NATIONAL POWER CORPORATION, PETITIONER, VS. AGUSTIN A. ZOZOBRADO, RESPONDENT.

G.R. NO. 153022. April 10, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45 of the Rules of Court is the Decision[1] dated 5 November 2001 of the Court of Appeals granting respondent's appeal and the Resolution[2] dated 12 April 2002 denying petitioner's motion for reconsideration. In granting respondent's appeal, the Court of Appeals reversed the Resolution dated 14 October 1999 of the Civil Service Commission (CSC), disposing of the appeal as follows:

> WHEREFORE, the instant petition is GRANTED and the assailed CSC Resolutions Nos. 99-2365 and 000213 are hereby REVERSED and SET ASIDE. The petitioner's reinstatement and/or continuous service is hereby ordered with full payment of backwages and other emoluments.[3]

While the factual background of this case is being disputed, the procedural antecedents of the case are as follows:

On 28 August 1998, respondent Agustin A. Zozobrado, a permanent employee of petitioner National Power Corporation (NPC[4]) assigned as Pilot in the aviation group, received a letter dated 18 August 1998 from NPC President Frederico C. Puno, informing him that that he was being dropped from the rolls.

On 14 September 1998, respondent Zozobrado filed an appeal before the CSC questioning NPC's implementation of dropping him from the rolls.

On 14 October 1999, the CSC issued a Resolution dismissing petitioner's appeal, the dispositive portion whereof is as follows:

> WHEREFORE, the appeal of Agustin A. Zozobrado is hereby dismissed for lack of merit. Accordingly, the Memorandum dated June 29, 1998 as approved by then NPC President Guido Alfredo A. Delgado dropping Zozobrado from the rolls is hereby affirmed.[5]

On 9 November 1999, respondent Zozobrado filed a Motion for Reconsideration of the said Resolution, which the CSC denied in another Resolution dated 25 January 2000.

On 22 March 2000, respondent filed with the Court of Appeals a Petition for Review on Certiorari under Rule 43 of the Rules of Court. The Court of Appeals granted the appeal in the assailed 5 November 2001 Decision. Petitioner filed a motion for reconsideration, but the same was denied in the 12 April 2002 assailed resolution.

Hence, this petition.

Petitioner submits the following allegations in its discussion:

> - Contrary to the Court of Appeal's findings, actual and constructive notice had been served upon respondent;[6] and

- Contrary to the finding of the Court of Appeals, the ratings given to respondent resulting to his dropping from the rolls, were official and regular acts by NPC based on his performance during the rating periods and by no means a premeditated design to drop respondent from the rolls.[7]

Respondent had been dropped by petitioner from the rolls based on the following provision in the Civil Service Rules:

2. Dropped from the rolls

x x x x

2.2 Unsatisfactory or Poor Performance

a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation.[8]

The Court of Appeals, in finding that the respondent's separation "was made with utter lack of due process," held:

Dropping from the rolls means separation from the service. Such separation is made summarily, without any case, investigation or due process. For this reason we submit that the rule should be strictly construed in order that it may not be used as a tool for harassment, vindictiveness or removal of any employee who happens to fall out of grace of his supervisor or superior officers.

Thus, before the dropping from the rolls, it is imperative that the following requisites should be complied with:

a) the employee concerned should be informed of his unsatisfactory performance for a semester;
b) such notice shall be in writing;
c) the same must be made within thirty (30) days from the end of the semester when the first unsatisfactory rating was given;
d) the notice should contain a warning that a succeeding unsatisfactory performance shall warrant his separation from the service; and
e) the notice shall contain sufficient information to enable the employee to prepare an explanation.

In the instant case, the notice required by law was not given to the petitioner. He was not given notice after the rating of unsatisfactory during the first semester of 1997 within thirty (30) days therefrom. The alleged verbal notice, to our mind, is not sufficient for the reason that it is easily concocted. And when there are conflicting allegations as to the alleged verbal notice, such that there is a clash between the word of a superior officer and that of a subordinate, the latter is usually at a disadvantage. Hence, a verbal notice cannot be considered as substantial compliance with the Civil Service Rules.

