

CIVIL SERVICE COMMISSION, PETITIONER, VS. SATURNINO DE LA CRUZ, RESPONDENT.

G.R. No. 158737. August 31, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for certiorari under Rule 45 of the Revised Rules of Court, seeking to review and set aside the May 14, 2003 decision[1] and June 17, 2003 resolution[2] of the Court of Appeals in CA-G.R. SP No. 54088, entitled *Saturnino de la Cruz vs. Civil Service Commission*. In that decision, the appellate court set aside CSC Resolution Nos. 98-2970 and 99-1451, consequently approving Saturnino de la Cruz' appointment as Chief of the Aviation Safety Regulation Office.

The pertinent facts,[3] as narrated by the Office of the Solicitor General, follow.

Respondent Saturnino de la Cruz is an employee of the Air Transportation Office, DOTC, presently holding the position of Chief Aviation Safety Regulation Officer of the Aviation Safety Division.

Respondent was promotionally appointed to the said position on November 28, 1994, duly attested by the Civil Service Commission (CSC). But prior thereto, he was a Check Pilot II in the Air Transportation Office (ATO).

In a letter dated February 9, 1995, Annabella A. Calamba of the Aviation Security Division of the ATO formally filed with the Department of Transportation and Communication (DOTC) her protest against the promotional appointment of respondent as Chief Aviation Safety Regulation Officer, claiming among others that respondent did not meet the four-year supervisory requirement for said position.

On July 20, 1995, then DOTC Secretary Jesus B. Garcia rendered a decision finding the protest without merit.

Apparently dissatisfied, Calamba appealed the decision of the DOTC Secretary to the CSC-NCR.

Under date of October 17, 1995, Director Nelson Acebedo of CSC-NCR requested ATO Executive Director Manuel Gilo to comment on the appeal and to submit to the CSC-NCR the documents pertinent thereto.

Since the CSC-NCR received no action on said request for comment, the CSC-NCR again wrote Director Gilo regarding the matter on May 5, 1997. But to no avail.

On October 14, 1997, for the last time, the CSC-NCR reiterated to Director Gilo its request for comment.

On November 18, 1997, the CSC-NCR rendered its decision upholding the protest of Calamba and recalling the approval of respondent's appointment as Chief Aviation Safety Regulation Officer. Said the CSC-NCR: "After an initial evaluation of the protest, we find that the only issue to be resolved is whether or not the protestee meets the minimum experience requirements as of the date of the protestee's appointment to the contested position. The contested position requires four years of work experience in position/s involving management per Qualification Standards Manual prescribed by MC No. 46, s. 1993 and/or four years of experience in planning, organizing, directing, coordinating and supervising the enforcement of air safety laws, rules and regulations pertaining to licensing, rating and checking of all airmen and mechanics and regulation of

the activities of flying schools per ATO Qualification Standards xxx.

xxx xxx xxx

Taking into account his previous positions, Mr. dela Cruz could not have exercised managerial or supervisory functions for the required number of years. x x x. Moreover, vis-à-vis the experience requirements of the approved ATO Qualification Standards, Mr. dela Cruz' work experience prior to his appointment to the contested position did not concur therewith.

We are of the view therefore, that experience-wise, Mr. dela Cruz did not meet the requirements of the contested position as of the date of his appointment thereto.

xxx xxx xxx."

Under date of December 11, 1997, ATO Director Gilo wrote the CSC-NCR asking for the suspension of the order recalling respondent's appointment, citing several reasons in support thereof.

Subsequently, a Manifestation with Motion to Admit Addendum dated December 22, 1997 was filed by Director Gilo with the CSC-NCR. Director Gilo argued that Calamba had no legal personality to file a protest because she is not a qualified next-in-rank and that the protest was filed out of time. He likewise asserted that respondent had fully met the qualifications required of the position.

On January 5, 1998, CSC-NCR Director Acebedo ruled that there is no cogent reason to disturb earlier rulings on the matter. He also denied ATO Director Gilo's request, for lack of merit.

Strangely, in a letter dated January 13, 1998, CSC-NCR Director Acebedo granted Director Gilo's request and affirmed the approval of respondent's appointment as Chief Aviation Safety Regulation Officer. He said:

"xxx xxx xxx.

