 19 SCRA 1002; Brillantez vs. Guevarra, 27 SCRA 138.

[3]See also Larin vs. Executive Secretary, 280 SCRA 713.

[4]Achacoso vs. Macaraig, 195 SCRA 235; Chua vs. Civil Service Commission, 206 SCRA 65.

[5]Sec. 8. Paragraphs (2) & (3), Chapter I, Subtitle A (Civil Service Commission) Title I, Book V of Executive Order No. 292, otherwise known as "The Administrative Code of 1987", provides:

"(2) xxx Entrance to the third level shall be prescribed by the Career Executive Service Board." (note: The CESB has prescribed CES Examinations for this purpose)

"(3) Within the same level, no civil service examination shall be required for promotion to higher position in one or more related occupational groups. A candidate for promotion should, however, have previously passed the examination for that level."

[6]Article IV, Chapter I, Part III of the Integrated Reorganization Plan adopted and approved under Presidential Decree No. 1.

[7]Part III, Chapter I, Art. IV, par. 5(c).

[8]CES Handbook, 1997 Revised Ed. Pp. 5-6.

[9]Part III, Chapter I, Art. IV, par. 5(e), I.R.P.

[10]pp. 5-6.

[11]Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank.

Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

There are six (6) ranks in the CES ranking structure. The highest rank is that of a Career Executive Service Officer I (CESO I), while the lowest is that of CESO VI.

[12]As a general rule, a CES eligible will be recommended for appointment to the rank equivalent of the level of his managerial responsibility if his performance rating is Satisfactory or higher. If the performance rating is Outstanding, he will be recommended one rank higher than his level of managerial responsibility.

[13]Salary of Career Executive Service Officers. A CESO is compensated according to his CES rank and not on the basis of the CES position he occupies. However, if a CESO is assigned to a CES position with a higher salary grade than that of his CES rank, he is allowed to receive the salary of the CES position.

[14]A member of the CES or CESO may be reassigned from one CES position to another and from one office to another. Such reassignments however, shall not result in any reduction in rank or compensation and shall be made only by the appointing authority.

[15]CES Handbook 1997, Revised Ed., p. 139.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.