

NARCISO Y. SANTIAGO, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION AND LEONARDO A. JOSE, RESPONDENTS.

G.R. No. 81467. October 27, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Resolution No. 87-554 of the Civil Service Commission, dated 28 December 1987, revoking the promotional appointment of petitioner Narciso Y. SANTIAGO, Jr., from Collector of Customs I to Collector of Customs III and directing instead the appointment of private respondent, Leonardo A. JOSE, to the same position, is sought to be reviewed and reversed herein.

On 18 November 1986, then Customs Commissioner Wigberto E. Tanada extended a permanent promotional appointment, as Customs Collector III, to petitioner SANTIAGO, Jr. That appointment was approved by the Civil Service Commission (CSC), National Capital Region Office. Prior thereto, SANTIAGO held the position of Customs Collector I.

On 26 November 1986, respondent JOSE, a Customs Collector II, filed a protest with the Merit Systems Promotion Board (the Board, for short) against SANTIAGO's promotional appointment mainly on the ground that he was next-in-rank to the position of Collector of Customs III.

Pursuant to Section 19(6) of Presidential Decree No. 807 (the Civil Service Decree), the Board referred the protest to Commissioner Tanada for appropriate action.

In reply, said official upheld SANTIAGO's promotional appointment on the grounds, among others, that: (1) the next-in-rank rule is no longer mandatory; (2) the protestee is competent and qualified for the position and such fact was not questioned by the protestant; and (3) existing law and jurisprudence give wide latitude of discretion to the appointing authority provided there is no clear showing of grave abuse of discretion or fraud.

On 29 December 1986, respondent JOSE appealed to the Board (MSB Case No. 1410), which, on 17 March 1987, decided to revoke petitioner SANTIAGO's appointment and directed that respondent JOSE be appointed in his stead.

On 15 July 1987, the Board resolved to deny SANTIAGO's Motion for Reconsideration for lack of merit.

On 28 December 1987, respondent Commission affirmed the Board Resolutions in its own Resolution No. 87-554. The Commission ruled that although both SANTIAGO and JOSE are qualified for the position of Customs Collector III, respondent JOSE has far better qualifications in terms of educational attainment, civil service eligibilities, relevant seminars and training courses taken, and holding as he does by permanent appointment a position which is higher in rank and salary range. It added that the Commission is empowered to administer and enforce the merit system as mandated by the 1973 and 1987 Constitutions and to approve all appointments, whether original or promotional, to positions in the civil service, subject to specified exceptions, pursuant to paragraphs (a) and (h), Section 9 of the Civil Service Law.

Hence, this Certiorari Petition filed by SANTIAGO.

On 10 February 1988 the Second Division issued a Temporary Restraining Order enjoining respondents from enforcing CSC Resolution No. 87-554. However, on 24 October 1988, for failure to acquire jurisdiction over the person of respondent JOSE, that Division resolved to dismiss the Petition and lifted the Temporary Restraining Order. Upon SANTIAGO's Motion for Reconsideration, the same Division allowed him a period of thirty (30) days within which to locate respondent JOSE's present address. After having been located and furnished this Court's previous Resolutions, JOSE manifested his intent to adopt in toto the Comment filed by the Solicitor General for respondent CSC.

On 4 October 1989, pursuant to an adopted policy, the Second Division referred the case to the Court en banc.

We grant reconsideration of our Order of dismissal and reinstate the Petition.

After considering the pleadings filed, the constitutional and statutory provisions invoked, the jurisprudence cited and legal arguments adduced, we are constrained to reverse.

We need only recall our previous ruling in *Taduran vs. Civil Service Commission* (L-52051, 31 July 1984, 131 SCRA 66) stating that there is "no mandatory nor peremptory requirement in the (Civil Service Law) that persons next-in-rank are entitled to preference in appointment. What it does provide is that they would be among the first to be considered for the vacancy, if qualified, and if the vacancy is not filled by promotion, the same shall be filled by transfer or other modes of appointment."

