

COL. JESUS G. CABARRUS, JR., PAF (RES.), PETITIONER, VS. HON. SECRETARY OF NATIONAL DEFENSE, THE CHIEF OF STAFF, AND THE COMMANDING GENERAL, RESERVE COMMAND, AFP, RESPONDENTS.

G.R. No. 180966. June 13, 2012

Ponente: ABAD, J.

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ABAD, J.:

This case is about a reserve officer called to active duty in the Armed Forces of the Philippines Reserve Command when he was already 60 years of age but refused to be relieved at 65 believing that he was still physically and mentally fit for duty.

The Facts and the Case

One of the major support commands of the Armed Forces of the Philippines (AFP) is its Reserve Command, created for the purpose of Reserve Force management, procurement, and organization. It develops, organizes, trains, equips, and administers AFP reservists into capable, responsive, and mobilizable reserve force. These reservists augment the regular force whenever needed.[1]

In 2000 the AFP called into active service petitioner Jesus G. Cabarrus, Jr., a reserve officer with the rank of colonel in the Philippine Air Force, and installed him as Group Commander of the Public Affairs Service of the AFP Reserve Command. He was then 60 years old.

In February 2005 the overall Commanding Officer of the AFP Reserve Command, Col. Cabarrus's superior, wrote the Judge Advocate General Office (JAGO), requesting its legal opinion on whether Col. Cabarrus could continue to serve as Group Commander after his 65th birthday. The JAGO replied in the negative, citing Section 13(3) of Republic Act (R.A.) 7077.[2]

On March 1, 2005 Col. Cabarrus reached the age of 65 but apparently remained at his post for a while. Eight months later or on November 8, 2005 the Group Commander of the Technical Service Reserve of the AFP Reserve Command issued a circular announcing the retirement of reservists in the AFP Reserve Command who had reached the age of 65. Thus, his superior in the latter Command considered Col. Cabarrus retired and relieved him of his post beginning on December 11, 2005.

Believing that his superiors singled him out for removal, Col. Cabarrus wrote separate letters to his Commanding Officer, to the AFP Chief of Staff, and to the Secretary of National Defense protesting the same. But they did not reply to him. Thus, he filed a petition for declaratory relief with the Quezon City Regional Trial Court (RTC) for the proper construction of Section 13(3) of R.A. 7077 regarding the retirement of reservists who had been called to active service. On November 27, 2007 the RTC rendered a decision, dismissing his petition for lack of merit, hence, the present action.

The Issue Presented

The case presents a legal issue that needs to be settled for the benefit of the AFP:

Whether or not Col. Cabarrus, a reservist called to serve in one of the support commands of the AFP may be regarded as retired under Section 13(3) of R.A. 7077 after he reached the age of 65.

The Ruling of the Court

The citizen soldiers of the AFP, called reservists, are of three categories. In the first category are able-bodied reservists between the ages of 18 and 35; in the second category are able-bodied reservists between the ages of 36 and 51; and in the third category are able-bodied reservists who are above the age of 51.[3] No doubt, Col. Cabarrus belonged to the third category when he was called into active service in 2000 since he was then already 60 years of age. As Group Commander of the Public Affairs Service of the AFP Reserve Command, he worked in a unit of the regular armed forces that looked after the affairs of its reserve force.

What is in issue in this case is the age when third category reservists who are called into the active service can be relieved from such service. Col. Cabarrus claims that he has the right to remain in the active service beyond the age of 65 as long as he remains mentally and physically fit. But the AFP, invoking Section 13(3) of R.A. 7077, claims that third category reservists like him when called to active duty are automatically relieved from the service at the age of 65.

The pertinent portions of Section 13 provide:

Section 13. Classification of Reserve Force Units. – Based on the categorization provided in Section 12 above, the Reserve Force units shall further be classified into the Ready Reserve, the Standby Reserve and the Retired Reserve based in their operational readiness for immediate deployment/utilization.

(1) Ready Reserve. - The Ready Reserve shall be composed of citizen soldiers belonging mostly to the First Category Reserve and others as provided in this Act who shall be organized, trained and maintained as mobilizable ready reserve subject to call at any time to augment the regular armed force of the AFP not only in times of war or national emergency but also to meet local emergencies arising from calamities, disasters and threats to peace, order, security and stability in any locality, including the need to provide assistance in relief and rescue work and other civil assistance activities.

Any reservist or citizen soldiers belonging to the Second Category Reserve and/or the Third Category Reserve, particularly the commissioned and non-commissioned officers, who will volunteer to serve with the Ready Reserve shall be allowed, if qualified and fit for duty, to join and actively participate as part of the Ready Reserve and shall serve with an appropriate Ready Reserve unit.

Furthermore, members of the AFP Affiliated Reserved units of various government and private utilities and services considered essential for the preservation of the economic stability of the country or particular locality, such as power and electricity, water supply, transportation and communications, among others, regardless of their categorization shall be classified as Ready Reserve.

