

PERFECTO ESPAÑOL, PETITIONER, VS. THE HON. CIVIL SERVICE COMMISSION, HON. FEDERICO N. ALDAY, JR., IN HIS CAPACITY AS ADMINISTRATOR, NATIONAL IRRIGATION ADMINISTRATION, AND ORLAN...

G.R. No. 85479. March 03, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

In this special civil action for certiorari, petitioner seeks the reversal of Resolution No. 88-755,[1] issued by public respondent Civil Service Commission on September 21, 1988 in MSPB Case No. 1564, which reversed the decision of the Merit Systems Protection Board and confirmed the appointment of private respondent Orlando L. Bulseco.

In September, 1986, the position of Regional Manager of the National Irrigation Administration, Regional Office No. 2, Cauayan, Isabela, became vacant. At that time, petitioner Perfecto Español was Chief of the Engineering Division, while private respondent Orlando L. Bulseco was Chief Design Engineer. In the organizational chart of the National Irrigation Administration (NIA), the position of Chief Design Engineer is below the Chief of the Engineering Division, and the latter is considered next-in-rank to the position of Regional Manager.

Private respondent Bulseco was appointed to the vacant position of Regional Manager effective October 1, 1986, pursuant to Resolution No. 5302-86 which was passed by the Board of Directors of NIA. As a consequence, petitioner Español filed a letter protest[2] with the Merit Systems Protection Board (MSPB), alleging that petitioner is the employee next-in-rank to the position of Regional Manager and, as such, he has promotional priority over Bulseco. MSPB referred the protest to the NIA Administrator for appropriate action. The protest was dismissed by the NIA Administrator for lack of merit on the ground that "in the evaluation conducted, Mr. Bulseco has advantage over Mr. Español on the factors of performance and potential." [3]

Petitioner appealed the dismissal of his protest to the MSPB. As a result of the evaluation made on the qualifications of Español and Bulseco, taking into consideration such factors as educational attainment, experience, eligibility and training, the MSPB ruled that the individual qualifications of the contestants exceed the qualification requirements, especially those of respondent Bulseco. However, by virtue of petitioner's ranking in the organizational chart of NIA and pursuant to the provisions of Sections 2 and 4 of Resolution No. 83-343 (Rules on Promotion) of the Civil Service Commission, the MSPB "directed that Engr. Perfecto C. Español be appointed instead to the position of Regional Manager, NIA Regional Office No. 2." [4]

Thereafter, respondent Bulseco appealed to the Civil Service Commission (CSC). In reversing the decision of the MSPB, thereby sustaining the appointment of private respondent, the CSC held in its Resolution No. 88-755 of September 21, 1988 that:

"x x x the Commission finds that prior to Bulseco's appointment as Regional Manager of NIA, Region 2, he

was appointed Project Manager of the Chico River Project in Tabuk, Kalinga-Apayao under a permanent status in September, 1979. Notably, the position is of job level 22, as compared to that of a Division Manager (level 20) and Regional Manager (level 23). At that time protestant Español was already a Chief Regional Engineer (now Division Manager) of Region 2, a position with job level 20. However, in that same year Bulseco accepted an offer for a position of Irrigation Consultant in Indonesia, prompting him to resign from his position as Project Manager. When Bulseco came back from abroad in 1981, he was offered the only available position of Chief Design Engineer of NIA, Region 2. This is a clear demotion but he accepted the same with an assurance from the NIA Administrator that he would soon be promoted to a higher position in the Region. Shortly thereafter, or on October 8, 1981, he was assigned as Acting Provincial Irrigation Manager (PIM) for the province of Cagayan. This position is of a job level 20. On October 16, 1983, he was designated Coordinator of the 'National Irrigation Systems Improvement Project' (NISIP), a foreign-assisted project, at Abulug-Apayao. This position is again of job level 20.

"Thus we find merit as to Español's contention that Bulseco was under him because insofar as actual plantilla position is concerned, the position of Bulseco is still Chief Design Engineer, a position really under Español. However, Bulseco, because of his designations, performed the duties and functions appurtenant to that of PIM and Coordinator of NISIP which positions are of equal and next-in-rank, respectively, to the contested position. So that prior to his appointment to the contested position, he was actually the Coordinator of NISIP.

"On the other hand, the Organizational Chart of NIA shows that there are six (6) next-in-rank positions to the contested position of Regional Manager and that, all these are held by other employees, including Mr. Español.

"On the third ground, we take notice (of) that portion of the MSPB decision which states:

'From the above comparative data, it is evident that both contestants meet the qualification requirements for the position. In fact their individual qualifications exceed those requirements especially that (sic) of Engr. Bulseco.'

Without further delving into the detailed comparative qualifications of the contestants, the Commission considers this an indication or an admission that Engr. Bulseco indeed possesses superior qualifications than Español, not discounting his relevant experience abroad. It is shown, however, that the MSPB accorded more weight to the finding that Español is the one next-in-rank to the contested position and pursuant to Section 4 of CSC Resolution No. 83-343, which states:

'Section 4. An employee who holds a next-in-rank position who is deemed the most competent and qualified x x x shall be promoted to the position when it becomes vacant.'

