

DENNIS A. B. FUNA, PETITIONER, VS. THE CHAIRMAN, COMMISSION ON AUDIT, REYNALDO A. VILLAR, RESPONDENT.*G.R. No. 192791. April 24, 2012*

Ponente: VELASCO JR., J.

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In this Petition for Certiorari and Prohibition under Rule 65, Dennis A. B. Funa challenges the constitutionality of the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit and accordingly prays that a judgment issue “declaring the unconstitutionality” of the appointment.

The facts of the case are as follows:

On February 15, 2001, President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) appointed Guillermo N. Carague (Carague) as Chairman of the Commission on Audit (COA) for a term of seven (7) years, pursuant to the 1987 Constitution.[1] Carague’s term of office started on February 2, 2001 to end on February 2, 2008.

Meanwhile, on February 7, 2004, President Macapagal-Arroyo appointed Reynaldo A. Villar (Villar) as the third member of the COA for a term of seven (7) years starting February 2, 2004 until February 2, 2011.

Following the retirement of Carague on February 2, 2008 and during the fourth year of Villar as COA Commissioner, Villar was designated as Acting Chairman of COA from February 4, 2008 to April 14, 2008. Subsequently, on April 18, 2008, Villar was nominated and appointed as Chairman of the COA. Shortly thereafter, on June 11, 2008, the Commission on Appointments confirmed his appointment. He was to serve as Chairman of COA, as expressly indicated in the appointment papers, until the expiration of the original term of his office as COA Commissioner or on February 2, 2011. Challenged in this recourse, Villar, in an obvious bid to lend color of title to his hold on the chairmanship, insists that his appointment as COA Chairman accorded him a fresh term of seven (7) years which is yet to lapse. He would argue, in fine, that his term of office, as such chairman, is up to February 2, 2015, or 7 years reckoned from February 2, 2008 when he was appointed to that position.

Meanwhile, Evelyn R. San Buenaventura (San Buenaventura) was appointed as COA Commissioner to serve the unexpired term of Villar as Commissioner or up to February 2, 2011.

Before the Court could resolve this petition, Villar, via a letter dated February 22, 2011 addressed to President Benigno S. Aquino III, signified his intention to step down from office upon the appointment of his replacement. True to his word, Villar vacated his position when President Benigno Simeon Aquino III named Ma. Gracia Pulido-Tan (Chairman Tan) COA Chairman. This development has rendered this petition and the main issue tendered therein moot and academic.

A case is considered moot and academic when its purpose has become stale,[2] or when it ceases to present a justiciable controversy owing to the onset of supervening events,[3] so that a resolution of the case or a declaration on the issue would be of no practical value or use.[4] In such instance, there is no actual substantial

relief which a petitioner would be entitled to, and which will anyway be negated by the dismissal of the basic petition.[5] As a general rule, it is not within Our charge and function to act upon and decide a moot case. However, in *David v. Macapagal-Arroyo*,[6] We acknowledged and accepted certain exceptions to the issue of mootness, thus:

The “moot and academic” principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution, second, the exceptional character of the situation and the paramount public interest is involved, third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public, and fourth, the case is capable of repetition yet evading review.

Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in *David*, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet evading review.[7] The situation presently obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth “guide the bench, the bar and the public” should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*,[8] “Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future.”

Both procedural and substantive issues are raised in this proceeding. The procedural aspect comes down to the question of whether or not the following requisites for the exercise of judicial review of an executive act obtain in this petition, viz: (1) there must be an actual case or justiciable controversy before the court; (2) the question before it must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[9]

To Villar, all the requisites have not been met, it being alleged in particular that petitioner, suing as a taxpayer and citizen, lacks the necessary standing to challenge his appointment.[10] On the other hand, the Office of the Solicitor General (OSG), while recognizing the validity of Villar’s appointment for the period ending February 11, 2011, has expressed the view that petitioner should have had filed a petition for declaratory relief or *quo warranto* under Rule 63 or Rule 66, respectively, of the Rules of Court instead of *certiorari* under Rule 65.

Villar’s posture on the absence of some of the mandatory requisites for the exercise by the Court of its power of judicial review must fail. As a general rule, a petitioner must have the necessary personality or standing (*locus standi*) before a court will recognize the issues presented. In *Integrated Bar of the Philippines v. Zamora*, We defined *locus standi* as:

x x x a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term “interest” means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges “such personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.”[11]

To have legal standing, therefore, a suitor must show that he has sustained or will sustain a “direct injury” as a result of a government action, or have a “material interest” in the issue affected by the challenged official act.[12]

However, the Court has time and again acted liberally on the locus standi requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake.[13] The rule on locus standi is after all a mere procedural technicality in relation to which the Court, in a catena of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non- traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.[14] In David, the Court laid out the bare minimum norm before the so-called “non-traditional suitors” may be extended standing to sue, thusly:

- 1.) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- 2.) For voters, there must be a showing of obvious interest in the validity of the election law in question;
- 3.) For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- 4.) For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators.

This case before Us is of transcendental importance, since it obviously has “far-reaching implications,” and there is a need to promulgate rules that will guide the bench, bar, and the public in future analogous cases. We, thus, assume a liberal stance and allow petitioner to institute the instant petition.

Anent the aforestated posture of the OSG, there is no serious disagreement as to the propriety of the availment of certiorari as a medium to inquire on whether the assailed appointment of respondent Villar as COA Chairman infringed the constitution or was infected with grave abuse of discretion. For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of certiorari may be invoked not only “to settle actual controversies involving rights which are legally demandable and enforceable,” but also “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.”[15] “Grave abuse of discretion” denotes:

such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[16]

We find the remedy of certiorari applicable to the instant case in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion.

This brings Us to the pivotal substantive issue of whether or not Villar’s appointment as COA Chairman, while sitting in that body and after having served for four (4) years of his seven (7) year term as COA commissioner, is valid in light of the term limitations imposed under, and the circumscribing concepts tucked in, Sec. 1 (2), Art. IX(D) of the Constitution, which reads:

(2) The Chairman and Commissioners [on Audit] shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. (Emphasis added.)[17]

And if valid, for how long can he serve?

At once clear from a perusal of the aforequoted provision are the defined restricting features in the matter of the composition of COA and the appointment of its members (commissioners and chairman) designed to safeguard the independence and impartiality of the commission as a body and that of its individual members.[18] These are, first, the rotational plan or the staggering term in the commission membership, such that the appointment of commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years; second, the maximum but a fixed term-limit of seven (7) years for all commission members whose appointments came about by reason of the expiration of term save the aforementioned first set of appointees and those made to fill up vacancies resulting from certain causes; third, the prohibition against reappointment of commission members who served the full term of seven years or of members first appointed under the Constitution who served their respective terms of office; fourth, the limitation of the term of a member to the unexpired portion of the term of the predecessor; and fifth, the proscription against temporary appointment or designation.

To elucidate on the mechanics of and the adverted limitations on the matter of COA-member appointments with fixed but staggered terms of office, the Court lays down the following postulates deducible from pertinent constitutional provisions, as construed by the Court:

1. The terms of office and appointments of the first set of commissioners, or the seven, five and three-year terms referred to in Sec. 1(2), Art. IX(D) of the Constitution, had already expired. Hence, their respective terms of office find relevancy for the most part only in understanding the operation of the rotational plan. In *Gaminde v. Commission on Audit*,^[19] the Court described how the smooth functioning of the rotational system contemplated in said and like provisions covering the two other independent commissions is achieved thru the staggering of terms:

x x x [T]he terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date [February 02, 1987, when the 1987 Constitution was ratified] irrespective of the variations in the dates of appointments and qualifications of the appointees in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms.

x x x In case of a belated appointment, the interval between the start of the terms and the actual appointment shall be counted against the appointee.^[20] (Italization in the original; emphasis added.)

Early on, in *Republic v. Imperial*,^[21] the Court wrote of two conditions, “both indispensable to [the] workability” of the rotational plan. These conditions may be described as follows: (a) that the terms of the first batch of commissioners should start on a common date; and (b) that any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term. Otherwise, *Imperial* continued, “the regularity of the intervals between appointments would be destroyed.” There appears to be near unanimity as to the purpose/s of the rotational system, as originally conceived, i.e., to place in the commission a new appointee at a fixed interval (every two years presently), thus preventing a four-year administration appointing more than one permanent and regular commissioner,^[22] or to borrow from Commissioner Monsod of the 1986 CONCOM, “to prevent one person (the President of the Philippines) from dominating the commissions.”^[23] It has been declared too that the rotational plan ensures continuity in, and, as indicated earlier, secure the independence of, the commissions as a body.^[24]

2. An appointment to any vacancy in COA, which arose from an expiration of a term, after the first chairman and commissioners appointed under the 1987 Constitution have bowed out, shall, by express constitutional fiat, be for

a term of seven (7) years, save when the appointment is to fill up a vacancy for the corresponding unserved term of an outgoing member. In that case, the appointment shall only be for the unexpired portion of the departing commissioner's term of office. There can only be an unexpired portion when, as a direct result of his demise, disability, resignation or impeachment, as the case may be, a sitting member is unable to complete his term of office.[25] To repeat, should the vacancy arise out of the expiration of the term of the incumbent, then there is technically no unexpired portion to speak of. The vacancy is for a new and complete seven-year term and, ergo, the appointment thereto shall in all instances be for a maximum seven (7) years.

3. Sec. 1(2), Art. IX(D) of the 1987 Constitution prohibits the "reappointment" of a member of COA after his appointment for seven (7) years. Writing for the Court in *Nacionalista Party v. De Vera*,[26] a case involving the promotion of then COMELEC Commissioner De Vera to the position of chairman, then Chief Justice Manuel Moran called attention to the fact that the prohibition against "reappointment" comes as a continuation of the requirement that the commissioners—referring to members of the COMELEC under the 1935 Constitution—shall hold office for a term of nine (9) years. This sentence formulation imports, notes Chief Justice Moran, that reappointment is not an absolute prohibition.

4. The adverted system of regular rotation or the staggering of appointments and terms in the membership for all three constitutional commissions, namely the COA, Commission on Elections (COMELEC) and Civil Service Commission (CSC) found in the 1987 Constitution was patterned after the amended 1935 Constitution for the appointment of the members of COMELEC[27] with this difference: the 1935 version entailed a regular interval of vacancy every three (3) years, instead of the present two (2) years and there was no express provision on appointment to any vacancy being limited to the unexpired portion of the his predecessor's term. The model 1935 provision reads:

Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years and the third for three years. x x x

Petitioner now asseverates the view that Sec. 1(2), Art. IX(D) of the 1987 Constitution proscribes reappointment of any kind within the commission, the point being that a second appointment, be it for the same position (commissioner to another position of commissioner) or upgraded position (commissioner to chairperson) is a prohibited reappointment and is a nullity ab initio. Attention is drawn in this regard to the Court's disposition in *Matibag v. Benipayo*. [28]

Villar's promotional appointment, so it is argued, is void from the start, constituting as it did a reappointment enjoined by the Constitution, since it actually needed another appointment to a different office and requiring another confirmation by the Commission on Appointments.

Central to the adjudication of the instant petition is the correct meaning to be given to Sec. 1(2), Article IX(D) of the Constitution on the ban against reappointment in relation to the appointment issued to respondent Villar to the position of COA Chairman.

Without question, the parties have presented two (2) contrasting and conflicting positions. Petitioner contends that Villar's appointment is proscribed by the constitutional ban on reappointment under the aforecited constitutional provision. On the other hand, respondent Villar initially asserted that his appointment as COA Chairman is valid up to February 2, 2015 pursuant to the same provision.

The Court finds petitioner's position bereft of merit. The flaw lies in regarding the word "reappointment" as, in context, embracing any and all species of appointment.

The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[29] This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[30]

The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself.[31] If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. *J.M. Tuason & Co., Inc. v. Land Tenure Administration* illustrates the verbal legis rule in this wise:

We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.[32] (Emphasis supplied.)

Let us dissect and examine closely the provision in question:

(2) The Chairman and Commissioners [on Audit] shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. x x x (Emphasis added.)

The first sentence is unequivocal enough. The COA Chairman shall be appointed by the President for a term of seven years, and if he has served the full term, then he can no longer be reappointed or extended another appointment. In the same vein, a Commissioner who was appointed for a term of seven years who likewise served the full term is barred from being reappointed. In short, once the Chairman or Commissioner shall have served the full term of seven years, then he can no longer be reappointed to either the position of Chairman or Commissioner. The obvious intent of the framers is to prevent the president from "dominating" the Commission by allowing him to appoint an additional or two more commissioners.