Moreover, the notice should contain sufficient information to enable the employee to prepare an explanation. This is the opportunity given the employee to explain why his efficiency had fallen - - if such were the fact - - and explain circumstances why his performance has deteriorated, so to speak, which might be considered by the rater. In any case, he is given the opportunity to improve, which is why the notice is given within thirty (30) days from the end of the rating period, so that he has sufficient time to do better, make amends, and enhance his performance at the succeeding period.

This was not done in the case at bar. On the contrary, the first unsatisfactory rating was obviously withheld from the petitioner. According to the respondent, the written notice was made on January 29, 1998, which is way beyond the 30-day period required by the rules.

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What is more, the records disclose that:

- In previous years, the petitioner was rated every semester, i.e., from January to June, and from July to December.

- After the first rating of "unsatisfactory" in the first semester (January - June) of 1997, he was given the next rating of unsatisfactory at the middle of the second semester, i.e., for the period from July to October 1997. There is no explanation for the shift from semester to quarter, and neither is there any showing that all the other employees were rated quarterly thenceforward. As a matter of fact, after the petitioner's transfer to another unit, he was again rated for the semester January to June 1998, where he received a "very satisfactory rating".

- In previous years, the petitioner was rated as a supervisory employee. Without any apparent change of position title nor of his duties and responsibilities, he was suddenly rated as a non-supervisory employee, which has different rating factors from those of supervisors. The shift to such category should have been explained to him, if the same were based on reasonable grounds. However, no explanation was made, thus giving the impression that the change was made arbitrarily.

- The NAPOCOR Performance Appraisal System (PAS) as approved by the Civil Service Commission consists of three (3) main parts, and each part has a corresponding percentage equivalent, to wit:

Part I Corporate Performance -20%

(rated by Management)

Part II Functional Performance -20%
(rated by the Oversight Committee)

Part III Individual Tasks/Assignments - 30%

(rated by Immediate Supervisor)

As shown on the rating form itself, these are rated by different raters. In addition to the above, there is a Part IV for evaluation of Behavioral Dimensions, which is assigned 30%, to make a total perfect score of 100%. In the two performance ratings under question, only Parts III and IV were rated by Gen. Jorge Lagera, the petitioner's immediate supervisor. Thus, as pointed out by the petitioner, the evaluation was incomplete. It is therefore impossible for him to get a fair rating without the other parts being accomplished.

Moreover, we observe that the petitioner had been getting "very satisfactory ratings for 8 ½ years before the controversial ratings were made solely by Gen. Lagera. All previous performance ratings appear to have complete evaluation on all factors, and signed in acknowledgement by the ratee himself.

It also appears that when the petitioner brought to the Grievance Committee the matter of his unsatisfactory ratings, the said committee recommended a review thereof to take into account the dimension of the quantity in the performance standard. However, Gen. Lagera blocked such review, claiming that it was not necessary because he had already considered the same, albeit minimally. This is an indication that Gen. Lagera really wanted to take it upon himself to solely give the rating to the petitioner, in violation of the approved PAS of NAPOCOR. Thus, the Grievance Committee had no recourse but to elevate it to the President [of NPC] for review. However, the latter, instead of making a fair and impartial review, just adopted the recommendation of Gen. Lagera.

All these are indications that there was a pattern to dislodge the petitioner from NAPOCOR's rolls. This started when he exposed certain anomalous transactions in the purchase of helicopter parts and materials. There are allegedly charges and counter charges between the petitioner and other pilots, which the respondent never categorically denied. Likewise not denied was the alleged efforts exerted by Gen. Lagera for the petitioner to