Español has an edge and promotional priority over Engr. Bulseco. But granting arguendo that Bulseco is not really the person next-in-rank, the MSPB seems to have missed the second paragraph of the same section which provides:

'However, the appointing authority may promote an employee who is not next-in-rank but, who possesses superior qualification and competence compared to a next-in-rank x x x.'

This Commission, in several occasions, resolved the issue in favor of employees who were not next-in-rank but were promoted to the contested position. In the case of Corpuz vs. Lopez, Jr., March 1, 1982, the then Commission ruled that:

'Although both may be considered for promotion and that the next-in-rank should be given preference for promotion, the appointing authority may appoint an employee who is not next-in-rank so as to choose only the most competent and best qualified for the position.'

x x x

"WHEREFORE, foregoing premises considered, this Commission resolved to find as it hereby finds the

appeal meritorious. Accordingly, the decision of MSPB dated April 14, 1988 is therefore set aside and the appointment of Orlando L. Bulseco as Regional Manager, Cauayan, Isabela, is thus confirmed."[5]

Hence, this petition.

At the outset, we affirm the fact that the CSC acted correctly in reversing the decision of the MSPB and in confirming the appointment of private respondent Bulseco as Regional Manager. We shall here rule on the merits of the petition of Español who insists that the MSPB did not err in setting aside the appointment made by the NIA Administrator.

Section 19, paragraph 6, Article VIII of Presidential Decree No. 807 defines a qualified next-in-rank as an employee appointed on a permanent basis to a position previously determined to be next-in-rank to the vacancy proposed to be filled and who meets the requisites for appointment thereto as previously determined by the appointing authority and approved by the respondent commission.

Pursuant to the provisions of Section 9(b) and Section 19 of Presidential Decree No. 807, the CSC promulgated Resolution No. 83-343 (Rules on Promotion), Sections 2 and 4 of which provide:

"Section 2. Whenever a position in the first level becomes vacant, the employees in the ministry or agency who occupy positions deemed to be next-in-rank to the vacancy, shall be considered for promotion. In the second level, those employees in the government service who occupy next-in-rank position shall be considered for promotion to the vacancy."

"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 requirements for the position."[6]

Petitioner contends that on the basis of the organizational chart[7] of the NIA, he is considered as next-in-rank to the contested position and, therefore, he has a promotional priority over respondent Bulseco. He likewise claims that assuming that the second paragraph of Section 4 of Resolution No. 83-343 provides an exception to the next-in-rank rule, the same shall apply only when the person who is next-in-rank merely meets the minimum requirements, but not where, as in the case of herein petitioner, the qualifications of the next-in-rank far exceed the requirements for appointment to the contested position. In other words, petitioner is of the opinion that one who is not next-in-rank may be promoted only if the next-in-rank merely meets the minimum requirements for the position. However, where the qualifications of the next-in-rank exceeds the minimum requirements, it is mandatory that the next-in-rank be promoted to the position.

The contention is devoid of merit.

Fundamental is the rule that appointment is an essentially discretionary power and must be performed by the officer in whom it is vested according to his best lights, the only condition being that the appointee shall possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.[8]

Consequently, it was further held that where respondent commission has acknowledged that both the petitioner and the private respondent were qualified for the contested position, that recognition alone rendered it *functus officio* in the case and prevented it from acting further thereon except to affirm the validity of the appointment

made by the head of the office.

In the case at bar, there is no dispute that both petitioner Español and private respondent Bulseco exceed the qualification standards for appointment to the position of Regional Manager. It is likewise not denied that, as originally found by the Administrator, respondent Bulseco is more qualified than petitioner. The fact alone that both contestants meet the minimum qualifications required by law should have restrained MSPB from acting on, much less in granting, the appeal of herein petitioner except, of course, to affirm the appointment of private respondent. Unfortunately, the MSPB opted to disregard the choice made by the appointing authority and appointed herein petitioner instead, invoking therein the next-in-rank rule provided for under Section 19 of Presidential Decree No. 807, as well as Sections 2 and 4 of CSC Resolution No. 83-343.

In the case of *Taduran vs. Civil Service Commission, et al.*,^[9] this Court had the opportunity to pass upon the extent of the applicability of the next-in-rank rule. The pertinent provisions of Presidential Decree No. 807 state:

"Sec. 19. Recruitment and Selection of Employees. ?

x x x

(3) When a vacancy occurs in a position in the second level of the Career Service as defined in Section 7, the employees in the government service who occupy the next lower positions in the occupational group under which the vacant position is classified and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil service eligibility shall be considered for promotion.

x x x

(5) If the vacancy is not filled by promotion as provided herein the same shall be filled by transfer of present employees in the government service, by reinstatement, by re--employment of persons separated through reduction in force, or by appointment of persons with the civil service eligibility appropriate to the positions.

x x x

(6) A qualified next-in-rank employee shall have the right to appeal initially to the department head and finally to the Office of the President an appointment made (1) in favor of another next-in-rank employee who is not qualified, or (2) in favor of one who is not next-in-rank, or (3) in favor of one who is appointed by transfer and not next--in-rank, or by reinstatement, or by original appointment if the employee making the appeal is not satisfied with the written special reason or reasons given by the appointing authority for such appointment: x x x."

which *Taduran* interpreted in this wise:

"We find no mandatory nor peremptory requirement in the foregoing provision 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. x x x."