We reviewed again the documents including the Office Orders designating protestant dela Cruz to supervisory position which were obviously issued during the latter part of 1993. A liberal consideration thereof would come up with a little over one year of supervisory and managerial experience. Certainly, he was short of the required number of years of work experience for the contested position as of the date of the issue of his appointment. Nevertheless, considering that Mr. dela Cruz has already in his favor at least four years of continuous supervisory/managerial experience from his designation as Acting Chief of the Aviation Safety Regulation Division, supervened by his permanent appointment thereto as Chief thereof in November 28, 1994, up to present, he has substantially satisfied the four years experience required for appointment to the contested position.

xxx xxx xxx."

In a letter dated January 26, 1998, Calamba requested the CSC to implement the January 5, 1998 ruling of the CSC-NCR.

When asked by the CSC to clarify the conflicting rulings, CSC-NCR Director Acebedo explained that the January 5, 1998 ruling is unofficial and inexistent.

The CSC treated Calamba's request as an appeal. On November 13, 1998, the CSC rendered its Resolution No. 98-2970, the decretal portion of which reads:

"WHEREFORE, the appeal of Annabella A. Calamba is hereby granted. The appointment of Saturnino De la Cruz as Chief Aviation Regulation Officer is disapproved. De la Cruz is hereby reverted to his former position.

xxx xxx xxx."

Acting on the request for reconsideration filed by respondent, the CSC rendered its Resolution No. 99-1451 on July 6, 1999, the dispositive portion of which reads:

“WHEREFORE, the instant motion for reconsideration of Saturnino dela Cruz is hereby denied. Accordingly, CSC Resolution No. 98-2970 dated November 13, 1998 stands.”

On August 11, 1999, respondent filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 54088, seeking to nullify CSC Resolution Nos. 98-2970 and 99-1451.

In a decision[4] dated March 14, 2003, the Court of Appeals granted the petition by setting aside CSC Resolution Nos. 98-2970 and 99-1451 and approving respondent’s appointment as Chief of the Aviation Safety Regulation Office.

Petitioner’s motion for reconsideration was subsequently denied in a resolution issued on June 17, 2003.

Hence, the instant petition for review.

Petitioner contends that the appellate court erred in approving respondent’s appointment as Chief Aviation Safety Regulation Officer despite his failure to meet the minimum four-year managerial and supervisory qualification for the position. It further contends that respondent’s completion of the required experience during the pendency of the present case cannot be counted in his favor because compliance with the prescribed mandatory requirements should be as of the date of issuance of the appointment and not the date of approval by the CSC or the resolution of the protest against the appointment.

The petition lacks merit.

Contrary to petitioner’s contention, respondent has sufficiently complied with the required experience standards.

First, upon the issuance of respondent’s appointment on November 28, 1994, the qualification standards of the DOTC for the position of Chief Aviation Safety Regulation Officer were as follows:

EDUCATION:

BACHELOR’S DEGREE RELATED TO AVIATION

EXPERIENCE:

4 YEARS OF EXPERIENCE IN PLANNING, ORGANIZING, DIRECTING, COORDINATING, AND SUPERVISING THE ENFORCEMENT OF AIR SAFETY LAWS, RULES, AND REGULATIONS PERTAINING TO LICENSING, RATING AND CHECKING OF ALL AIRMEN AND MECHANICS AND THE REGULATION OF THE ACTIVITIES OF FLYING SCHOOLS.

LICENSE REQUIRED: AIRLINE TRANSPORT RATING / FLIGHT OPERATIONS OFFICER / AIRCRAFT MAINTENANCE ENGINEER (A&P) LICENSE / FLIGHT ENGINEER LICENSE

TRAINING:

IN-SERVICE TRAINING IN MANAGEMENT; SPECIALIZED COURSE IN AIRCRAFT MAINTENANCE / AIR CARRIER OPERATIONS/ FLIGHT DISPATCHING/ AIRCRAFT ACCIDENT INVESTIGATION/ EQUIPMENT QUALIFICATION COURSE / FLIGHT TRAINING (LOCAL & ABROAD)

ELIGIBILITY:**RELEVANT RA 1080 CAREER SERVICE PROF. 1[ST] GRADE****RELEVANT ELIGIBILITY FOR SECOND LEVEL POSITION[5]**

As noted by the CSC-NCR,[6] the contested position required four years of work experience in managerial position(s) per the Qualification Standards Manual prescribed by MC No. 46, s. 1993 and/or four years of experience in planning, organizing, directing, coordinating and supervising the enforcement of air safety laws, rules and regulations pertaining to licensing, rating and checking of all airmen and mechanics and regulation of the activities of flying schools per the above-stated ATO-DOTC Qualification Standards.