> withdraw his charges. Thus, at a time when he was supposed to testify in court at the hearing of a case against the other pilots, Gen. Lagera suddenly sent him to fly the NAPOCOR President albeit another pilot was assigned to such mission. Although his failure to fly on such flight was fully explained to Gen. Lagera, this was obviously made the basis of the unsatisfactory rating given to the petitioner. These circumstances which were fully narrated by the petitioner had never been refuted by the respondent.
>
> It is also worthy to note that when the petitioner was transferred to the Engineering and Maintenance Division, after the two unsatisfactory ratings in 1997, he was again given a Very Satisfactory rating for January to June 1998. Hence, at the time he was notified of his being dropped from the rolls, on August 28, 1998, his immediate past rating was "very satisfactory" and not "unsatisfactory".
>
> In view of all the foregoing, we believe and so hold that the Civil Service Commission was in error when it upheld the arbitrary rating of unsatisfactory upon the petitioner, as to summarily cause his separation from the service.
>
> Indeed, the petitioner's separation was made with utter lack of due process. The petitioner should not be denied his right to his job for failure of the respondent to comply with the requirements provided by law. As the Supreme Court constantly rules, it is bad enough to lose a job; it is worse if it is taken away by government itself without due process of law. Our Constitution abhors such arbitrariness.[9]

After a careful review of the records, we find no shred of reason to disturb the findings of the Court of Appeals.

The dropping of respondent fromthe rolls is a violation of procedural due process.

Petitioner claims that, contrary to the findings of the Court of Appeals, its compliance with Memorandum Circular No. 12 is full and not merely substantial. However, the evidence submitted by petitioner to prove this allegation, namely the affidavit of Gen. Lagera, only confirms the findings of the Court of Appeals that if there really was a notice to respondent, it had been oral.[10] This is in clear contravention of the requirement in Memorandum Circular No. 12. As held by the Court of Appeals, dropping from the rolls is made summarily, making it imperative to strictly observe the circular to prevent its being used for harassment or vindictiveness.

Not even one of the requisites mentioned by the Court of Appeals had been complied with. It is an uncontested fact that respondent was never notified in writing of his Unsatisfactory rating within 30 days from the end of the semester when the Unsatisfactory rating was given. It is likewise uncontested that respondent was never warned in writing that a succeeding Unsatisfactory performance shall warrant his separation from the service. Even the allegation of the oral notice itself (that petitioner claims and respondent categorically denies) is clearly an afterthought, having been utilized for the first time in the Motion for Reconsideration of the assailed Court of Appeals decision and was never used as an argument in the administrative proceedings. The proof of such notice, a self-serving affidavit of the very individual who unilaterally gave the apparently groundless rating, deserves scant consideration.

Petitioner also refutes the finding that respondent was denied due process by claiming that the action to drop an employee from the rolls is not disciplinary in character. Petitioner claims that such dropping from the rolls does not carry with it forfeiture of Civil Service eligibility and other benefits arising from employment, nor does it involve a disqualification from holding a public office or re-entry in the service. This Court is appalled by such an argument. One's employment, profession, trade or calling is a property right, the wrongful interference therewith is an actionable wrong.[11] Taking this away without due process is a violation of a constitutional human right, and the consolation of not being disqualified for later employment does not erase nor mitigate such infraction.

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Petitioner claims that, contrary to the findings of the Court of Appeals, the ratings given to respondent resulting to

his dropping from the rolls were official and regular acts by the NPC based on his performance during the rating periods and by no means a premeditated design to drop respondent from the rolls. According to petitioner, respondent failed to prove ill motive on the part of Gen. Lagera as to the "unsatisfactory" rating given to him.[12]

Evidence, however, shows otherwise. Petitioner never denied that respondent's unsatisfactory rating was due to respondent's testimony in court concerning the graft charges against NPC employees. On the day respondent was supposed to testify in court under pain of contempt, Gen. Lagera suddenly sent him to fly the NPC President despite the fact that another pilot was assigned to such mission. Instead of denying the deliberate attempt to thwart respondent's testimony, petitioner, in its memorandum to this Court, arrogantly insisted that respondent's failure to perform his duty for the highest officer of the corporation does not deserve the "Fair" or "Unsatisfactory" rating but outright dismissal from service.[13]

Gen. Lagera's ill motive is further proved by the fact that respondent was kept in the dark as to the status of his employment even though the same had already been terminated two months earlier. It appears that the sad news was relayed to respondent only on his natal day affair. We can see no reason for the two months delay other than the devastation Gen. Lagera expected to cause by imparting the shocking news on respondent's birth anniversary, during a celebration and in front of other people.