The same purpose obtains in the second sentence of Sec. 1(2). The Constitutional Convention barred reappointment to be extended to commissioner-members first appointed under the 1987 Constitution to prevent the President from controlling the commission. Thus, the first Chairman appointed under the 1987 Constitution who served the full term of seven years can no longer be extended a reappointment. Neither can the Commissioners first appointed for the terms of five years and three years be eligible for reappointment. This is the plain meaning attached to the second sentence of Sec. 1(2), Article IX(D).

On the other hand, the provision, on its face, does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, further qualified by the third sentence of Sec. 1(2), Article IX (D) that "the appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." In addition, such promotional appointment to the position of Chairman must conform to the rotational plan or the staggering of terms in the commission membership such that the aggregate of the service of the Commissioner in said position and the term to which he will be appointed to the position of Chairman must not exceed seven years so as not to disrupt the rotational system in the commission prescribed by

Sec. 1(2), Art. IX(D).

In conclusion, there is nothing in Sec. 1(2), Article IX(D) that explicitly precludes a promotional appointment from Commissioner to Chairman, provided it is made under the aforesaid circumstances or conditions.

It may be argued that there is doubt or ambiguity on whether Sec. 1(2), Art. IX(D), as couched, allows a promotional appointment from Commissioner to Chairman. Even if we concede the existence of an ambiguity, the outcome will remain the same. *J.M. Tuason & Co., Inc.*[33] teaches that in case of doubt as to the import and reach of a constitutional provision, resort should be made to extraneous aids of construction, such as debates and proceedings of the Constitutional Convention, to shed light on and ascertain the intent of the framers or the purpose of the provision being construed.

The understanding of the Convention as to what was meant by the terms of the constitutional provision which was the subject of the deliberation goes a long way toward explaining the understanding of the people when they ratified it. The Court applied this principle in *Civil Liberties Union v. Executive Secretary*:

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[34] (Emphasis added.)

And again in *Nitafan v. Commissioner on Internal Revenue*:

x x x The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.[35] (Emphasis added.)

Much weight and due respect must be accorded to the intent of the framers of the Constitution in interpreting its provisions.

Far from prohibiting reappointment of any kind, including a situation where a commissioner is upgraded to the position of chairman, the 1987 Constitution in fact unequivocally allows promotional appointment, but subject to defined parameters. The ensuing exchanges during the deliberations of the 1986 Constitutional Commission (CONCOM) on a draft proposal of what would eventually be Sec. 1(2), Art. IX(D) of the present Constitution amply support the thesis that a promotional appointment is allowed provided no one may be in the COA for an aggregate threshold period of 7 years:

MS. AQUINO: In the same paragraph, I would propose an amendment x x x. Between x x x the sentence which begins with "In no case," insert THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. I was thinking that this may approximate the situation wherein a commissioner is first appointed as chairman. I am willing to withdraw that amendment if there is a representation on the part of the Committee that there is an implicit intention to prohibit a term that in the aggregate will exceed more than seven years. If that is the intention, I am willing to withdraw my amendment.

MR. MONSOD: If the [Gentlewoman] will read the whole Article, she will notice that there is no

reappointment of any kind and, therefore, as a whole there is no way somebody can serve for more than seven years. The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

MS. AQUINO. Yes. Reappointment is fine; that is accounted for. But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.

MR. MONSOD. It is covered.

MR. FOZ. There is a provision on line 29 precisely to cover that situation. It states: "Appointment to any vacancy shall be only for the unexpired portion of the predecessor." In other words, if there is upgrading of position from commissioner to chairman, the appointee can serve only the unexpired portion of the term of the predecessor.

MS. AQUINO: But we have to be very specific x x x because it might shorten the term because he serves only the unexpired portion of the term of the predecessor.

MR. FOZ: He takes it at his own risk. He knows that he will only have to serve the unexpired portion of the term of the predecessor. (Emphasis added.)[36]

The phrase "upgrading of position" found in the underscored portion unmistakably shows that Sec. 1(2), Art. IX(D) of the 1987 Constitution, for all its caveat against reappointment, does not per se preclude, in any and all cases, the promotional appointment or upgrade of a commissioner to chairman, subject to this proviso: the appointee's tenure in office does not exceed 7 years in all. Indeed, such appointment does not contextually come within the restricting phrase "without reappointment" twice written in that section. Delegate Foz even cautioned, as a matter of fact, that a sitting commissioner accepting a promotional appointment to fill up an unexpired portion pertaining to the higher office does so at the risk of shortening his original term. To illustrate the Foz's concern: assume that Carague left COA for reasons other than the expiration of his threshold 7-year term and Villar accepted an appointment to fill up the vacancy. In this situation, the latter can only stay at the COA and served the unexpired portion of Carague's unexpired term as departing COA Chairman, even if, in the process, his (Villar's) own 7-year term as COA commissioner has not yet come to an end. In this illustration, the inviolable regularity of the intervals between appointments in the COA is preserved.

Moreover, jurisprudence tells us that the word "reappointment" means a second appointment to one and the same office.[37] As Justice Arsenio Dizon (Justice Dizon) aptly observed in *Visarra v. Miraflor*,[38] the constitutional prohibition against the reappointment of a commissioner refers to his second appointment to the same office after holding it for nine years.[39] As Justice Dizon observed, "[T]he occupant of an office obviously needs no such second appointment unless, for some valid cause, such as the expiration of his term or resignation, he had ceased to be the legal occupant thereof." [40] The inevitable implication of Justice Dizon's cogent observation is that a promotion from commissioner to chairman, albeit entailing a second appointment, involves a different office and, hence, not, in the strict legal viewpoint, a reappointment. Stated a bit differently, "reappointment" refers to a movement to one and the same office. Necessarily, a movement to a different position within the commission (from Commissioner to Chairman) would constitute an appointment, or a second appointment, to be precise, but not reappointment.

A similar opinion was expressed in the same *Visarra* case by the concurring Justice Angelo Bautista, although he expressly alluded to a promotional appointment as not being a prohibited appointment under Art. X of the 1935 Constitution.

Petitioner's invocation of *Matibag* as additional argument to contest the constitutionality of Villar's elevation to

the COA chairmanship is inapposite. In *Matibag*, then President Macapagal-Arroyo appointed, ad interim, Alfredo Benipayo as COMELEC Chairman and Resurreccion Borra and Florentino Tuason as Commissioners, each for a term of office of seven (7) years. All three immediately took their oath of, and assumed, office. These appointments were twice renewed because the Commission on Appointments failed to act on the first two ad interim appointments. Via a petition for prohibition, some disgruntled COMELEC officials assail as infirm the appointments of Benipayo, et al.

Matibag lists (4) four situations where the prohibition on reappointment would arise, or to be specific, where the proviso “[t]he Chairman and the Commissioners shall be appointed x x x for a term of seven years without reappointment” shall apply. Justice Antonio T. Carpio declares in his dissent that Villar’s appointment falls under a combination of two of the four situations.

Conceding for the nonce the correctness of the premises depicted in the situations referred to in *Matibag*, that case is of doubtful applicability to the instant petition. Not only is it cast against a different milieu, but the *lis mota* of the case, as expressly declared in the main opinion, “is the very constitutional issue raised by petitioner.”[41] And what is/are this/these issue/s? Only two defined issues in *Matibag* are relevant, viz: (1) the nature of an ad interim appointment and subsumed thereto the effect of a by-passed ad interim appointment; and (2) the constitutionality of renewals of ad interim appointments. The opinion defined these issues in the following wise: “Petitioner [*Matibag*] filed the instant petition questioning the appointment and the right to remain in office of Benipayo, Borra and Tuason as Chairman and Commissioners of the COMELEC, respectively. Petitioner claims that the ad interim appointments of Benipayo, et al. violate the constitutional provisions on the independence of COMELEC, as well as on the prohibitions on temporary appointments and reappointments of its Chairman and members.” As may distinctly be noted, an upgrade or promotion was not in issue in *Matibag*.

We shall briefly address the four adverted situations outlined in *Matibag*, in which, as there urged, the uniform proviso on no reappointment—after a member of any of the three constitutional commissions is appointed for a term of seven (7) years—shall apply. *Matibag* made the following formulation:

The first situation is where an ad interim appointee after confirmation by the Commission on Appointments serves his full 7-year term. Such person cannot be reappointed whether as a member or as chairman because he will then be actually serving more than seven (7) years.

The second situation is where the appointee, after confirmation, serves part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed whether as a member or as chair to a vacancy arising from retirement because a reappointment will result in the appointee serving more than seven years.

The third situation is where the appointee is confirmed to serve the unexpired portion of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed whether as a member or as chair to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven (7) years.

The fourth situation is where the appointee has previously served a term of less than seven (7) years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar to those appointed under the second sentence of Sec. 1(20), Art. IX-C of the Constitution [referring to the first set of appointees (the 5 and 3 year termers) whose term of office are less than 7 years but are barred from being reappointed under any situation].”[42] (Words in brackets and emphasis supplied.)

The situations just described constitute an obiter dictum, hence without the force of adjudication, for the corresponding formulation of the four situations was not in any way necessary to resolve any of the determinative

issues specifically defined in Matibag. An opinion entirely unnecessary for the decision of the case or one expressed upon a point not necessarily involved in the determination of the case is an obiter.[43]

There can be no serious objection to the scenarios depicted in the first, second and third situations, both hewing with the proposition that no one can stay in any of the three independent commissions for an aggregate period of more than seven (7) years. The fourth situation, however, does not commend itself for concurrence inasmuch as it is basically predicated on the postulate that reappointment, as earlier herein defined, of any kind is prohibited under any and all circumstances. To reiterate, the word “reappointment” means a second appointment to one and the same office; and Sec. 1(2), Art. IX(D) of the 1987 Constitution and similar provisions do not peremptorily prohibit the promotional appointment of a commissioner to chairman, provided the new appointee’s tenure in both capacities does not exceed seven (7) years in all. The statements in Matibag enunciating the ban on reappointment in the aforecited fourth situation, perforce, must be abandoned, for, indeed, a promotional appointment from the position of Commissioner to that of Chairman is constitutionally permissible and not barred by Sec. 1(2), Art. IX (D) of the Constitution.

One of the aims behind the prohibition on reappointment, petitioner urges, is to ensure and preserve the independence of COA and its members,[44] citing what the dissenting Justice J.B.L Reyes wrote in Visarra, that once appointed and confirmed, the commissioners should be free to act as their conscience demands, without fear of retaliation or hope or reward. Pursued to its logical conclusion, petitioner’s thesis is that a COA member may no longer act with independence if he or she can be rewarded with a promotion or appointment, for then he or she will do the bidding of the appointing authority in the hope of being promoted or reappointed.

The unstated reason behind Justice J.B.L. Reyes’ counsel is that independence is really a matter of choice. Without taking anything away from the gem imparted by the eminent jurist, what Chief Justice Moran said on the subject of independence is just as logically sound and perhaps even more compelling, as follows:

A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restraint in his moral character. Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent with or without the possibility of reappointment.[45]

The Court is likewise unable to sustain Villar’s proposition that his promotional appointment as COA Chairman gave him a completely fresh 7- year term—from February 2008 to February 2015—given his four (4)-year tenure as COA commissioner devalues all the past pronouncements made by this Court, starting in De Vera, then Imperial, Visarra, and finally Matibag. While there had been divergence of opinion as to the import of the word “reappointment,” there has been unanimity on the dictum that in no case can one be a COA member, either as chairman or commissioner, or a mix of both positions, for an aggregate term of more than 7 years. A contrary view would allow a circumvention of the aggregate 7-year service limitation and would be constitutionally offensive as it would wreak havoc to the spirit of the rotational system of succession. Imperial, passing upon the rotational system as it applied to the then organizational set-up of the COMELEC, stated:

The provision that of the first three commissioners appointed “one shall hold office for 9 years, another for 6 years and the third for 3 years,” when taken together with the prescribed term of office for 9 years without reappointment, evinces a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years.[46]

To be sure, Villar’s appointment as COA Chairman partakes of a promotional appointment which, under appropriate setting, would be outside the purview of the constitutional reappointment ban in Sec 1(2), Art. IX(D) of the Constitution. Nonetheless, such appointment, even for the term appearing in the underlying appointment

paper, ought still to be struck down as unconstitutional for the reason as shall be explained.