Petitioner's insistence that respondent failed to meet the four-year managerial and supervisory experience requirement is misplaced. It is a well-settled rule in statutory construction that the use of the term "and/or" means that the word "and" and the word "or" are to be used interchangeably.[7] The word "or" is a disjunctive term signifying dissociation and independence of one thing from another.[8] Thus, the use of the disjunctive term "or" in this controversy connotes that either the standard in the first clause or that in the second clause may be applied in determining whether a prospective applicant for the position under question may qualify.

Respondent would indeed lack the required years of work experience to qualify for the contested position if the managerial standards in the first clause above were to be strictly followed. At the time of his permanent appointment on November 28, 1994 as Chief Aviation Safety Regulation Officer, respondent had a little over one year of managerial experience from his designation as Acting Chief of the Aviation Safety Division during the latter part of 1993. However, the work already rendered by respondent in the ATO at the time of his appointment was well within the supervisory standard in the second clause. Planning, organizing, directing, coordinating and supervising the enforcement of air safety laws, rules and regulations pertaining to licensing, rating and checking of all airmen and mechanics and regulation of the activities of flying schools were part of the work performed by respondent for more than 13 years prior to his appointment.

Before respondent was appointed to the contested position, he had held several other positions in the ATO, namely:

March 6, 1981 to July 15, 1981

Supply Checker

July 16, 1981 to February 5, 1983

Junior Aeronautical Engineer

February 6, 1983 to February 29, 1984

Air Carrier Safety Inspector

March 1, 1984 to February 28, 1987

Check Pilot I

March 1, 1987 to November 27, 1994

Check Pilot II

November 28, 1994 to date

Chief Aviation Safety Regulation Officer[9]

These positions, spanning more than 13 years, in four of the five sections of the Aviation Safety Division of the ATO definitely met the minimum supervisory experience required of respondent for the position.

In *Rapisora vs. Civil Service Commission*,[10] this Court held that the rule that appointees must possess the prescribed mandatory requirements cannot be so strictly interpreted as to curtail an agency's discretionary power to appoint, as long as the appointee possesses other qualifications required by law. The appellate court was therefore correct in setting aside the assailed CSC resolutions and considering the respondent's total work experience as sufficient to meet the supervisory standards under the second clause, thereby finding respondent qualified for appointment to the contested position.

Second, respondent's promotional appointment was issued in accordance with petitioner's selection process. Respondent passed the rigid screening of the ATO Personnel Selection/Promotion Board as well as the oral and written examinations of the DOTC Selection Board.

DOTC Assistant Secretary Panfilo V. Villaruel, Jr. noted that:

- Capt. dela Cruz has been with the Air Transportation Office for more than 13 years already and during such period, he faithfully and efficiently (served in) four of the five sections of the Aviation Safety Division of which the position under consideration is the head, thereby gaining more varied experience and working knowledge of the most important and sensitive functions of the Division over other applicants;
- The recommendee always performs his assigned tasks promptly with dedication, integrity, high sense of responsibility and professionalism which he had demonstrated when he established and developed the Airport Crash Rescue Organization (ACRO) procedure to various national airports of the country, and when he organized the Air Transportation Office (ATO) Operations Center which is now on a 24-hour operation and serving as the nerve center of this Office;
- He is a dedicated public servant and is always willing to respond to call of duty even beyond office hours like when he is flying the ATO's aircraft for navigation aide check during holidays and weekends, aside from conducting checkride to airmen prior to issuance of the pilot license;
- Capt. dela Cruz is an outstanding team worker as well as a leader and promotes enthusiasm among co-workers. He handles all areas of job with minimal supervision and accomplishes objectives efficiently. He accepts stress situations and performs extremely well.[11]

Because of respondent's excellent credentials, DOTC Assistant Secretary for Administrative and Legal Affairs Wilfredo M. Trinidad, chair of the Personnel Selection Board, strongly recommended his promotional appointment to the contested position.