One who is next-in-rank is entitled to preferential consideration for promotion to the higher vacancy but it does not necessarily follow that he and no one else can be appointed. The rule neither grants a vested right to the holder nor imposes a ministerial duty on the appointing authority to promote such person to the next higher position. As provided for in Section 4, CSC Resolution No. 83-343:

"Section 4. An employee who holds a next-in-rank position who is deemed the most competent and qualified, possesses an appropriate civil service eligibility, and meets the other conditions for promotion shall be promoted to the higher position when it becomes vacant.

However, the appointing authority may promote an employee who is not next-in-rank but who possesses superior qualifications and competence compared to a next-in-rank employee who merely meets the minimum requirements for the position."

The former Customs Commissioner had explained the reasons behind petitioner's appointment in his reply to the Merit Systems Board, thus:

"Suffice it to state that both Jose and the protestee are customs collectors. On 31 January 1984, Jose was assigned to Panganiban, Camarines Norte, but he never assumed that position. For the past five years, there is no official record of any activity that recommends him for promotion.

"On the other hand, after the February revolution, the Protestee was immediately designated by the undersigned as Chief of a task force which has been credited with the seizure of millions of pesos worth of smuggled shipments. Each one was duly recorded, not only in the official files, but also in the media.

"For the services, the undersigned saw fit, not only to promote the Protestee but also to designate him as my special assistant.

"It may likewise be mentioned that Protestee has been the recipient of citations awarded by the Customs Commissioner for the two consecutive years 1984 and 1985, for exemplary performance of official duties, particularly investigation and prosecution. More specifically, the latest citation commends the Protestee for his

pivotal role in the seizure and forfeiture of an ocean-going vessel upheld by the Supreme Court, which constituted a first in the history of this Bureau."

The power to appoint is a matter of discretion. The appointing power has a wide latitude of choice as to who is best qualified for the position (*Ocampo vs. Subido*, L-28344, August 27, 1976, 72 SCRA 443). To apply the next-in-rank rule peremptorily would impose a rigid formula on the appointing power contrary to the policy of the law that among those qualified and eligible, the appointing authority is granted discretion and prerogative of choice of the one he deems fit for appointment (*Pineda vs. Claudio*, L-29661, May 13, 1969, 28 SCRA 34).

The case of *Meram vs. Edralin* (L-71228, September 24, 1987, 154 SCRA 238) is inapplicable to the factual situation herein. In said case, we affirmed the appointment of the next-in-rank because the original appointee's appointment was made in consideration of political, ethnic, religious or blood ties totally against the very purpose behind the establishment of professionalism in the civil service.

True, the Commission is empowered to approve all appointments, whether original or promotional, to positions in the civil service and disapprove those where the appointees do not possess the appropriate eligibility or required qualification (paragraph (h), Section 9, P.D. No. 807). However, consistent with our ruling in *Luego vs. CSC* (L-69137, 5 August 1986, 143 SCRA 327), "all the commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment is approved; if not, it is disapproved. No other criterion is permitted by law to be employed by the Commission when it acts on, or as the decree says, "approves" or "disapproves" an appointment made by the proper authorities. x x x To be sure, it has no authority to revoke the said appointment simply because it believed that the private respondent was better qualified for that would have constituted an encroachment on the discretion vested solely (in the appointing authority)."

All told, we fail to see any reason to disturb SANTIAGO's promotional appointment. The minimum qualifications and the standard of merit and fitness have been adequately satisfied as found by the appointing authority. The latter has not been convincingly shown to have committed any grave abuse of discretion.

Having arrived at the foregoing conclusion, we find no necessity to delve into the other issues raised.

WHEREFORE, Resolution No. 87-554 of the Civil Service Commission is SET ASIDE and petitioner's promotional appointment as Customs Collector III is hereby UPHELD. The Temporary Restraining Order heretofore issued, enjoining respondents from enforcing CSC Resolution No. 87-554, is hereby made permanent.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Padilla, J., no part, related to petitioner's lead counsel.

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