Consider:

In a mandatory tone, the aforecited constitutional provision decrees that the appointment of a COA member shall be for a fixed 7-year term if the vacancy results from the expiration of the term of the predecessor. We reproduce in its pertinent part the provision referred to:

(2) The Chairman and Commissioners [on Audit] shall be appointed x x x for a term of seven years without reappointment. x x x Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. x x x

Accordingly, the promotional appointment as COA Chairman of Villar for a stated fixed term of less than seven (7) years is void for violating a clear, but mandatory constitutional prescription. There can be no denying that the vacancy in the position of COA chairman when Carague stepped down in February 2, 2008 resulted from the expiration of his 7-year term. Hence, the appointment to the vacancy thus created ought to have been one for seven (7) years in line with the verbal legis approach^[47] of interpreting the Constitution. It is to be understood, however, following Gaminde, that in case of a belated appointment, the interval between the start of the term and the actual appointment shall be counted against the 7-year term of the appointee. Posing, however, as an insurmountable barrier to a full 7-year appointment for Villar is the rule against one serving the commission for an aggregate term of more than seven (7) years.

Where the Constitution or, for that matter, a statute, has fixed the term of office of a public official, the appointing authority is without authority to specify in the appointment a term shorter or longer than what the law provides. If the vacancy calls for a full seven-year appointment, the President is without discretion to extend a promotional appointment for more or for less than seven (7) years. There is no in between. He or she cannot split terms. It is not within the power of the appointing authority to override the positive provision of the Constitution which dictates that the term of office of members of constitutional bodies shall be seven (7) years.^[48] A contrary reasoning “would make the term of office to depend upon the pleasure or caprice of the [appointing authority] and not upon the will [of the framers of the Constitution] of the legislature as expressed in plain and undoubted language in the law.”^[49]

In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7- year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Carague). Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.

On the other hand, a commissioner who resigned before serving his 7- year term can be extended an appointment to the position of chairman for the unexpired period of the term of the latter, provided the aggregate of the period he served as commissioner and the period he will serve as chairman will not exceed seven (7) years. This situation will only obtain when the chairman leaves the office by reason of death, disability, resignation or impeachment. Let us consider, in the concrete, the situation of then Chairman Carague and his successor, Villar. Carague was appointed COA Chairman effective February 2, 2001 for a term of seven (7) years, or up to February 2, 2008.

Villar was appointed as Commissioner on February 2, 2004 with a 7-year term to end on February 2, 2011. If Carague for some reason vacated the chairmanship in 2007, then Villar can resign as commissioner in the same year and later be appointed as chairman to serve only up to February 2, 2008, the end of the unexpired portion of Carague's term. In this hypothetical scenario, Villar's appointment to the position of chairman is valid and constitutional as the aggregate periods of his two (2) appointments will only be five (5) years which neither distorts the rotational scheme nor violates the rule that the sum total of said appointments shall not exceed seven (7) years. Villar would, however, forfeit two (2) years of his original seven (7)-year term as Commissioner, since, by accepting an upgraded appointment to Carague's position, he agreed to serve the unexpired portion of the term of the predecessor. As illustrated earlier, following Mr. Foz's line, if there is an upgrading of position from commissioner to chairman, the appointee takes the risk of cutting short his original term, knowing pretty well before hand that he will serve only the unexpired portion of the term of his predecessor, the outgoing COA chairman.

In the extreme hypothetical situation that Villar vacates the position of chairman for causes other than the expiration of the original term of Carague, the President can only appoint the successor of Villar for the unexpired portion of the Carague term in line with Sec. 1(2), Art. IX(D) of the Constitution. Upon the expiration of the original 7-year term of Carague, the President can appoint a new chairman for a term of seven (7) full years.

In his separate dissent, my esteemed colleague, Mr. Justice Mendoza, takes strong exception to the view that the promotional appointment of a sitting commissioner is plausible only when he is appointed to the position of chairman for the unexpired portion of the term of said official who leaves the office by reason of any the following reasons: death, disability, resignation or impeachment, not when the vacancy arises out as a result of the expiration of the 7-year term of the past chairman. There is nothing in the Constitution, so Justice Mendoza counters, that restricts the promotion of an incumbent commissioner to the chairmanship only in instances where the tenure of his predecessor was cut short by any of the four events referred to. As earlier explained, the majority view springs from the interplay of the following premises: The explicit command of the Constitution is that the "Chairman and the Commissioners shall be appointed by the President x x x for a term of seven years [and] appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." To repeat, the President has two and only two options on term appointments. Either he extends an appointment for a full 7-year term when the vacancy results from the expiration of term, or for a shorter period corresponding to the unexpired term of the predecessor when the vacancy occurs by reason of death, physical disability, resignation or impeachment. If the vacancy calls for a full seven-year appointment, the Chief Executive is barred from extending a promotional appointment for less than seven years. Else, the President can trifle with terms of office fixed by the Constitution.

Justice Mendoza likewise invites attention to an instance in history when a commissioner had been promoted chairman after the expiration of the term of his predecessor, referring specifically to the appointment of then COMELEC Commissioner Gaudencio Garcia to succeed Jose P. Carag after the expiration of the latter's term in 1959 as COMELEC chairman. Such appointment to the position of chairman is not constitutionally permissible under the 1987 Constitution because of the policy and intent of its framers that a COA member who has served his full term of seven (7) years or even for a shorter period can no longer be extended another appointment to the position of chairman for a full term of seven (7) years. As revealed in the deliberations of the Constitutional Commission that crafted the 1987 Constitution, a member of COA who also served as a commissioner for less than seven (7) years in said position cannot be appointed to the position of chairman for a full term of seven (7) years since the aggregate will exceed seven (7) years. Thus, the adverted Garcia appointment in 1959 made under the 1935 Constitution cannot be used as a precedent to an appointment of such nature under the 1987 Constitution. The dissent further notes that the upgrading remained uncontested. In this regard, suffice it to state

that the promotion in question was either legal or it was not. If it were not, no amount of repetitive practices would clear it of invalidating taint.

Lastly, Villar's appointment as chairman ending February 2, 2011 which Justice Mendoza considers as valid is likewise unconstitutional, as it will destroy the rationale and policy behind the rotational system or the staggering of appointments and terms in COA as prescribed in the Constitution. It disturbs in a way the staggered rotational system of appointment under Sec. 1(2), Art. IX(D) of the 1987 Constitution. Consider: If Villar's term as COA chairman up to February 2, 2011 is viewed as valid and constitutional as espoused by my esteemed colleague, then two vacancies have simultaneously occurred and two (2) COA members going out of office at once, opening positions for two (2) appointables on that date as Commissioner San Buenaventura's term also expired on that day. This is precisely one of the mischiefs the staggering of terms and the regular intervals appointments seek to address. Note that San Buenaventura was specifically appointed to succeed Villar as commissioner, meaning she merely occupied the position vacated by her predecessor whose term as such commissioner expired on February 2, 2011. The result is what the framers of the Constitution doubtless sought to avoid, a sitting President with a 6-year term of office, like President Benigno C. Aquino III, appointing all or at least two (2) members of the three-man Commission during his term. He appointed Ma. Gracia Pulido-Tan as Chairman for the term ending February 2, 2015 upon the relinquishment of the post by respondent Villar, and Heidi Mendoza was appointed Commissioner for a 7- year term ending February 2, 2018 to replace San Buenaventura. If Justice Mendoza's version is adopted, then situations like the one which obtains in the Commission will definitely be replicated in gross breach of the Constitution and in clear contravention of the intent of its framers. Presidents in the future can easily control the Commission depriving it of its independence and impartiality.

To sum up, the Court restates its ruling on Sec. 1(2), Art. IX(D) of the Constitution, viz:

1. The appointment of members of any of the three constitutional commissions, after the expiration of the uneven terms of office of the first set of commissioners, shall always be for a fixed term of seven (7) years; an appointment for a lesser period is void and unconstitutional.

The appointing authority cannot validly shorten the full term of seven (7) years in case of the expiration of the term as this will result in the distortion of the rotational system prescribed by the Constitution.

2. Appointments to vacancies resulting from certain causes (death, resignation, disability or impeachment) shall only be for the unexpired portion of the term of the predecessor, but such appointments cannot be less than the unexpired portion as this will likewise disrupt the staggering of terms laid down under Sec. 1(2), Art. IX(D).

3. Members of the Commission, e.g. COA, COMELEC or CSC, who were appointed for a full term of seven years and who served the entire period, are barred from reappointment to any position in the Commission. Corollarily, the first appointees in the Commission under the Constitution are also covered by the prohibition against reappointment.

4. A commissioner who resigns after serving in the Commission for less than seven years is eligible for an appointment to the position of Chairman for the unexpired portion of the term of the departing chairman. Such appointment is not covered by the ban on reappointment, provided that the aggregate period of the length of service as commissioner and the unexpired period of the term of the predecessor will not exceed seven (7) years and provided further that the vacancy in the position of Chairman resulted from death, resignation, disability or removal by impeachment. The Court clarifies that "reappointment" found in Sec. 1(2), Art. IX(D) means a movement to one and the same office (Commissioner to Commissioner or Chairman to Chairman). On the other hand, an appointment involving a movement to a different position or office (Commissioner to Chairman) would constitute a new appointment and, hence, not, in the strict legal sense, a reappointment barred under the

Constitution.

5. Any member of the Commission cannot be appointed or designated in a temporary or acting capacity.

WHEREFORE the petition is PARTLY GRANTED. The appointment of then Commissioner Reynaldo A. Villar to the position of Chairman of the Commission on Audit to replace Guillermo N. Carague, whose term of office as such chairman has expired, is hereby declared UNCONSTITUTIONAL for violation of Sec. 1(2), Art. IX(D) of the Constitution.

SO ORDERED.

Corona, C.J., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Perlas-Bernabe, JJ., concur.

Carpio, J., see concurring & dissenting opinion.

Brion and Reyes, JJ., joins the opinion of J. Mendoza.

Abad, J., join the separate opinion of J.A.T. Carpio.

Mendoza, J., see concurring & dissenting opinion.

Sereno, J., join the dissent of J. Carpio.

[1] Art. IX(D), Sec. 1(2).—The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

[2] *Joya v. PCGG*, G.R. No. 96541, August 24, 1993, 225 SCRA 568.

[3] *Prov. Of Batangas v. Romulo*, G.R. No. 1522774, May 27, 2004, 429 SCRA 736.

[4] *Go v. Sandiganbayn*, G.R. Nos. 150329-30, September 11, 2007, 532 SCRA 574; citing *Vda. De Davao v. Court of Appeals*, G.R. No. 116526, March 23, 2004, 426 SCRA 91 and other cases.

[5] *Olanolan v. COMELEC*, G.R. No. 165491, March 31, 2005, 807 SCRA 454.

[6] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 161.

[7] *Id.*

[8] G.R. Nos. 68379-81, September 22, 1986, 144 SCRA 194.

[9] *Herrera*, Remedial Law 96 (2000).

[10] *Rollo*, pp. 270, 274-275.

[11] G.R. No. 141284, August 15, 2000, 338 SCRA 81; citing *Baker v. Carr*, 369 U.S. 186.

[12] *Id.*

[13] *David v. Macapagal-Arroyo*, *supra* note 6.

[14] *Abaya v. Ebdane*, G.R. No. 167919, February 14, 2007, 515 SCRA 720; *Agan v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744 (2003); *Del Mar v. PAGCOR*, 400 Phil. 307 (2000).

[15] Constitution, Art. VIII, Sec. 1.

[16] Benito v. COMELEC, G.R. No. 134913, January 19, 2001, 349 SCRA 705.

[17] An identical provision is repeated for the Civil Service Commission and the COMELEC, differing only in the case of the COMELEC as to the numerical composition and the number of appointees involved in the staggered appointments.

[18] Republic v. Imperial, 96 Phil. 770 (1955).

[19] G.R. No. 140335, December 13, 2000, 347 SCRA 655, 662-663; citing Republic v. Imperial, supra note 18.

[20] Id.

[21] Supra note 18.

[22] Id.

[23] 1986 Constitutional Commission, Record of Proceedings and Debates, Vol. 1, pp. 574-575.

[24] Republic v. Imperial, supra note 18; Concurring Opinion of Justice Angelo Bautista in Visarra v. Miraflor, 8 Phil. 1 (1963); Record of Proceeding and Debates, 1986 Constitutional Commission, Vol. 1, p. 585; Matibag v. Benipayo, G.R. No. 149036, April 2, 2002, 380 SCRA 49.

