

HONORATO M. FRUTO, PETITIONER, VS. HONORABLE RAINERO O. REYES, SECRETARY, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND LINA L. ESTRADA, REGIONAL DIRECTOR, NATIONAL CAPITAL...

G.R. No. 82304. November 29, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, a dismissed employee of the Department of Transportation and Communications, asks for reinstatement in this petition for certiorari. The facts are beyond dispute.

The petitioner was employed way back in 1950 in the Motor Vehicles Office, of the defunct Land Transportation Commission (LTC), as a Chauffeur Examiner. Ten years later, he was promoted to the position of Driver Examiner, and later, Motor Vehicle Inspector. In 1971, he was named Registrar, of the Commission.

On November 1, 1979, Mariano Santiago, the Director of the Bureau of Land Transportation (BLT), promulgated Office Order No. 18 relieving the petitioner from his post and assigning him under himself (Santiago) directly.

On May 5, 1980, Jose Villaspin, acting National Capital Regional Director, issued Regional Office Order No. 11, assigning the petitioner to the Committee on Computation and Consolidation (of monthly reports) under a certain Cesar Moran.

As a result of his relief (as Registrar) and successive assignments thereafter, the petitioner, together with another similarly situated, went to the Merit Systems Board on a complaint for illegal separation.

On July 8, 1981, the Board rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, it is directed that the complainants be appointed to same or similar position they occupied in the defunct Land Transportation Commission or to any equivalent position, in the Bureau of Land Transportation.

SO ORDERED.[1]

A copy of the decision was received by the BLT on July 8, 1981.[2] On July 29, 1981,[3] or twenty-one days later, the Bureau filed a motion for reconsideration. Based thereon, the Merit Systems Board reversed itself and dismissed the petitioner's complaint. The only issue is whether or not the petitioner's dismissal is valid.

The petition is impressed with merit.

The decision of the Merit Systems Board, rendered on July 8, 1981, ordering the petitioner's reinstatement, and declaring his separation invalid, had achieved a character of finality, and hence, open to no more reconsideration. The reconsidered "decision" of May 17, 1985 is accordingly, null, void, and of no force or effect.

It should be noted that in its decision of July 8, 1981, the Board categorically held:

xxx xxx xxx

On the basis of the facts culled from the records, we cannot gainsay the claim of the complainants that their reassignment is unjustified and not in the interest of the service. What made matters even worse is that complainants were not issued appointments to any position in the reorganized Bureau of Land Transportation. This lends credence to complainant's claim that their relief as Registrars is a prelude to "further unwarranted acts" against them. Indeed, it does not appear that the separation of complainants as a result of reorganization was made in accordance with Memorandum Circular No. 650 of the Office of the President which provides in part:

"To effectively implement the provisions on placement of personnel of the Integrated Reorganization Plan or modifications thereof and the Letters of Implementation issued pursuant thereto, and to insure compliance with the Memorandum circular of this Office dated June 30, 1973, in the selection of personnel, the following guidelines are hereby prescribed for the guidance of all concerned:

I. The priorities for placement shall be in the following order:

(1) Permanent employees presently occupying positions with the same or comparable titles and duties and responsibilities as those in the approved staffing patterns, provided that in cases where the number of positions exceed those in the approved staffing pattern, the incumbents shall be compared in terms of relative fitness and the most qualified shall be preferred."

Considering that the complainants were not facing any administrative case nor has either of them been the subject of any administrative proceedings, they should have been appointed to the same positions they occupied prior to reorganization if re-created, or if not, to any equivalent positions.[4]

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It comes as a surprise, therefore, for the Board to overturn itself by mere reason, as follows:

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During the hearings, neither Fruto nor his counsel appeared despite repeated notices and a warning, thus, upon motion of the counsel for BLT, the Board in an Order dated February 14, 1983, considered the case of Fruto submitted for decision.[5]

xxx xxx xxx

If the petitioner had been remiss--although his inaction was arguably justified, because the main decision had become final--in respecting the "jurisdiction" of the Board at the hearing for reconsideration, it, the Board, had been even more guilty because it had no jurisdiction to begin with.