In *Medenilla vs. Civil Service Commission, et al.*,^[10] this Court went further by holding that the next-in-rank rule may be disregarded even in case of promotions. Thus:

"x x x We have already held in cases subsequent to *Millares* that the next-in-rank rule is not absolute; it only applies in cases of promotions x x x. And even in promotions, it can be disregarded for sound reasons made known to the next-in-rank. The appointing authority, under the Civil Service Law, is allowed to fill vacancies by promotion, transfer of present employees, reinstatement, reemployment, and appointment of outsiders who have appropriate civil service eligibility, not necessarily in that order. x x x There is no legal fiat that a vacancy must be filled only by promotion; the appointing authority is given wide discretion to fill a vacancy from

among the several alternatives provided for by law."

In a recent case,[11] we noted further "that even if the vacancy here had been filled by promotion rather than by lateral transfer, the concept of 'next in rank' does not import any mandatory or peremptory requirement that the person next in rank must be appointed to the vacancy. What Section 19(3) of P.D. No. 807, the Civil Service Law, provides is that if a vacancy is filled by a promotion, the person holding the position next in rank thereto 'shall be considered for promotion.'"

The rationale advanced for the limitation imposed on the next-in-rank rule is because 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. Hence, 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.[12]

Time and again we have held on to the principle that the determination of who among several candidates for a vacant position has the best qualifications is vested in the sound discretion of the department head or appointing authority and not in the Civil Service Commission. Every particular job in an office calls for both formal and informal qualifications. Formal qualifications such as age, number of academic units in a certain course, seminars attended, and so forth, may be valuable but so are such intangibles as resourcefulness, team spirit, courtesy, initiative, loyalty, ambition, prospects for the future, and best interests of the service. Given the demands of a certain job, who can do it best should be left to the head of the office concerned provided the legal requirements for the office are satisfied. The Civil Service Commission cannot substitute its judgment for that of the head of office in this regard.[13]

Elucidating further, we held in *Abila vs. Civil Service Commission, et al.*, supra, that "(t)he head of the office is the person on the spot. He occupies the ideal vantage point from which to identify and designate the individual who can best fill the post and discharge its functions in the government agency he heads. The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function."

We deem it necessary, under the circumstances herein obtaining, to declare that Section 4 of CSC Resolution No. 83-343 has been superseded by Section 2 of Rule 3 of CSC Resolution No. 89-799 which reads:

"Section 2. Positions in the Second Level. - When a vacancy occurs in the second level of the career service as herein defined, the employees in the department who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups, who are competent and qualified and with appropriate civil service eligibility shall be considered for appointment to the vacancy."

In the aforesaid case of *Abila*, we made a categorical pronouncement that "(w)hen, in the exercise of its rule-making power, it promulgated Section 4 of its earlier Resolution No. 83-343, the Commission clearly exceeded the scope of its statutory authority since the Civil Service Law itself, in Section 19(3) of P.D. No. 807, had simply provided that persons next in rank who are qualified 'shall be considered for promotion.' The current regulation found in Section 2 of Rule III of the Commission's Resolution No. 89-779 is, fortunately, more consistent with the Commission's enabling statute."

Parenthetically, anent the observation of respondent commission and private respondent that Section 19 (6) of Presidential Decree No. 807 has been repealed by Section 8 of Presidential Decree No. 1409, suffice it to say that

it is the power of review by the President, not the next-in-rank rule, which has been repealed by the latter decree.

FOR ALL THE FOREGOING CONSIDERATIONS, no abuse of discretion being imputable to public respondents in this case, the petition at bar is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Davide, Jr., Romero, and Nocon, JJ., concur.

[1] Annex D, Petition; Rollo, 36.

[2] Annex B, id.,; ibid., 28.

[3] Comment for Public Respondent, 4; Ibid., 74.

[4] Annex C, id.; ibid., 54.

[5] Annex D, id.; ibid., 57.

[6] Comment of Public Respondent, 10; ibid., 80.

[7] Annex E, Petition; ibid., 62.

[8] *Luego vs. Civil Service Commission, et al.*, 143 SCRA 327 (1986); *Patagoc vs. Civil Service Commission, et al.*, 185 SCRA 411 (1990); *Lapinid vs. Civil Ser-vice Commission, et al.*, G.R. No. 96298, May 14, 1991.

[9] 131 SCRA 66 (1984).

[10] 194 SCRA 278 (1991).

[11] *Abila vs. Civil Service Commission, et, al.*, G.R. No. 92573, June 3, 1991.

[12] *Santiago, Jr. vs. Civil Service Commission, et. al.*, 178 SCRA 733 (1989).

[13] *Gaspar vs. Court of Appeals, et al.*, 190 SCRA 774 (1990); *Chang vs. Civil Service Commission, et al.*, 191 SCRA 663 (1990).

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