[25] Republic v. Imperial, supra note 18.

[26] No. L-3474, December 7, 1949, 85 SCRA 126.

[27] Gaminde v. COA, supra note 19. The COMELEC, then a 3-man body, is now composed of a Chairman and six (6) Commissioners.

[28] G.R. No. 149036, April 2, 2002, 380 SCRA 49.

[29] Agpalo, Statutory Construction 94 (1990).

[30] Globe-Mackay Cable and Radio Corporation v. NLRC, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

[31] Ang Bagong Bayani-OFW Labor Party v. Commission on Elections, G.R. Nos. 147589 & 147613, June 26, 2001, 359 SCRA 698, 724.

[32] No. L-21064, February 18, 1970, 31 SCRA 413.

[33] Id.

[34] G.R. No. 83896, February 22, 1991, 194 SCRA 317, 325.

[35] No. L-78780, July 23, 1987, 152 SCRA 284, 291-292.

[36] I Records of the Constitutional Convention Proceedings and Debates, pp. 586 et seq.; cited in Bernas, The Intent of the 1986 Constitution Writers 591-592 (1995).

[37] Sibal, Philippine Legal Encyclopedia 826 (1995 reprint); citing Visarra v. Miraflor, supra note 24.

[38] Supra note 24.

[39] Referring to a COMELEC commissioner who was then entitled to a 9- year term of office.

[40] *Visarra v. Miraflor*, supra note 24, at 46.

[41] Supra note 28, at 65.

[42] Id. at 82.

[43] *American Home Assurance Co. v. NLRC*, 328 Phil. 606 (1996); *City of Manila v. Entote*, 156 Phil. 498 (1974).

[44] Rollo, p. 25.

[45] *Nacionalista Party v. De Vera*, supra note 26, at 136.

[46] Supra note 18, at 775.

[47] Whenever possible, the words used in the Constitution must be given their ordinary meaning, except when technical terms are employed.

[48] See rollo, p. 315.

[49] *Baker v. Kirk*, 33 Ind. 517; cited in *Republic v. Imperial*, supra note 18.

CONCURRING AND DISSENTING OPINION

CARPIO, J.:

The appointment of respondent Reynaldo A. Villar (Villar) as Chairman of the Commission on Audit (COA) is clearly unconstitutional.

Villar's appointment as Chairman is a reappointment prohibited by the Constitution

Prior to his appointment as COA Chairman, Villar was a COA Commissioner serving the fourth year of his seven-year term. Villar's "promotional" appointment as Chairman on 18 April 2004 constituted a reappointment prohibited by the Constitution since it actually required another appointment by the President to a different office, another confirmation by the Commission on Appointments to that other office, and another oath of office to that other office. When Villar accepted the appointment as Chairman, he necessarily had to resign beforehand as Commissioner. In short, Villar resigned as Commissioner, and then accepted a new appointment as Chairman, his second appointment to the COA.

It is indisputable that the office of the Chairman is a different office from the office of a Commissioner. The Chairman has a salary grade higher than that of a Commissioner, and is the presiding officer of the Commission while a Commissioner is not. The Chairman is specifically authorized by the Constitution to re-align savings of the Commission,[1] while a Commissioner has no such authority. The Chairman is the head of the Commission, while a Commissioner is not,[2] in the same manner that the Chief Justice is the head of the Judiciary while an Associate Justice is not.

Section 1(2), Article IX-D of the 1987 Constitution states:

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the

term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Emphasis supplied)

The words “without reappointment” appear twice in Section 1(2) of Article IX-D, the first time in the first sentence and the second time in the second sentence.

The counterpart provision in the 1935 Constitution uses the phrase “may not be reappointed” and the phrase appears only once. Section 1, Article XI of the 1935 Constitution provides:

Section 1. There shall be a General Auditing Office under the direction and control of an Auditor General, who shall hold office for a term of ten years and may not be reappointed. The Auditor General shall be appointed by the President with the consent of the Commission on Appointments, and shall receive an annual compensation to be fixed by law which shall not be diminished during his continuance in office. Until the Congress shall provide otherwise, the Auditor General shall receive an annual compensation of twelve thousand pesos. (Emphasis supplied)

To repeat, while the first sentence of Section 1, Article XI of the 1935 Constitution contains the words “may not be reappointed,” the succeeding sentences do not. In contrast, the words “without reappointment” appears in the first and second sentences of Section 1(2), Article IX-D of the 1987 Constitution. This difference is pivotal in the resolution of the present case.

The framers of the 1987 Constitution deliberately disallowed a situation where, in the words of Commissioner Vicente Foz, “the appointee serves only for less than seven years, (and) would be entitled to reappointment,” which was the “case of Visarra v. Miraflor,[3] to the effect that x x x in cases where the appointee serves only for less than seven years, he would be entitled to reappointment.” To specifically implement the rejection of the Visarra ruling, the framers intentionally added the words “without reappointment” in the second sentence of Section 1(2), even though the same words already appear in the first sentence of the same Section. This is the reason why the words “without reappointment” appear twice in Section 1(2). Thus, the 1987 Constitution has an additional “safety valve” compared to the 1935 Constitution.

The following exchange, during the deliberations of the Constitutional Commission, between Commissioner Hilario G. Davide, Jr. (later Chief Justice of this Court) and Commissioner Vicente Foz, bears out the rejection of the Visarra ruling, in particular the concurring opinion of Justice Angelo Bautista:

MR. DAVIDE: I propose another perfecting amendment on line 29, Section 2 (2). It consists in the deletion of the comma (,) after “years” and the words “without reappointment.”

MR. FOZ: In other words, the Gentleman is going to allow reappointment in this case.

MR. DAVIDE: No, because on line 25 there is already the phrase “without reappointment.”

MR. FOZ: Yes, but in the past, that was a source of controversy. That was one of the points raised in one of the controversies in the Supreme Court.

MR. DAVIDE: There would be no area of controversy because it is very clear.

The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment.

So, it would even apply to the first set of three commissioners.

MR. FOZ: But there is the argument made in the concurring opinion of Justice Angelo Bautista in the case of Visarra vs. Miraflor, to the effect that the prohibition on reappointment applies only when the term or the

tenure is for seven years. But in cases where the appointee serves only for less than seven years, he would be entitled to reappointment. Unless we put the qualifying words “without reappointment” in the case of these appointees, then it is possible that an interpretation could be made later on that in their case, they can still be reappointed to serve for a total of seven years.

Precisely, we are foreclosing that possibility by making it very clear that even in the case of those first appointed under this Constitution, no reappointment can be had.

MR. DAVIDE: Can it not be done by a mere interpretation because it would really appear to be repetitious? The wording itself on the first set of commissioners would clearly indicate that their term is really for seven years, but their tenure is staggered. So, we have to distinguish between term and tenure because the general term is really seven years. But of the first three to be appointed, the tenure of one is seven; the tenure of the second is five; and the tenure of the third is three. But technically, the term for which they are appointed is seven years.

MR. FOZ: The Committee regrets to say that we cannot accept the amendment.

MR. DAVIDE: May I submit it to a vote, Mr. Presiding Officer.

VOTING

x x x

The results show 2 votes in favor and 21 against[;] the amendment is lost.[4] (Emphasis supplied)

Thus, the framers of the 1987 Constitution added the words “without reappointment” in the second sentence of Section 1(2) of Article IX-D precisely to overturn Visarra, in particular the concurring opinion of Justice Bautista. The foregoing exchange between Commissioners Davide and Foz clearly proves that the framers specifically added the words “without reappointment” twice precisely to foreclose the possibility of an appointee, who has served for less than seven years, being reappointed to complete a seven-year term.

This Court can no longer resurrect Visarra because the 1987 Constitution itself has rejected Visarra, particularly, in the words of Commissioner Foz, “the concurring opinion of Justice Angelo Bautista.” In his concurring opinion, Justice Bautista concluded that “the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid.” This Court has no power to undo what the framers have so clearly written in the Constitution. To repeat, the framers of the 1987 Constitution expressly rejected the Visarra ruling, in particular the concurring opinion of Justice Bautista, and instead adopted the dissenting opinions of Justices Roberto Concepcion and JBL Reyes.

Moreover, the framers of the 1987 Constitution emphatically made it clear that the words “without reappointment” apply to a promotional appointment, or a situation where “a commissioner is upgraded to a position of chairman.” The following exchange among Commissioners Felicitas Aquino, Christian Monsod, and Foz clearly established this:

MS. AQUINO: Thank you.

In the same paragraph, I would propose an amendment by addition on page 2, line 31 between the period (.) after the word ‘predecessor’ and the sentence which begins with ‘In no case,’ THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. I was thinking that this may approximate the situation wherein a commissioner is first appointed as an ordinary commissioner and later on appointed as chairman. I am willing to withdraw that amendment if there is an implicit intention to prohibit a term that in the aggregate will exceed more than seven years.

MR. MONSOD: If the Gentleman will read the whole Article, she will notice that there is no reappointment of

any kind and, therefore, as a whole there is no way that somebody can serve for more than seven years. The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

MS. AQUINO: Yes. Reappointment is fine; that is accounted for. But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.

MR. MONSOD: It is covered.

MR. FOZ: There is a provision on line 29 precisely to cover that situation. It states: ‘Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.’ In other words, if there is upgrading of position from commissioner to chairman, the appointee can only serve the unexpired portion of the term of the predecessor.

MS. AQUINO: But we have to be very specific about it; the provision does not still account for that kind of situation because in effect, it might even shorten the term because he serves only the unexpired portion of the vacant position.

MR. FOZ: He takes it at his own risk. He knows that he will only serve the unexpired portion of the term of the predecessor.

MS. AQUINO: Regardless of that, my question is: Will this provision likewise apply to that kind of situation? In other words, I am only asking for an assurance that the safety valve applies to this situation.

MR. FOZ: The provision does take care of that situation.[5] (Boldfacing and italicization supplied)

Commissioner Monsod, in reply to Commissioner Aquino’s query whether “a commissioner x x x first appointed as an ordinary commissioner and later appointed as chairman” is covered by the prohibition on reappointment, answered that “there is no reappointment of any kind.” When Commissioner Aquino specifically pointed to the situation where “a commissioner is upgraded to a position of chairman,” Commissioner Monsod replied that “it is covered,” meaning that such upgrading is prohibited. When Commissioner Aquino still persisted in her line of inquiry on whether the prohibition on reappointment applied to “that kind of situation” where “a commissioner is upgraded to a position of chairman,” Commissioner Foz, after a fuzzy initial response, finally answered that the “provision does take care of that situation.”

In contrast, the ponencia of Justice Presbitero J. Velasco, Jr. concludes that “a promotion, albeit entailing a second appointment, involves a different office and hence not, in the strict legal viewpoint, a reappointment.” This is grave and egregious error.

The ponencia insists that Section 1(2), Article IX-D of the 1987 Constitution “does not preclude the promotional appointment of a commissioner to chairman, provided the appointee’s tenure in office does not exceed 7 years in all,” citing the same deliberations of the Constitutional Commission quoted above. This is misleading. Commissioner Aquino’s full statement reads:

MS. AQUINO: Yes. Reappointment is fine; that is accounted for. But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.[6] (Boldfacing and italicization supplied)

Obviously, Commissioner Aquino wanted it clarified whether the situation where “a commissioner is upgraded to a position of chairman” is covered by the provision prohibiting reappointment, and to which Commissioner Monsod categorically stated, “It is covered.”

Subsequent to the exchange among Commissioners Monsod, Aquino and Foz,[7] the Constitutional Commission again deliberated on the same issue when the framers discussed and voted whether the words “without reappointment” should be added in the second sentence of Section 1(2) of Article IX-D. Thus, whatever doubts remained on whether “promotional” appointments are prohibited were removed completely when the framers voted to add the words “without reappointment” in the second sentence of Section 1(2) to reject specifically the Visarra ruling, in particular the concurring opinion of Justice Bautista, which stated that the appointment of a Commissioner to Chairman of a Commission is valid.

There is no doubt whatsoever that the framers of the 1987 Constitution clearly intended to forbid reappointment of “any kind,” including specifically a situation where, in the words of Commissioner Aquino, “a commissioner is upgraded to a position of chairman.”