The Board can not legitimately take cognizance of the fact that:

x x x Evidence adduced by BLT showed that on January 3, 1979, Fruto was administratively charged with violation of COA Rules and Regulations; that in a Memorandum dated March 12, 1979, he was relieved of his duties as Registrar of La Loma Agency for failure to submit the abstract of collections for the month of May, 1979. Evidence likewise shows that on October 1, 1980, Fruto was charged with Gross Dishonesty, Violation of Office Rules and Regulations, and Conduct Prejudicial to the Best Interest of the Service. Another administrative complaint dated August 1, 1980 for Dishonesty (Estafa) and Immorality was filed against him by Atty. Pedro F. Martinez together with a criminal complaint filed with the Tanodbayan and Quezon City Fiscal's Office based on the same charge.[6]

It is evidence that failed to stand scrutiny in the main decision; it is thus proof that can not be accepted upon a

mere motion for reconsideration.

The Court is indeed distressed with the Board's mercurial stances. After absolving the petitioner, it can not logically reverse itself by saying that the petitioner was guilty, based on the same evidence it had rejected in its first decision. This is simple "flip-flopping", or worse, plain "flipping".

There is no merit in the Solicitor General's claims that since the proceedings before the Merit System Board's were "purely administrative,"[7] which does not allegedly deter a motion for reconsideration filed beyond the fifteen-day period. For under:

SEC. 39. Appeals.--(a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

(b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; or (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained.[8]

Appeals to "equity" are equally unavailing. Our rules of procedure, although impressed with the character of law, are also based on equity, in this case, the need for an end, one way or another, to litigation. It would be a mockery of equity if BLT's motion for reconsideration were still entertained after a belated filing.

The case of *Siguenza v. Court of Appeals*[9] does not have application. In that case, equity was clearly on the side of the appellant, first, "since on its face the appeal appears to be impressed with merit,"[10] and second, "we have already promulgated a resolution in the related case of *Bert Osmeña & Associates v. Court of Appeals* (G.R. No. 50545, January 28, 1983, 120 SCRA 395), ordering the petitioner's co-defendants, Bert Osmeña and Associates to pay the respondents the appropriate amounts due them."[11]

The petitioner therefor had valid reasons to ignore the hearing (on the motion for reconsideration) before the Board because clearly, it had lost its jurisdiction. The fact that he failed to act upon learning that proceedings were being reopened is no point against him because his inaction can not alter the nagging fact that the Board had no more authority to act.

Memorandum Circular No. 35, "ENJOINING STRICT OBSERVANCE [OF MEMORANDUM CIRCULAR 163 DATED MARCH 5, 1968] PARTICULARLY ON THE HIRING OR REAPPOINTMENT OF RETIRED GOVERNMENT PENSIONER OR ANNUITANT" has no application to this case. The circular refers to re-appointment or re-employment of retired government personnel. The petitioner can not, however, be considered as a candidate for either re-appointment or re-employment because he had neither retired nor resigned. He was illegally dismissed; hence, he can not be said to have severed his relations with the BLT. And at the age of sixty-two, he is still fit to be in the service.

WHEREFORE, the petitioner is REINSTATED to his former or equivalent post. He is also AWARDED backwages based on the latest payroll for the office of Registrar, Land Transportation Office, equivalent to three years with no qualification or deduction.

SO ORDERED.

Paras, (Acting Chairman) and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

Padilla, J., No part; related to respondent Secretary.

[1] Rollo, 35.

[2] Id., 98, 134.

[3] Id.

[4] Id., 64-65.

[5] Id., 94.

[6] Id., 95.

[7] Id., 134.

[8] Pres. Decree No. 807, sec. 39.

[9] No. L-44050, July 16, 1985, 137 SCRA 570.

[10] Supra, 576.

[11] Supra, 577.

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