All citizen soldiers belonging to the First Category Reserve, except those exempted under this Act, shall be required to serve with Ready Reserve units and will have assignments and promotions in accordance with existing policies of the AFP until transferred to the Standby Reserve by virtue of their age.

x x x x

(2) Standby Reserve. - The Standby Reserve shall be composed of citizen soldiers belonging mostly to the Second Category Reserve and the Third Category Reserve, except as provided in this Act. The members of the Standby Reserve shall be organized and assigned to specified reserve units and shall be maintained through

annual assembly tests to update their records and their present addresses, among others. The Standby Reserve may be mobilized or ordered to active duty only in times of national emergency or war. The ranks of the members of the Standby Reserve may be upgraded if they voluntarily participate in training or serve with the Ready Reserve units in their areas or if their Standby Reserve units undergo retraining. They will however be encouraged to upgrade their military knowledge and skills by taking up non-resident or resident courses which shall be set up for the purpose.

(3) Retired Reserve. - The Retired Reserve shall be composed of citizen soldiers who have qualified for retirement through length of service, old age or disability. For this purpose, sixty-five (65) years shall be considered as the retirement age. However, if qualified and fit for duty, a member of the Retired Reserve may be ordered to active duty in times of local or national emergencies if he volunteers for active duty and when the Secretary of National Defense determines that there are not enough qualified citizen soldiers with his special skills and qualifications in the Ready Reserve or the Standby Reserve in his particular area of residence. (Emphasis supplied)

The reference to “sixty-five (65) years” as the retirement age in sub-paragraph (3) above evidently has to do with the composition of the Retired Reserve Unit. That unit is composed of “citizen soldiers who have qualified for retirement through length of service, old age or disability.” The retirement age for this purpose, it says, is the age of 65. The provision in question does not prescribe the retirement age for reservists who are called into active service in the regular armed forces.

Moreover, Section 13 is not about the retirement of reservists who have been called to active duty. Section 13 essentially creates a classification of the Reserved Force units of the country’s citizen armed force. The three units of this Reserve Citizen Armed Force are the (a) Ready Reserve; (b) Standby Reserve; and (c) Retired Reserve. These units do not, until mobilized, perform the work of the regular armed forces. They are essentially needed only to cope with an actual war, invasion, rebellion or any other extreme emergency. Theirs is the limited and contingent mission described under Section 7 which reads:

Section 7. Mission. – The mission of the Citizen Armed Force, alternately referred to as the Reserve Force, is to provide the base for the expansion of the Armed Forces of the Philippines in the event of war, invasion or rebellion; to assist in relief and rescue during disaster or calamities; to assist in socioeconomic development; and to assist in the operation and maintenance of essential government or private utilities in furtherance of overall mission.

Of the three units mentioned, the Ready Reserve unit consists of reservists who are organized, trained, and maintained as mobilizable ready reserve subject to call at any time to augment the regular armed force of the AFP not only in times of war or national emergency but also in normal times. Still, they have to be mobilized when the occasion calls for it.

The AFP did not post Col. Cabarrus to any of the three stand by reserve units subject of Section 13, the membership of which exists, except during training, largely on paper. The AFP posted Col. Cabarrus in one of its support commands, the AFP Reserve Command, as Group Commander of its Public Affairs Service. Consequently, Section 13 does not apply to him.

Actually, the only possible opportunity for reservists to be called to active duty and hold commands in the regular armed forces is for “training” as provided in Section 53 of R.A. 7077.

Section 53. Active Duty Tour for Training of Reserve Officers. – In order to improve their professional competence and leadership qualities, reserve officers in the inactive status shall be called to active duty for a period not exceeding two (2) years without extension; provided, that the quota for such active duty shall as far as practicable be proportionately distributed to the provinces and cities based on their reserve units, with

priority to units of Ready Reserve I: provided, further, that the reserve officers called to active duty shall as far as practicable serve in the province of their reserve unit assignment. A reserve officer who has served his tour shall not be called again to active duty until after (5) years, except in case of mobilization.

Since Col. Cabarrus has already exceeded the two-year service allowed to reservists who are called to active duty tour, he cannot complain that he has been prematurely removed from the active or regular service.

WHEREFORE, the Court DENIES the petition for lack of merit.

SO ORDERED.

Peralta, (Acting Chairperson),[*] Villarama, Jr.,[**] Mendoza, and Perlas-Bernabe, JJ., concur.

[*] Per Special Order 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1229 dated June 6, 2012.

[1] <http://wikimapia.org/13183946/AFPRESKOM-Armed-Forces-of-the-Philippines-Reserve-Command> (last accessed May 28, 2012).

[2] Entitled “An Act Providing for the Development, Administration, Organization, Training, Maintenance and Utilization of the Citizen Armed Forces of the Armed Forces of the Philippines and For Other Purposes.”

[3] Section 12. Categorization of Citizen Soldiers. – There shall be three (3) categories of citizen soldiers of AFP reservists: the First Category Reserve, the Second Category Reserve, and the Third Category Reserve based on age.

(1) First Category Reserve. - The First Category Reserve shall be composed of able-bodied reservists whose ages are between eighteen (18) years and thirty-five (35) years, inclusive.

(2) Second Category Reserve. - The Second Category Reserve shall be composed of able-bodied reservists whose ages are between thirty-six (36) years and fifty-one (51) years, inclusive.

(3) Third Category Reserve. - The Third Category Reserve shall be composed of the all able-bodied reservists who are above fifty-one (51) years of age.

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