To allow the “promotional” appointment of Villar from Commissioner to Chairman is to put Villar in a far better, and uniquely privileged, position compared to the first two Commissioners who were barred from being promoted from Commissioners to Chairman. The second sentence of Section 1(2), Article IX-D of the 1987 Constitution provides, “Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment.” Thus, the first Commissioner with a term of five years, and the second Commissioner with a term of three years, could not be promoted to Chairman because of the words “without reappointment.” Indeed, the first two Commissioners could not even be reappointed as mere Commissioners, making their reappointment as Chairman an even greater constitutional anomaly. The first two Commissioners have the same rank and privileges as Commissioner Villar. Logically, and as clearly and emphatically intended by the framers of the 1987 Constitution, the same words “without reappointment” should bar the promotional appointment of Villar, as well as all future promotional appointments of Commissioners to Chairman.

On the other hand, the minority, through the dissent of Justice Jose C. Mendoza, claims that the second “without reappointment” in Section 1(2) of Article XI-D “does nothing more than limit the terms of the first batch of appointees to the COA.” This is an absurd reading of the constitutional provision. There is no evidence whatsoever of the intent to make such a distinction in the status of the first appointees and the subsequent appointees. Moreover, this claim is belied by the exchange between Commissioners Davide and Foz. To quote again:

MR. DAVIDE: There would be no area of controversy because it is very clear:

The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment.

So, it would even apply to the first set of three commissioners.

MR. FOZ: But there is the argument made in the concurring opinion of Justice Angelo Bautista in the case of Visarra vs. Mirafior, to the effect that the prohibition on reappointment applies only when the term or the tenure is for seven years. But in cases where the appointee serves only for less than seven years, he would be entitled to reappointment. Unless we put the qualifying words “without reappointment” in the case of these appointees, then it is possible that an interpretation could be made later on that in their case, they can still be reappointed to serve for a total of seven years.

Precisely, we are foreclosing that possibility by making it very clear that even in the case of those first appointed under this Constitution, no reappointment can be had.[8] (Boldfacing and italicization supplied)

Commissioners Davide and Foz both used the word “even” to emphasize that the words “without reappointment” apply to all the chairmen and commissioners to be appointed by the President, including even the first set of three

commissioners. That was the clear import of their discussion.

Justice JBL Reyes' Dissenting Opinion in Visarra further elucidated how Section 1, Article X of the 1935 Constitution, on the terms of office of the members of the Commission on Elections (Comelec), should be interpreted. Justice Reyes explained:

It is clear from the provisions above-quoted that, being, acutely conscious of the crucial importance of the functions of the Commission on Elections to candidates for elective positions, and aware of the consequent pressures and influences that would be brought to bear upon the Commissioners, the framers of this part of the Constitution sought as much as possible to shield the Commission members from any force or influence that might affect them in the discharge of their duties. To this end, the Constitution not only disqualified the Commissioners from holding outside interests that might be affected by their official functions (section 3); it expressly protected the Commissioners against danger of possible retaliation by (a) giving them a fixed term of nine (9) years, not terminable except by impeachment, and by (b) prohibiting any diminution of their salaries during their term of office. The Constitution went even further: cognizant that human conduct may be influenced not only by fear of vindictiveness but also, and even more subtly and powerfully, by prospects of advancement, our fundamental law has likewise provided that members of the Commission on Elections (c) may not be reappointed, and that (d) their salaries may not be increased during their terms. The plain purpose of all these safeguards is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.

Upon these premises, the promotion of Dr. Gaudencio Garcia from Associate Commissioner to Chairman of the Commission, with the attendant higher compensation and pre-requisites, violated the Constitutional prohibition against both reappointment and salary increase. If, by express mandate of the fundamental charter, a Commissioner cannot be validly reappointed, not even to the same position that he has occupied, I can see no excuse for holding that he may validly be appointed again to a higher position within the Commission. It is undeniable that a promotion involves a second appointment, i.e., a reappointment that is expressly forbidden by the Constitution.

And if the legislature may not lawfully increase the Commissioners' salaries during their terms of office, by express constitutional inhibition, how in the name of good sense may the Chief Executive grant such an increase to an Associate Commissioner via a promotional appointment to the Chairmanship?

x x x

Finally, in the Republic vs. Imperial case, upon which the majority opinion places so much reliance, this very Court expressly reiterated that the intention of the Constitution in staggering the terms of the Commissioners on Elections, so that one expires every three years, was that no President could appoint more than one Commissioner[.]

x x x

By sanctioning promotion of one Associate Commissioner to the Chairmanship, the majority decision enables the President to appoint more Commissioners (the one promoted and the replacement for the latter) at one time whenever a chairman fails to complete his own term. This despite the avowed intention of the constitutional plan of staggered terms, so that no President should appoint more than one Commissioner, unless unavoidable.[9] (Emphasis supplied)

Since the framers of the 1987 Constitution adopted the dissenting opinions in Visarra, Villar's "promotion" from Commissioner to Chairman is clearly a reappointment expressly prohibited by the 1987 Constitution.

The prohibition must apply to all kinds of reappointment if we are to honor the purpose behind the prohibition. The purpose is to ensure and preserve the independence of the COA and its members. The members of the independent constitutional commissions, in the wise words of Justice JBL Reyes –

x x x should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.[10] (Emphasis supplied)

A COA member, like members of the other independent constitutional commissions, may no longer act with independence if he or she can be rewarded with a promotion or reappointment, for he or she will likely do the bidding of the appointing power in the expectation of being promoted or reappointed. This Court has a sacred duty to safeguard the independence of the constitutional commissions, not make them subservient to the appointing power by adopting a view that is grossly and manifestly contrary to the letter and intent of the Constitution.

The minority likewise points out that after the ratification of the 1987 Constitution, then President Corazon C. Aquino promoted then Commissioner Eufemio Domingo to Chairman, after Chairman Teofisto Guingona resigned to run for a Senate seat.

Commissioner Domingo was appointed as one of the first commissioners under the 1987 Constitution, with an original term of three years. When then Chairman Guingona resigned, he left a portion of his seven-year term. President Aquino then appointed Commissioner Domingo as Chairman to serve the unexpired portion of Guingona's term. Domingo, however, did not complete his term, and served less than seven years in the COA both as Commissioner and Chairman. In 1993, Pascacio Banaria was appointed to replace Domingo, and served as Chairman until 2 February 1994.

Domingo's appointment was never questioned before this Court and thus, the Court could not have made a definitive ruling on the constitutionality of Domingo's appointment. What is now under consideration before this Court is the appointment of Villar, and thus, the Court cannot evade its duty to make the proper ruling, based on the letter and intent of the Constitution. Suffice it to say that Domingo's promotional appointment does not in any way constitute binding precedent.

The Court already had occasion to explain the prohibition on reappointments to the independent constitutional commissions under the 1987 Constitution. In *Matibag v. Benipayo*,^[11] the Court explained:

Section 1 (2), Article IX-C of the Constitution provides that "[t]he Chairman and the Commissioners shall be appointed x x x for a term of seven years without reappointment." x x x There are four situations where this provision will apply. The first situation is where an ad interim appointee to the COMELEC, after confirmation by the Commission on Appointments, serves his full seven-year term. Such person cannot be reappointed to the COMELEC, whether as a member or as a chairman, because he will then be actually serving more than seven years. The second situation is where the appointee, after confirmation, serves a part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed, whether as a member or as a chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years. The third situation is where the appointee is confirmed to serve the unexpired term of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed, whether as a member or chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years.

The fourth situation is where the appointee has previously served a term of less than seven years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar

to those appointed under the second sentence of Section 1 (2), Article IX-C of the Constitution. This provision refers to the first appointees under the Constitution whose terms of office are less than seven years, but are barred from ever being reappointed under any situation. x x x[12] (Emphasis supplied)

Villar's appointment falls under both the second and fourth situations. In order for him to take the position of Chairman, Villar had to cut short his seven-year term, which means Villar resigned as Commissioner. After such resignation, Villar could no longer be reappointed to the COA, either as Commissioner or Chairman. First, Villar's "promotional" appointment as Chairman falls under the second situation since Villar had to resign as Commissioner to be appointed Chairman to fill a vacancy arising from the expiration of the term of Chairman Carague. Second, Villar was given a term of only three years as Chairman, instead of the mandatory seven years, to avoid exceeding the maximum term of seven years. However, the term of office is fixed by the Constitution at seven years, and the President has no power to shorten this term because that would mean amending the Constitution. Thus, the "promotional" appointment of Villar as Chairman to a three-year term is, in itself, unconstitutional for violating the mandatory seven-year fixed term, apart from the prohibition on reappointment. On the other hand, had Villar's term as Chairman been made seven years, it would have also been unconstitutional since his total term would then exceed seven years. Thus, whether the upgrading of a Commissioner to Chairman is for a seven-year term or less, such upgrading would be unconstitutional, whatever is the term.

Villar's "promotional" appointment as Chairman for the unexpired portion of his own term as Commissioner also falls under the fourth situation, similar to the situation of the first Commissioners appointed to the COA who served for less than seven years but could not be promoted as Chairman or reappointed as Commissioners. In fact, the words "without reappointment" were specifically added in Section 1(2) of Article IX-D precisely to prohibit a situation where "a commissioner is upgraded to a position of chairman." The words "without reappointment" in the second sentence of Section 1(2) were the additional "safety valve" that the framers of the 1987 Constitution incorporated in the Constitution to prevent "promotional" appointments like that of Villar.

Moreover, to allow Villar to carry his unexpired term as Commissioner to his term as Chairman means crossing the lines of succession. This is also unconstitutional because it disrupts the rotational scheme of succession mandated in the Constitution.

The Court has already declared that the words "without reappointment," which appear twice in Section 1(2) of Article IX-D, were precisely incorporated to prohibit "any reappointment of any kind." As the Court held in *Matibag*:

The framers of the Constitution made it quite clear that any person who has served any term of office as COMELEC member – whether for a full term of seven years, a truncated term of five or three years, or even for an unexpired term of any length of time – can no longer be reappointed to the COMELEC.

x x x [T]he phrase "without reappointment" appears twice in Section 1 (2), Article IX-C of the present Constitution. The first phrase prohibits reappointment of any person previously appointed for a term of seven years. The second phrase prohibits reappointment of any person previously appointed for a term of five or three years pursuant to the first set of appointees under the Constitution. In either case, it does not matter if the person previously appointed completes his term of office for the intention is to prohibit any reappointment of any kind.

x x x

The prohibition on reappointment is common to the three constitutional commissions. The framers of the present Constitution prohibited reappointments for two reasons. The first is to prevent a second appointment for those who have been previously appointed and confirmed even if they served for less than seven years. The

second is to insure that the members of the three constitutional commissions do not serve beyond the fixed term of seven years. x x x

Plainly, the prohibition on reappointment is intended to insure that there will be no reappointment of any kind. On the other hand, the prohibition on temporary or acting appointments is intended to prevent any circumvention of the prohibition on reappointment that may result in an appointee's total term of office exceeding seven years. The evils sought to be avoided by the twin prohibitions are very specific – reappointment of any kind and exceeding one's term in office beyond the maximum period of seven years.[13] (Emphasis supplied)

To repeat, there is no doubt whatsoever that the prohibition in Section 1(2) of Article IX-D applies to “any reappointment of any kind,” including promotional appointments from Commissioner to Chairman.

The terms of office of the Chairman and Commissioners are for a fixed term of seven years without reappointment.

The Constitution states, “The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment.” The Constitution uses the word “shall,” which makes it mandatory for the President to appoint to a fixed term of seven years. The only exception is an appointment to a vacancy caused by death, resignation, or impeachment. In such exceptional causes, however, the Constitution directs that the appointment “shall be only for the unexpired portion of the term of the predecessor.” The President cannot give the appointee a term that is more, or less, than the unexpired term of the predecessor. Thus, whether the appointment arises from a regular vacancy or from an exceptional cause, the President has no discretion to shorten or lengthen the appointee's term because the term is fixed by the Constitution. The President must appoint to a full term of seven years to fill a vacancy from an expired term, or to the full unexpired portion of the term of the predecessor who vacated the office for an exceptional cause.

The ponencia posits that a seven-year appointment is not constitutionally feasible for Villar because Villar had already served as COA Commissioner for four years prior to his appointment as Chairman. Thus, under the circumstances of this case, giving Villar a seven-year term would violate the term of office prescribed in Section 1(2), Article IX-D of the Constitution. The ponencia contends, however, that far from prohibiting reappointment of any kind, the 1987 Constitution allows a promotional appointment, but subject to defined parameters.