Third, respondent's multifarious experiences and trainings[12] in air transportation were taken into account when he was chosen for the subject position. Respondent not only showed a continuing interest to improve his expertise in the field of air transportation, he also acquired an Airline Transport Pilot's License in 1998.[13] As a privileged holder of such license, respondent exercised administrative supervision and control over pilots, cabin and crew members to ensure compliance with air safety laws, rules and regulations.

In addition, respondent's dedication to the service was demonstrated by his conceptualization and establishment of the Airport Crash Rescue Organization (ACRO) procedure in various national airports in the country to ensure the security of both airport personnel and passengers. Respondent also organized the Air Transportation Office Operations Center which now provides air service assistance on a 24-hour basis.

Because of respondent's commendable performance, he was designated Chief of the Air Transportation Office

Operations Center in 1993 per Office Order No. 178-93,[14] in addition to his duties as Check Pilot II. He was also designated Acting Chief, Aviation Safety Division, of the ATO per Office Order No. 211-93.[15]

In *Teologo vs. Civil Service Commission*,[16] the Supreme Court ruled:

“Promotions in the Civil Service should always be made on the basis of qualifications, including occupational competence, moral character, devotion to duty, and, not least important, loyalty to the service. The last trait should always be given appropriate weight, to reward the civil servant who has chosen to make his employment in the Government a lifetime career in which he can expect advancement through the years for work well done. Political patronage should not be necessary. His record alone should be sufficient assurance that when a higher position becomes vacant, he shall be seriously considered for the promotion and, if warranted, preferred to less devoted aspirants.”

As stated by ATO Executive Director Manuel Gilo in his letter to CSC-NCR Director Nelson Acebedo, “a proven excellent performance of a person is better than just experience by occupying a position but lacks dedication to duty, strong leadership and technical know-how.”[17]

It is elementary in the law of public officers that the power to appoint is in essence discretionary on the part of the proper authority. In *Salles vs. Francisco, et al.*,[18] we had occasion to rule that, in the appointment or promotion of employees, the appointing authority considers not only their civil service eligibilities but also their performance, education, work experience, trainings and seminars attended, agency examinations and seniority. Consequently, the appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. The final choice of the appointing authority should be respected and left undisturbed. Judges should not substitute their judgment for that of the appointing authority.

In the appointment of division chiefs, as in this case, the power to appoint rests on the head of the department. Sufficient if not plenary discretion should be granted to those entrusted with the responsibility of administering the offices concerned. They are in a position to determine who can best fulfill the functions of the office vacated.[19] Not only is the appointing authority the officer primarily responsible for the administration of the office, he is also in the best position to determine who among the prospective appointees can efficiently discharge the functions of the position.[20]

Respondent was the uncontested choice of the appointing authority. Then DOTC Secretary Jesus B. Garcia dismissed the protest against respondent’s appointment. ATO Executive Director Gilo also noted respondent’s full compliance with the qualifications for the position. CSC-NCR Director Acebedo, who previously recalled respondent’s appointment, later affirmed it after a re-evaluation of the case and declared his previous ruling unofficial and inexistent.

Clearly then, there is no reason to disapprove the appointment of respondent as Chief of the Aviation Safety Regulation Office considering that he is fully qualified and evidently the choice of the appointing authority. Between the Commission and the appointing authority, we sustain the latter.[21] “Every particular job in an office calls for both formal and informal qualifications. Formal qualifications such as age, number of academic units in a certain course, seminars attended, etc., may be valuable but so are such intangibles as resourcefulness, team spirit, courtesy, initiative, loyalty, ambition, prospects for the future and best interest of the service. Given the demands of a certain job, who can do it best should be left to the head of the office concerned provided the legal requirements for the office are satisfied.”[22]

We, however, agree with petitioner that the reckoning point in determining the qualifications of an appointee is the date of issuance of the appointment and not the date of its approval by the CSC or the date of resolution of the

protest against it. We need not rule on petitioner's assertion that respondent's subsequent compliance with the experience standards during the pendency of the case should not be counted in his favor since respondent was anyway qualified for the position at the time of his appointment.