Petitioner claims that it was non-sequitur for the Court of Appeals to conclude that, just because respondent received a "Very Satisfactory" rating for 8 ½ years, he could not possibly receive a lower rating thereafter.[14] The Court of Appeals never said that. The Court of Appeals was revealing petitioner's ill-disguised attempt to illegally dismiss respondent by means of unsatisfactory ratings. As observed by the Court of Appeals, the "Very Satisfactory" performance ratings for those 8 ½ years have complete evaluation on all factors, and signed in acknowledgement by all three raters. This is as opposed to the "Unsatisfactory" ratings made solely by Gen. Lagera, who is only one of the raters. The ratings, furthermore, had been made on a per semester basis (January to June and July to December) for all those 8 ½ years, while the last "Unsatisfactory" rating was made for a four-month period (July to October, 1997), an innovation applied only to respondent among the hundreds of employees of petitioner. As a matter of fact, respondent was again rated "Very Satisfactory" and on a per semester basis (January to June 1998) after he was transferred to another unit.

On this note, petitioner claims that the "Very Satisfactory" ratings by the Engineering and Training Division (ETD) should not have been considered in doubting the ratings given by Gen. Lagera.[15] According to petitioner, the job respondent handled at the ETD is different from the job of a pilot, and that "respondent was dropped from the rolls because of unsatisfactory performance as a pilot and not for being a researcher or ordinary employee in ETD."[16] Petitioner mockingly claims that respondent may have a talent for research but not for flying.[17]

We disagree. Even if we disregard respondent's believable claim that his ETD activities require the skill and technical know-how of a pilot, the "Very Satisfactory" rating in the ETD shows the credibility of respondent in all aspects of the work he rendered, and that the only reason for the "Unsatisfactory" ratings is respondent's reporting of the alleged anomalies in the NPC. It is uncontested that, sometime in May 1997, respondent brought to the attention of the Chairman and the President of the NPC several alleged anomalies in the Aviation Group. In November 1997, the Philippine Daily Inquirer reported the alleged anomalous purchases in a three-part series of an investigative Special Report. Complaints had been filed by respondent, and complaints had been filed against him. The ratings for the second half of 1996 (where respondent was rated 76% which translates to "Fair") were released in the second half of 1997, followed by the ratings for January to June 1997 and July to October 1997. Needing two consecutive "Unsatisfactory" ratings to dismiss respondent, and seeing that the second "Unsatisfactory" rating was made for a period of July to October 1997, petitioner argued that the "Fair" rating is

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equivalent to "Unsatisfactory." This is a wild supposition which does not deserve merit at all.

As further found by the Court of Appeals, when respondent brought to the Grievance Committee the matter of his unsatisfactory ratings, the Grievance Committee recommended a review thereof to take into account respondent's quantity of flying hours. Pilots have traditionally been rated by the number of flying hours spent in their career, and respondent had more than double the flying hours of the two other pilots of the Aviation Group combined. However, Gen. Lagera blocked such review, claiming that he had already considered the same, albeit minimally. This is a clear indication that Gen. Lagera really wanted to take it upon himself to solely give the "Unsatisfactory" ratings to respondent, in violation of the approved Performance Appraisal System (PAS) of the NPC.

WHEREFORE, the petition is DENIED. The Decision dated 5 November 2001 and the Resolution dated 12 April 2002 of the Court of Appeals are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., ,(Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ. concur.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr., concurring.

[2] Rollo, p. 60.

[3] Id., p. 58.

[4] In some documents and portions of the Court of Appeals decision, the abbreviation "NAPOCOR" was used.

[5] Rollo, p. 71.

[6] Id., p. 19.

[7] Id., p. 28.

[8] CSC Memorandum Circular No. 12, series of 1994.

[9] Rollo, pp. 54-58.

[10] Id., p. 79.

[11] Crespo v. Provincial Board of Nueva Ecija, G.R. No. L-33237, 15 April 1988, 160 SCRA 66, 68.

[12] Petitioner's Memorandum, rollo, pp. 713-714.

[13] Id., p. 708.

[14] Id., p. 716.

[15] Id., p. 725.

[16] Id., p. 726.

[17] Id., p. 726.

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