The ponencia maintains that a promotion from Commissioner to Chairman is not per se unconstitutional. The ponencia argues that the ban on reappointment applies only to a new appointment to the same position. On the other hand, a promotional appointment is disallowed only if the new appointment will lead to a tenure of more than seven years because no term or tenure can exceed seven years. The ponencia asserts that “[a]ppointment to the position of [C]hairman extended to a former [C]ommissioner is allowed and is not covered by the ban on reappointment, provided the aggregate period of the two (2) appointments will not exceed seven (7) years.”

Under the ponencia's view, the words “without reappointment,” which appear twice in Section 1(2) of Article IX-D, apply only to a reappointment to the same position. Thus, the ban on reappointment applies only to the following situations: (1) a Commissioner is reappointed as Commissioner; and (2) a Chairman is reappointed as Chairman.

Conversely, according to the ponencia, the words “without reappointment” do not apply to the following situations: (1) a Chairman who has served for less than seven years is reappointed as Commissioner if his total term does not exceed seven years; and (2) a Commissioner who has served for less than seven years is reappointed as Chairman if his total term does not exceed seven years.

The error in the ponencia's view is basic and quite obvious for three reasons. First, the constitutional ban on

reappointment, expressed in the words “without reappointment,” does not distinguish between appointments to the same or different positions. There are only two possible positions – that of Commissioner and Chairman. The words “without reappointment” have no conditions, distinctions or qualifications that limit the ban on reappointments only to the same position. When the framers twice used the plain, simple and unconditional words “without reappointment,” they meant exactly what the words mean – no reappointment. When the people ratified the Constitution, they naturally and logically understood the plain, simple and unconditional words “without reappointment” to mean no reappointment.

Second, the rationale for the ban on reappointment applies to reappointments to the same or different positions because the intention is to safeguard the independence of the Commission and all of its Members. There is even greater reason to ban promotional appointments from Commissioner to Chairman to prevent Commissioners from kowtowing to the appointing power in the hope of being promoted to Chairman. It is more likely that a Commissioner would want to be promoted to Chairman than to be reappointed to the same position as Commissioner.

Third, the framers of the Constitution repeated the words “without reappointment” in the second sentence of Section 1(2) of Article IX-D precisely to prohibit promotional appointments from Commissioner to Chairman. The framers expressly rejected Visarra, in particular the concurring opinion of Justice Bautista, which construed the counterpart provision in the 1935 Constitution as allowing promotional appointments. For the Court to now allow promotional appointments is to utterly disregard the clear language of the Constitution, grossly ignore the clear intent of the framers, and wantonly rewrite the Constitution – in the process destroying the independence of the constitutional commissions.

To repeat, the Constitution prohibits reappointment of any kind, including the promotional appointment of a Commissioner to the position of Chairman. Whether the promoted Commissioner’s term will or will not exceed seven years, or will be exactly seven years, is irrelevant. The constitutional prohibition on any kind of reappointment still applies to any promotional appointment.

The appointment or designation to the COA
in a temporary or acting capacity is prohibited.

Section 1(2), Article IX-D of the Constitution expressly prohibits appointments or designations in a temporary or acting capacity. The last sentence of Section 1(2) states: “In no case shall any Member be appointed or designated in a temporary or acting capacity.” Yet, after COA Chairman Guillermo Carague’s (Chairman Carague) term of office expired, Villar was appointed as acting chairman from 4 February 2008 to 4 April 2008, in violation of this express constitutional prohibition. Clearly, Villar’s designation as temporary or acting COA Chairman was unconstitutional. This Court must declare such appointment unconstitutional to prevent a recurrence of temporary or acting appointments to the independent constitutional commissions.

Term versus Tenure

On several occasions, the Court had clarified the distinction between term and tenure. The term of office is the period when an elected officer or appointee is entitled to perform the functions of the office and enjoy its privileges and emoluments.[14] The term is fixed by statute and it does not change simply because the office may have become vacant for some time, or because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.[15] In the case of the independent constitutional commissions, the Constitution not only fixes the terms of office but also staggers the terms of office with a fixed common starting date, which is the date of ratification of the 1987 Constitution.[16]

On the other hand, tenure is the period during which the incumbent actually holds the office. In length of time, tenure may be as long as, or longer or shorter than, the term for reasons within or beyond the power of the incumbent.[17] The phrase “actually holds office” means the discharge of the duties of the office after due appointment and qualification.[18]

The term of office of the Chairman and Commissioners of the COA is fixed by the Constitution at seven years, except for the first appointees. Villar was appointed Commissioner for a term of seven years, but served only four years, which is his actual tenure. His four-year tenure as Commissioner cannot be tacked on to the term of office of Chairman for two reasons: first, it will give him a tenure of more than seven years, and second, crossing from one line of succession to another is prohibited.

This Court cannot also uphold Villar’s appointment as Chairman for a term of three years because the Constitution specifically says that the term of office shall be seven years if the predecessor’s term has expired, as in the case of Villar’s predecessor, Chairman Carague. If the appointee is replacing a predecessor with an unexpired term, as in the case of Villar’s successor, Commissioner Evelyn San Buenaventura (San Buenaventura), then the appointee’s term of office shall be such unexpired term.

The President has no power to appoint a Chairman for less than a seven-year term in place of a predecessor whose full term has expired. To repeat, the Constitution expressly mandates that the Chairman “shall be appointed by the President x x x for a term of seven years x x x.” Thus, apart from the constitutional prohibition on reappointment, Villar’s appointment as Chairman for a three-year term is in itself unconstitutional for violation of the mandated fixed seven-year term prescribed by the Constitution.

To this, the ponencia agrees:

[T]he promotional appointment of Villar ending on February 2, 2011 constitutes [an] infringement of Section 1(2), Article IX-D of the 1987 Constitution, hence, void because the President is only authorized to appoint the new chairman to a full term of seven (7) years when the vacancy is created by the expiration of the term of the predecessor.

Rationale behind the staggering of terms

Fr. Joaquin Bernas, S.J., a member of the 1986 Constitutional Commission, explained the rationale for the staggering of terms of members of the three independent constitutional commissions:

In prescribing that the term of each Commissioner shall be seven years but that of the Commissioners first appointed, three shall hold office for seven years, three for five years, and the last three for three years, the result achieved is that at any one time only three Commissioners (of the three independent constitutional commissions) retire together. Continuity in the body is thus achieved. Moreover, it makes it unlikely that all the Commissioners at any one time are appointees of the same President.[19] (Emphasis supplied)

Under the staggering of terms, there will be a vacancy in the COA only once every two years arising from the expiration of terms of office. No two vacancies will occur at the same time arising from the expiration of terms.

There are two reasons for staggering the terms of office of the members of the constitutional commissions. First is to ensure the continuity of the body. For the COA, this means that at any given time, there will always be at least two members – barring death, resignation, or impeachment in the meantime – discharging the functions of the COA.

Second, staggering of terms ensures that the same President will not appoint all the three members of the COA, unless the unexpected happens i.e., when vacancies arise out of death, resignation, or impeachment. This is necessary to safeguard the independence of the COA. This staggering of terms mandated by the Constitution must

be observed by the President as the appointing authority. It is the duty of this Court to ensure that this constitutional mandate is followed.

Villar's appointment as Chairman violates the staggering of terms mandated by the Constitution.

Villar insists that, since he is replacing Carague who has served his full seven-year term, he (Villar) must also be given a full seven-year term despite his four-year tenure as Commissioner. Villar justifies his stance by claiming that his appointment as Chairman is to "a totally different and distinct office."

This is outright error without any basis under the Constitution, law or jurisprudence. The Court cannot uphold Villar's appointment as Chairman without wreaking havoc on the constitutionally mandated staggering of terms or rotational system in the terms of office of the Chairman and Commissioners of the COA.

In *Republic v. Imperial*,^[20] the Court held that the staggering of terms, taken together with the prescribed term of office,²¹ without reappointment, "evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years."^[22]

The term of former Chairman Carague was from 2 February 2001 to 2 February 2008. Since Chairman Carague served his full seven-year term, whoever was appointed to replace him should have been given a full seven-year term, or from 2 February 2008 until 2 February 2015. However, since Villar was already a Commissioner for four years, he could not be given a full seven-year term because then he would serve the COA for more than seven years. Thus, Villar was given a term of only three years as Chairman, with the justification that Villar "carried with him his seven-year term" as Commissioner.

The minority views Villar's appointment thus:

[I]n 2008, Chairman Carague's term expired. Again, either Commissioner may be promoted or upgraded to the position of chairman with the condition that they would only serve his or her remaining term. And this is exactly what happened to Commissioner Villar when President Arroyo promoted him as chairman. This time, an outsider to be appointed should have a full seven-year term because he or she was not filling in an unexpired term of a member but was in fact replacing one whose term had expired. By this scheme, San Buenaventura would not have been appointed to the unexpired portion of then Commissioner Villar's term] as the latter carried with him his seven-year term. San Buenaventura or any outsider should have been appointed to a full seven-year term. (Emphasis supplied)

The minority insists that "in the case of San Buenaventura, she should have been considered a replacement of [Chairman] Carague and should have been appointed for a term of seven years." The minority rationalizes that San Buenaventura replaced Chairman Carague, not Villar, because at that time Villar was "still a commissioner, albeit a chairman."

It is undeniable that Villar resigned as Commissioner on the fourth year of his seven-year term before his term expired. It is also undeniable that San Buenaventura was appointed Commissioner to replace Villar for the unexpired term of Villar as Commissioner. It is further undeniable that Villar was appointed Chairman to replace Chairman Carague whose term had expired.

To appoint San Buenaventura as Commissioner with the seven-year term of the Chairman, instead of the unexpired term of her predecessor Villar, is to cross the lines of succession. The minority's view would have the lines of succession crossed twice – the first, when Villar "carried with him his seven-year term," and the second, when San Buenaventura should have been given a "full seven-year term" for "actually replacing an expired term of Chairman G. Carague." To hold that San Buenaventura replaced Chairman Carague because Villar "was still a

member, albeit a chairman” is to hold that Villar held simultaneously two positions – that of Commissioner and Chairman, in itself a constitutionally anomalous situation. And if indeed Villar held both positions simultaneously, then there would have been no vacancy and San Buenaventura could not have been appointed to replace Villar as Commissioner. The minority is caught in a tangled web of ridiculous self-contradictions and inconsistencies.

The minority further holds that the “appointment of San Buenaventura to serve up to 2 February 2011 only disrupted the rotational cycle.” On the contrary, appointing San Buenaventura to a full term of seven-years or up to 2 February 2015 would mean that her term would expire simultaneously with the expiration of the term of the Chairman on 2 February 2015. This would disrupt the constitutional rotation cycle of one vacancy every two years, with no two vacancies occurring at the same time.

With Villar’s resignation as Commissioner and appointment as Chairman, the only vacancy left, with its corresponding unexpired term, was for the office of Commissioner vacated by Villar. Hence, San Buenaventura was appointed Commissioner in place of the resigned Villar. When Villar resigned as Commissioner, the third sentence of Section 1(2), Article IX-D of the Constitution applied – that “appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.”

Thus, San Buenaventura merely assumed the unexpired term of the resigned Villar. Giving San Buenaventura the seven-year term of the vacancy arising from the expiration of Chairman Carague’s term is crossing the lines of succession, which even the minority agrees is prohibited by the Constitution.

The fact is the full seven-year term applies to whoever replaces Chairman Carague because he or she will not be filling an unexpired term but will be replacing one whose term has expired. Apart from the prohibition on reappointment, another reason why no incumbent Commissioner could be promoted to Chairman to replace Chairman Carague, whose term had expired, is that whoever is appointed must be given a full seven-year term as fixed by express command of the Constitution. A “promotional” appointment of an incumbent Commissioner to succeed Chairman Carague will automatically make the appointee’s term exceed seven years. The President has no discretion to give the appointee a shorter term to avoid breaching the maximum seven-year term. The term of office is fixed by the Constitution, not by the President.

To allow Villar to take the position of Chairman without exceeding the maximum seven-year term, the minority had to justify that Villar brought with him his term of office as Commissioner into his term as Chairman. However, Villar could not have carried with him his seven-year term as Commissioner because there must be no crossing of lines – as expressed in the constitutional provision that “appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.” The remainder of Villar’s term was actually left in his line of succession as Commissioner and, in fact, given to a new Commissioner, San Buenaventura. There is no denying that Villar’s appointment as Chairman crossed the lines of succession, disrupted the rotational scheme, and breached the prohibition on reappointment, a prohibition that clearly includes “promotional” appointments. Hence, Villar’s appointment as Chairman with a term of three years has no legal basis at all.