But even assuming for the sake of argument that respondent failed to meet the experience requirement to qualify for the contested position, we are still inclined to uphold the appellate court's approval of respondent's appointment. Petitioner itself has, on several occasions, allowed the appointment of personnel who were initially lacking in experience but subsequently obtained the same.

In Civil Service Commission Resolution No. 97-0191 dated January 9, 1997, it ruled thus:

"A careful evaluation of the qualifications of Josue reveals that he meets the education, training and eligibility requirements of the position. Considering that Josue has already in his favor three (3) years and eight (8) months experience as Senior Inspector up to the present, he has substantially satisfied the four (4) years experience required for the appointment as Chief Inspector."

Following petitioner's line of reasoning, respondent is deemed to have satisfactorily complied with the experience requirement for the contested position when he was designated Chief of the ATO Operations Center and Acting Chief of the ATO Aviation Safety Division. Having held said positions from 1993 to the present, respondent may be considered to have acquired the necessary experience for the position.

WHEREFORE, the instant petition is hereby DENIED. The decision of the Court of Appeals setting aside CSC Resolution No. 98-2970 and CSC Resolution No. 99-1451 is AFFIRMED. The appointment of Saturnino de la Cruz as Chief Aviation Safety Regulation Officer is APPROVED.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.

Puno, Panganiban, Sandoval-Gutierrez, and Carpio, JJ., on official leave.

[1] Penned by Associate Justice Bennie A. Adeguin-De La Cruz and concurred in by Associate Justices Mercedes Gozo-Dadole and Mariano C. Del Castillo of the Ninth Division.

[2] Rollo, p. 44.

[3] Rollo, pp. 35-38.

[4] Rollo, p. 42.

[5] Rollo, p. 66.

[6] Rollo, p. 48.

[7] *Romulo Mabanta Buenaventura Sayoc & De los Angeles vs. Home Development Mutual Fund*, 333 SCRA 777 [2000].

[8] *People of the Philippines vs. Martin*, 39 SCRA 430 [1971].

[9] Rollo, p. 63.

[10] 228 SCRA 622 [1993].

[11] Rollo, pp. 135-136.

[12] Records show that the trainings attended by respondent de la Cruz both internationally and locally included the following: (a) Aircraft Accident Investigation per certificate dated October 4, 1985 from the University of Southern California, Institute of Safety and Systems Management; (b) 9[th] OAA Flight Safety Seminar per certificate dated May 13-14, 1987, Orient Airlines Association; (c) FOKKER 50 course of instruction for pilots from July 4, 1988 to July 13, 1988 per certificate dated July 12, 1988, Fokker B. V. Holland; (d) C-130A Conversion Course No. 1 per certificate dated August 15, 1988, Aboitiz Air Transport; (e) Initial Super King Air 300 Ground and Flight Training as per certificate dated October 5, 1988 from Elliott Flying Service, Inc., Quad-City Airport, Moline, IL.; (f) Airspace Systems Inspection Pilot conducted by the FAA Academy per certificate dated December 7, 1989 from the U.S. Department of Transportation, Federal Aviation Administration; (g) Aviation Accident Investigation per certificate dated June 15, 1990 from the Institute of Aviation Safety, Stockholm, Sweden; (h) Aviation Safety International Conference per certificate dated March 12, 1991 from the Air Safety Foundation Philippines and Philippine Exhibition Services Organization, Inc.; (i) Kinr Air 200/B200 Pilot Initial per certificate dated September 29, 1995 from Flight Safety International; (j) A 340 Transition Course per attestation dated June 19, 1996 from Airbus Industrie Training Centre in Blagnac; and (k) Ascent to Excellence Program per certificate dated April 26, 1997 from the Asian Institute of Management.

[13] License No. 88A27; Rollo, p. 138.

[14] Rollo, p. 139.

[15] Rollo, p. 140.

[16] 191 SCRA 238 [1990].

[17] Rollo, p. 50.

[18] 206 SCRA 621 [1992].

[19] Central Bank of the Philippines and Jordan vs. Civil service Commission, 171 SCRA 744 [1989].

[20] Villegas vs. Subido, 30 SCRA 498 [1969].

[21] Medenilla vs. Civil Service Commission, 194 SCRA 278 [1991].

[22] Torio vs. Civil Service Commission, 209 SCRA 691 [1992].

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