The minority brushes aside the stark fact that “promotion” disturbs the staggering of terms or rotational scheme of appointment. If a Commissioner, who has already served part of his or her seven-year term, is appointed Chairman and brings with him or her the remainder of his or her term as Commissioner, the regular rotational scheme of appointment is immediately thrown into chaos.

As this case clearly shows, the rotational scheme of appointment is an integral element of the constitutionally mandated structure of the Constitutional Commissions. To ignore it is to invite exactly the kind of problems posed in this case.

To illustrate, the lines of succession and terms of office of the Chairman and Commissioners of the COA – which have been observed since 2 February 1987 until Villar’s appointment in 2008 – are as follows:

Chairman

Commissioner I

Commissioner II

February 2, 1987

to

February 2, 1994

(7-year original term)

February 2, 1987

to

February 2, 1992

(5-year original term)

February 2, 1987

to

February 2, 1990

(3-year original term)

February 2, 1994

to

February 2, 2001

February 2, 1992

to

February 2, 1999

February 2, 1990

to

February 2, 1997

February 2, 2001

to

February 2, 2008

February 2, 1999

to

February 2, 2006

February 2, 1997

to

February 2, 2004

February 2, 2008

to

February 2, 2015

February 2, 2006

to

February 2, 2013

February 2, 2004
to
February 2, 2011

As shown above, every two years a single vacancy arises due to the expiration of the term of office of a COA member. No two such vacancies occur at the same time.

However, with Villar's appointment, what actually happened is this:

Chairman

Commissioner I

Commissioner II

Teofisto

Guingona[23]/Eufemio

Domingo[24]/Pascacio Banaria[25]

February 2, 1987 to February 2, 1994

(7-year original term)[26]

Bartolome Fernandez

February 2, 1987

to

February 2, 1992

(5-year original term)

Eufemio Domingo²⁷/Alberto Cruz

February 2, 1987

to

February 2, 1990

(3-year original term)

Celso Gangan[28]

February 2, 1994

to

February 2, 2001

Sofronio Ursal

February 2, 1992

to

February 2, 1999

Rogelio Espiritu

February 2, 1990

to

February 2, 1997

Guillermo Carague

February 2, 2001

to

February 2, 2008

Emmanuel Dalman

February 2, 1999

to
February 2, 2006

Raul Flores
February 2, 1997

to
February 2, 2004

Villar
February 2, 2008

to
February 2, 2011

Juanito Espino
February 2, 2006

to
February 2, 2013

Villar
February 2, 2004

to
February 2, 2008
San Buenaventura
February 2, 2008

to
February 2, 2011

Ma. Gracia Pulido-Tan[29]
February 2, 2011

to
February 2, 2015

February 2, 2013
to
February 2, 2020

Heidi Mendoza[30]
February 2, 2011

to
February 2, 2018

Immediately apparent is the occurrence of two vacancies at the same time, namely, the expiration of San Buenaventura's term on 2 February 2011 and the expiration of Villar's term also on the same date. This is contrary to the staggering of terms where only one vacancy occurs every two years as a result of the expiration of the terms of office.

Likewise immediately apparent is the fact that incumbent COA Chairman Ma. Gracia Pulido-Tan – an “outsider,” or one without any prior term within the COA – is given a term of office of only four years. This is contrary to Section 1(2) of Article IX-D, which states that the Chairman and Commissioners of the COA “shall be appointed x x x for a term of seven years.” The incumbent Chair's abbreviated term, however, is the result of Villar's reappointment as Chairman, for if incumbent Chairman Pulido-Tan is given a full seven-year term as prescribed

in the 1987 Constitution, her term would end at the same time as Commissioner Mendoza and the staggering of terms or rotational scheme of succession would be disrupted again.

The disruptive effect of Villar's appointment is making itself obvious – it forced the incumbent President to appoint a new Chairman to a term shorter than that mandated by the Constitution, if only to restore things in their proper rotational scheme. Even the minority concedes that the incumbent "President has brought sanity and order to the otherwise disruptive appointments made by the former appointing power in the case of Villar and San Buenaventura." Moreover, Villar's "promotion" as Chairman and San Buenaventura's appointment as Commissioner, with their terms ending on the same date, further disrupted the constitutional scheme of staggering the members' terms of office.

In every case that a Commissioner of the COA – or of any of the other constitutional commissions for that matter – is "promoted" to Chairman and brings with him or her the unexpired portion of his or her term, the same disruption in the constitutional rotation scheme will happen. This was never the intention of the framers of the Constitution, and this is not what the clear language of the 1987 Constitution mandates.

The only way to prevent another insane, disorderly and disruptive appointment from happening again is to affirm that a "promotion" from Commissioner to Chairman is expressly prohibited by the 1987 Constitution, as clearly intended by the framers of the 1987 Constitution, and as specifically written in Section 1(2), Article IX-D of the 1987 Constitution. The framers of the 1987 Constitution added the words "without reappointment" twice in Section 1(2) of Article IX-D precisely to remove any doubt whatsoever that the prohibition applies to "any reappointment of any kind," categorically rejecting the Visarra ruling, in particular the concurring opinion of Justice Bautista, that allowed a "promotional appointment" from Commissioner to Chairman.

What then do we make of Villar's "promotional" appointment to a three-year term as COA Chairman? To stress the obvious, it is nothing but a blatant, barefaced violation of the 1987 Constitution that must be frankly characterized for what it is – grossly and manifestly unconstitutional.

The ponencia posits:

[A]ppointment to the COA, by express constitutional fiat, shall be for a term of seven (7) years, save when the appointment is to fill up a vacancy for the corresponding unserved term of an outgoing commissioner. x x x Should the vacancy arise out of the expiration of the term of the incumbent, then there is technically no unexpired portion to speak of. The vacancy is for a fresh 7-year term and, ergo, the appointment thereto shall in all instances be for seven (7) years.

Further, the ponencia asserts:

The word 'reappointment' means a second appointment to one and the same office; and Sec. 1(2), Art. IX-D of the 1987 Constitution and similar provisions does not peremptorily prohibit the promotional appointment of a commissioner to chairman, provided the new appointee's tenure in both capacities does not exceed seven (7) years in all.

Following the ponencia's assertions, a Commissioner, with two years left to serve in the COA, can be promoted to Chairman to fill an unexpired portion of three years, following the death, resignation or impeachment of the Chairman. This appointment, according to the ponencia, will not violate the constitutional prohibition because the promoted member will not be serving more than seven years in the COA.

There are, however, fundamental errors in the ponencia's premise.

First, as already previously discussed, a "promotion" is a reappointment prohibited by the Constitution. The ban on reappointment applies to any kind of appointment, including a promotional appointment.

Second, a promotional appointment violates the constitutional directive that all appointments shall be for a full seven-year term, except when the appointee is filling the unexpired term of a member who died, resigned or was impeached.

Third, there will be a disruption of the rotational scheme of succession if a promotional appointment is issued to fill an unexpired term of a Chairman.

*To illustrate, a Commissioner, who has served two years, is promoted to Chairman upon the resignation of the Chairman who served only for one year. The new Chairman will serve a full seven-year term, counted from the time he was appointed as Commissioner. This means that the new Chairman will be appointed as Chairman for only five years; otherwise, he will serve for more than seven years. After he has served for seven years, the Chairman will mandatorily retire from the Commission. When he retires, he will leave one year in the Chairman's term of office, based on the dates set under the rotational scheme of succession, which is fixed starting on the date of the ratification of the 1987 Constitution. In order not to disturb the rotational scheme of succession, any appointment to replace the retired Chairman must be for only one year. However, such appointment will violate the constitutional provision that the "Chairman x x x shall be appointed x x x for a term of seven years x x x" when the term of the predecessor has expired. In short, since the term of the retired Chairman has already expired, he leaves no unexpired term of his own since he served for seven years, and his successor must be given a full seven-year term. However, appointing a successor for a term of seven years will disturb the rotational scheme of succession. Either way, there will be a violation of the requirement that upon the expiration of a predecessor's term the appointment of a successor shall be for a full term of seven years, or a violation of the rotational scheme of succession as envisioned in the Constitution.

To repeat, any appointment of more than the unexpired term will immediately disturb the rotational scheme of succession and violate the Constitution. Similarly, any appointment of less than seven years – since the predecessor's term has already expired – will violate the constitutional requirement that the appointment shall be for a full seven-year term if the predecessor has fully served his seven-year term.

Finally, the minority posits so-called "guidelines" for future appointments in the Constitutional Commissions to maintain the rotational scheme of succession as mandated by the Constitution. The minority prescribes, among others, that "commissioners may be promoted or upgraded to the position of chairman, but they must maintain or keep their original seven-year term with them." This guideline, however, ipso facto destroys the rotational scheme of succession. One needs only to reexamine the facts of this case to find a crystal clear illustration of how the guidelines that the minority prescribes, in fact, contradict the letter and spirit of the Constitution.

When Commissioner Villar was promoted as Chairman, and carried with him the remainder of his original seven-year term as argued by the minority, there was immediate disruption to the rotational scheme of succession. Since he could not be given a full seven-year term, as was proper since he was succeeding a Chairman whose term had expired, his term as Chairman would end in the middle of the term mandated by the rotational scheme of succession under the Constitution. Hence, whoever is appointed to succeed Villar will also be appointed in the middle of the mandated term. If Villar's successor is given a full seven-year term, his or her term will cut into the next successor's term, and the same cycle will continue ad infinitum, until the whole scheme of rotational succession in the Chairman's line is entirely lost.

The dates when the terms of office start and end never change, even when an appointment is made in mid-term. This is the reason why someone appointed to replace a Chairman or Commissioner, who leaves office before the end of the term, can only be appointed to the remainder of that term – known as the "unexpired portion of the term" – to preserve the rotational cycle of succession. Neither the President nor this Court can change these dates.

The Constitution is the supreme law of the land and the bible of this Court. Every member of this Court has taken an oath to defend and protect the Constitution. This Court must apply and interpret the Constitution faithfully without fear or favor. This Court must not twist or distort the letter and intent of the Constitution to favor anyone, for the Constitution is larger and far more important than any party, personality, group or institution in this country. The safeguards to ensure the independence of the constitutional commissions, as designed and written in the Constitution, are vital to the survival of our democracy and the development of our nation. It is the sacred duty of this Court to preserve and maintain these safeguards.

Accordingly, I vote to GRANT the petition and to declare respondent Reynaldo A. Villar's appointment as Acting Chairman, and as Chairman, of the Commission on Audit, UNCONSTITUTIONAL.

[1] Section 24(5), Article VI, 1987 Constitution.

[2] Id.

[3] The 1963 case of *Visarra v. Miraflor* (118 Phil. 1) was decided under the 1935 Constitution, specifically, Section 1, Article X:

Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution.

The Court upheld the appointment of then incumbent Commission on Elections (Comelec) Commissioner Gaudencio Garcia to succeed Chairman Jose P. Carag, whose nine-year term had expired. Justice Angelo Bautista in his concurring opinion wrote:

[T]o hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position x x x its effect is to stimulate hard work, greater zeal and increased efficiency for a member in the hope that his efforts would someday be regarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

[4] Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, p. 591.

[5] Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, p. 586.

[6] Id.

[7] This took place on the Constitutional Commission's 15 July 1986 session. At that same session, but subsequent to the discussion among Commissioners Monsod, Aquino, and Foz, was the discussion on Commissioner Davide's proposal for a perfecting amendment to line 29, Section 2 (2), cited previously. (Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, pp. 586 and 591.) Taken together, these discussions show the deliberate intent of the framers of the Constitution to prohibit reappointments of any kind, including promotions from Commissioner to Chairman.

[8] *Supra* note 4.

- [9] Supra note 3 at 34-38.
- [10] Supra note 3 at 35.
- [11] 429 Phil. 554 (2002).
- [12] Id. at 596.
- [13] Id. at 597, 598, 600.
- [14] Casibang v. Aquino, 181 Phil. 181, 190 (1979).
- [15] Valle Verde Country Club, Inc. v. Africa, G.R. No. 151969, 4 September 2009, 598 SCRA 202, 210.
- [16] Gaminde v. Commission on Audit, 401 Phil. 77, 88-89 (2000).
- [17] Topacio Nueno v. Angeles, 76 Phil. 12, 22 (1946).
- [18] See the Dissenting Opinion of Justice Roberto Concepcion in Salaysay v. Castro, 98 Phil. 364, 385 (1956).
- [19] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 929.
- [20] 96 Phil. 770 (1955).
- [21] Seven years under the 1987 Constitution, nine years under the 1935 Constitution.
- [22] Republic v. Imperial, supra.
- [23] Guingona was appointed COA Chairman on 10 March 1986, prior to the ratification of the 1987 Constitution, and served in that capacity until March 1987.
- [24] Appointed COA Chairman in March 1987 and served in that capacity until April 1993.
- [25] Appointed COA Chairman in April 1993 and served in that capacity until February 1994.
- [26] The Court explained in the case of Gaminde v. Commission on Audit (G.R. No. 140335, 13 December 2000) that “the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms” and therefore, “the appropriate starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 02, 1987, the date of the adoption of the 1987 Constitution.”
- [27] Domingo was appointed COA Commissioner in April 1986 and served in that capacity until he was appointed Chairman in March 1987.
- [28] Gangan was appointed Chairman on 3 February 1994.
- [29] Per the Official Gazette, Ma. Gracia M. Pulido-Tan was appointed COA Chairperson on 10 June 2011, for a term expiring on 02 February 2015 (visited 22 July 2011)
- [30] Per the Official Gazette, Heidi L. Mendoza was appointed COA Commissioner on 10 June 2011, for a term expiring on 02 February 2018 (visited 22 July 2011)

SEPARATE CONCURRING AND DISSENTING OPINION

MENDOZA, J.:

I convey my concurrence with the well-studied position of Justice Presbitero J. Velasco, Jr. that Section 1(2), Article IX-(D) of the 1987 Constitution does not proscribe the promotion or upgrade of a commissioner to a chairman, provided that his tenure in office will not exceed seven (7) years in all. The appointment is not covered by the qualifying or restricting phrase “without reappointment” twice written in that section.

From the records, the following appear to be the facts of the case:

1] On February 15, 2001, then President Arroyo appointed Carague as Chairman of the Commission on Audit (COA) for a term of seven (7) years from February 2, 2001 to February 2, 2008.

2] Three years later, on February 7, 2004, President Arroyo appointed Villar as the third member of the COA also for a term of seven years, or from February 2, 2004 to February 2, 2011.[1] When Carague’s term of office expired, Villar was designated as “Acting Chairman” of the COA from February 4, 2008 to April 4, 2008. On April 18, 2008, on his fourth year as COA Commissioner, Villar was appointed to the position of COA Chairman with a term ending on February 2, 2011. His promotion was subsequently confirmed by the Commission on Appointments on June 11, 2008.[2]

3] On January 5, 2010, San Buenaventura was appointed as COA Commissioner by President Arroyo. As shown in her appointment papers, she was to serve only the unexpired term of Villar as commissioner or up to February 2, 2011.[3]

4] On July 26, 2010, Funa filed this petition for certiorari and prohibition challenging the constitutionality of the appointment of Villar as COA Chairman contending that the promotion of Villar, who had served as member therein for four (4) years, was a violation of the Constitution because it was, in effect, a prohibited “reappointment.”

From the pleadings and memoranda, it appears that the principal issue is whether or not the constitutional proscription on reappointment includes the promotion of an incumbent commissioner as chairman of a constitutional commission.

The resolution of the issue entails the proper interpretation of Section 2, Article IX-D of the Constitution which reads:

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointment for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. (Emphases supplied)

From the aforequoted provision, the following are clear and undisputed:

- The FIRST sentence sets out that the members of the COA must be appointed by the President for a non-extendible term of seven years, thus, the phrase “without reappointment” at the end of the sentence;
- The SECOND sentence specifically directs that the first set of appointees to the COA starting with the Chairman shall have a non-extendible term of seven, five and three years, which provision sets the ball rolling for the staggered system of appointments;

The terms of these first appointees to the COA are also non-extendible for the second sentence is also qualified by the phrase “without reappointment;”

- The THIRD sentence instructs that an appointment to any vacancy in the COA shall only be for the unexpired term of the predecessor; and
- The FOURTH sentence imposes a restriction on the power of the appointing authority, the President, to designate a member of the COA in a temporary or acting capacity.

The Framers were clear in setting these limitations. They could very well have been as clear and explicit with respect to promotions if it was their intention to do so.

My reasons for being one with Justice Velasco on the issue are the following:

- 1] the Constitution does not explicitly proscribe such promotions;
- 2] before the 1987 Constitution, there were several unquestioned and upheld promotions of similar nature; and
- 3] after the 1987 Constitution, a commissioner was still promoted to succeed a chairman.

There is nothing at all in Section 2 which expressly or impliedly proscribes promotion of a commissioner to chairman. If it was the intention of the Framers to absolutely prohibit such movement, it would have been categorically specified and spelled out in the provision. Evidently, there was none. There were indeed discussions about it in the constitutional commission but nothing definite was finally crafted.

The only thing clear was that members could not be reappointed either as commissioner or chairman after they had served their respective terms of office. Nothing even remotely suggested that there was an intention to do away with promotion or upgrade.

In the past (even under the 1987 Constitution), there were unquestioned promotions in the various constitutional commissions whether due to the death, disability, resignation, impeachment or expiration of the term of the predecessor, promotions were made and had, in fact, been unchallenged.

In *Visarra v. Miraflor*,^[4] the appointment of Commissioner Gaudencio Garcia (Garcia) to succeed Chairman Jose P. Carag (Carag), upon the expiration of the latter’s term in 1959, was recognized by the Court without question. In *Nacionalista Party v. De Veyra*,^[5] Vicente de Vera was among the first commissioners appointed to the Commission on Elections (COMELEC) under the 1935 Constitution. When the COMELEC chairmanship became vacant by the death of Chairman Jose Lopez Vito in 1947, De Vera was promoted to occupy this vacancy for the unexpired term of the former incumbent. De Vera’s appointment to the chairmanship was met with protest, on the theory that his promotion thereto was considered a “reappointment” disallowed by the Constitution. The Court, through former Chief Justice Moran, upheld the appointment.

The reason therefor was embodied in the concurring opinion of Justice Angelo Bautista in *Visarra* that the ruling in *Nacionalista* remains to be a binding precedent on the validity of a promotion of an incumbent Commissioner to the position of Chairman. Thus:

[T]o hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position x x x its effect is to stimulate hard work greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one’s

legitimate ambition to betterment and progress.[6]

Despite the deliberations in the constitutional commission, there was no discussion at all on such a prohibition. What was clearly discussed and settled was the safety valve that no appointee shall serve an aggregate period of more than seven (7) years. The records of the deliberations of the 1986 Constitutional Commission disclose the following:

“MS. AQUINO. Thank you.

In the same paragraph, I would propose an amendment by addition on page 2, line 31. Between the period (.) after the word ‘predecessor’ and the sentence which begins with ‘In no case,’ insert THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. I was thinking that this may approximate the situation wherein a commissioner is first appointed as an ordinary commissioner and later on appointed as chairman. I am willing to withdraw that amendment if there is representation on the part of the Committee that this provision contemplates that kind of situation and that there is an implicit intention to prohibit a term that in the aggregate will exceed more than seven years. If that is the intention, I am willing to withdraw my amendment.

MR. MONSOD. If the Gentleman will read the whole Article, she will notice that there is no reappointment of any kind and, therefore, as a whole, there is no way that somebody can serve for more than seven years. The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

MS. AQUINO. Yes. Reappointment is fine; that is accounted for and appointment of a temporary or acting capacity is also accounted for. But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.

MR. MONSOD. It is covered.

MR. FOZ. There is a provision on line 29 precisely to cover that situation. It states: ‘Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.’ In other words, if there is upgrading of position from commissioner to chairman, the appointee can only serve the unexpired portion of the term of the predecessor.

MS. AQUINO. But we have to be very specific about it; the provision does not still account for that kind of a situation because, in effect, it might even shorten the term because he serves only the unexpired portion of the vacant position.

MR. FOZ. He takes it at his own risk. He knows that he will only have to serve the unexpired portion of the term of the predecessor.

MS. AQUINO. Regardless of that, my question is: Will this provision apply likewise to that kind of a situation? In other words, I am only asking for an assurance that the safety valve applies to this situation.

MR. FOZ. The provision does take care of that situation.

MS. AQUINO. Thank you.”

On the whole, Commissioner Aquino was of the position that the prohibition on re-appointment does not include the promotion or upgrade of an incumbent commissioner to the position of chairman. What she was firm about was “an implicit intention to prohibit a term that in the aggregate will exceed more than seven years.” For her, a promotion or an upgrade was permissible for as long as the aggregate term would not exceed the seven- year limit.

Commissioner Monsod shared a similar position. Although he made a sweeping remark, a full and complete reading of his response would reveal that he was merely assuring Commissioner Aquino that there would be no chance for anybody to serve for more than seven years.

The response of Commissioner Foz bares that he did not foreclose that situation of a commissioner being upgraded to a chairman.

After the 1987 Constitution was ratified, on February 2, 1987, former President Corazon C. Aquino (President Aquino) appointed Teofisto Guingona (Guingona) as COA Chairman for a term of seven years, Bartolome Fernandez (Fernandez) as commissioner for a term of five years, and Eufemio Domingo (Domingo) as commissioner for a term of three years. When Guingona resigned to run for a senate seat, President Aquino promoted Commissioner Domingo to the position of Chairman.[7]

With due respect to Justice Velasco, I part with him with respect to his position that a commissioner cannot be promoted as chairman in case of the expiration of the term of his predecessor. My view is that such a promotion is allowable not only in case of death, disability, resignation or impeachment.

It has been argued by the petitioner that since Carague had already completed his full term, Villar's appointment was a "constitutional impossibility"[8] because granting him a fresh term of seven (7) years as Chairman would give him more than the maximum term allowed, in view of his four-year tenure as Commissioner. This, for petitioner, completely debunks Villar's assertion that he must remain as COA Chairman until 2015. A similar view was aired when it was advocated that Villar's promotion was invalid because it "was not legally feasible in the light of the 7-year aggregate rule." [9] The explanation given was that "Villar has already served 4 years of his 7-year term as COA commissioner. A shorter term, however, to comply with said rule would effectively breach the clear purpose of the Constitution of giving every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years." [10]

The undersigned finds himself unable to agree with such position for three reasons. First, it has no explicit constitutional basis. Second, in the past, commissioners were promoted to the chairmanship without any question. Third, it is unfair to an incumbent commissioner who cannot hope to be promoted in case of expiration of the term of a chairman.

The position that a commissioner cannot be promoted in case of expiration of a term of chairman has no clear and concrete constitutional basis. There is nothing at all in the subject constitutional provision which expressly or impliedly restricts the promotion of a commissioner in situations where the tenure of his predecessor is cut short by death, disability, resignation or impeachment only. Likewise, there is no express provision prohibiting a promotion in case of the expiration of the term of a predecessor. The ponencia mentioned some distinctions but they were not clear or substantial. There were no discussions about it either in the debates of the constitutional commission. What is unchallenged is the prohibition on reappointment of either a commissioner or chairman after he has served his term of office (expiration of term), or his term has been cut short by disability or resignation.

In promotions, naturally the predecessor is a chairman. In case of expiration of his term, an incumbent commissioner can be appointed. Note that in the Constitution, there is no distinction whether the predecessor is a chairman or a mere commissioner. For said reason, among others, it is my considered view that a commissioner can be promoted in case of expiration of term of the chairman.

In fact, in the past, a commissioner was promoted to chairman after the expiration of the term of his predecessor. He was Commissioner Garcia, who was promoted to succeed Chairman Carag of the COMELEC, upon the expiration of the latter's term in 1959.

Premises considered, it is my considered view that the promotion of Villar was legal but he could serve up to February 15, 2011 only because his tenure should not exceed seven (7) years.

Respectfully submitted.

[1] Rollo, pp. 12 - 13.

[2] Id. at 13.

[3] Id. at 14.

[4] 118 Phil. 1 (1963).

[5] 85 Phil. 126 (1949).

[6] Concurring Opinion of Justice Angelo Bautista in Visarra v. Miraflor, 118 Phil. 1, 13 (1963).

[7] Rollo, pp. 240 to 243 and pp. 315 to 316.

[8] Memorandum for Petitioner, rollo, p. 227.

[9] Concurring and Dissenting Opinion, dated October 7, 2011, of Mr. Justice Velasco, p. 10.

[10] Id. at 10-11.

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