

JOSE CESAR D. SIMPAO, PETITIONER, VS. CIVIL SERVICE COMMISSION, BUREAU OF INTERNAL REVENUE, AND RAUL DE OCERA, RESPONDENTS.

G.R. No. 85976. November 15, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for Certiorari with Urgent Prayer for the Issuance of a Temporary Restraining Order to annul the resolutions[1] of the respondent Civil Service Commission in CSC Case No. 31, entitled “RE: DE OCERA, RAUL B., Appellant”, the first dated September 27, 1988, and the second dated November 24, 1988, for having been issued with grave abuse of discretion amounting to lack of jurisdiction and in gross violation of the right of petitioner to due process.

The undisputed facts are as follows:

On November 1, 1987, petitioner Jose Cesar D. Simpao was appointed Supervising Revenue Enforcement Officer of the Bureau of Internal Revenue (BIR), pursuant to the reorganization of the BIR under Executive Order No. 127 dated January 20, 1987. The appointment was actually a reappointment because prior to the reorganization Simpao was holding the same position of Supervising Revenue Enforcement Officer assigned to the Manufacturing Division I by virtue of Revenue Travel Assignment Order No. 166-87 (Rollo, p. 73).

On April 28, 1988, private respondent Raul de Ocera filed his protest contesting the appointment of petitioner Jose Cesar D. Simpao as Supervising Revenue Enforcement Officer on the ground that he has better qualifications and is more competent than Simpao (Rollo, p. 53; Comment, p. 1).

Evaluating the protest, Assistant Commissioner of the BIR, Fortunato Aguas, Section Operations Officer, made the following comment on May 10, 1988:

“In connection with the subject protest, I would like to state for the record that the Protestee meets the standard of competence and integrity as will be shown by his performance and his spotless records as a revenue man. A consistent outstanding achiever in terms of assessment and collection for the last two years, he is superior to Protestant, who has alternately posted on a ‘satisfactory’ or ‘very satisfactory’ adjectival rating during the same period.

“Similarly, my evaluation on the parties as to the moral fitness relevant to the contested position discloses that the Protestee has an edge because he has not been linked to any anomaly, irregularity, a fact which cannot be conceded to the Protestant.

“In sum it is my considered view that between the herein contending parties, it is the Protestee who can better give substance and dignity to the position, hence, more deserving than Protestant.

“Accordingly, it is respectfully recommended that the protest be dismissed for lack of merit.” (Rollo, p. 25; Petition; Annex “C”).

On May 24, 1988, the Bureau of Internal Revenue-Reorganization Appeals Board (BIR-RAB) rendered its decision against Ocera (Rollo, p. 54; Comment, p. 2).

On May 26, 1988, Ocera appealed to the Civil Service Commission. Simpao was never notified by the former of the appeal. Neither did the respondent Commission give any notice thereof to Simpao (Rollo, p. 6; Petition). He came to know of it only when the questioned resolution of September 27, 1988 was promulgated, the dispositive portion of which reads as follows:

“In view thereof, Mr. Simpao’s appointment as Supervising Revenue Enforcement Officer is deemed revoked. Appellant De Ocera should be appointed thereto instead and appellee Simpao be considered to the Sr. Revenue Enforcement Officer position vacated by appellant. The BIR Commissioner is hereby directed to immediately issue to herein contestants their respective appointments, in accordance with the new staffing pattern of the Bureau.” (Rollo, p. 20; Petition; Annex “A”, p. 3).

On October 17, 1988, Simpao filed with the respondent Commission a Motion for Reconsideration with Urgent Prayer to Stay Execution (Rollo, p. 26; Petition; Annex “D”). In its resolution of November 24, 1988, the CSC found no cogent reason to warrant reversal and denied reconsideration (Rollo, p. 75).

Hence, this petition for certiorari based on the following grounds:

I

Having itself found that the petitioner is in possession of the basic and minimum qualifications for the position (under the reorganization plan) of Supervising Revenue Enforcement Officer, the respondent Commission gravely abused its discretion when it nullified petitioner’s appointment thereto in palpable disregard of long established jurisprudence that in such cases the discretionary choice of the appointing power cannot be supplanted by that of the Civil Service Commission.

II

The grave abuse of discretion of the respondent Commission is underscored by the fact that the petitioner, more than having the minimum qualifications for the position, has been found by the BIR Personnel Evaluator to be more competent, more qualified and more deserving than private respondent De Ocera, and yet the Commission without any justifiable reason disregarded this finding and, instead, resorted to a distorted application of the Rules on Government Reorganization to come out with the baseless conclusion that respondent De Ocera has a ‘preferential right of appointment.’

III

The respondent Commission denied petitioner’s right to due process and compounding the violation of constitutional rights, brushed aside without discussion the petitioner’s motion for reconsideration wherein it precisely raised the issue of violation of the due process clause. (Rollo, p. 7; Petition, p. 6).

On December 28, 1988, the Court En Banc issued a Temporary Restraining Order enjoining the implementation and execution of the questioned CSC Resolutions dated September 27, 1988 and November 24, 1988 (Rollo, p. 50).

In the resolution of July 25, 1989, the Court considered the comment as answer and required the parties to file their respective memoranda (Rollo, p. 104). Petitioner and respondent having adopted their respective pleadings as their memoranda, this case was calendared for deliberation in the resolution of April 24, 1990 (Rollo, p. 122).

The claim of Simpao that he was deprived of his right to due process has been cured by his filing of a Motion for

Reconsideration subsequently upon having learned of the questioned resolution of September 27, 1988. In the case of *Sumadchat v. Court of Appeals*, January 30, 1982, 111 SCRA 501; this Court held that “in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard x x x.” (*Bermejo v. Barrios*, L-23614; *Camorin v. Barrios*, L-23615, February 27, 1980, 31 SCRA 764, 775-776 cited in *Corjeo v. Secretary of Justice*, June 28, 1974, 57 SCRA 663). “Absence of previous notice is not itself a substantial defect; what the law abhors is the lack of opportunity to be heard x x x.” (*Manuel v. Viilalena, et al.*, L-28218, February 27, 1970, 37 SCRA 745, 751).

The records disclose that petitioner moved for reconsideration of the CSC decision. In the case of *Dominador L. Galura v. Civil Service Commission, et al.*, G.R. No. 85812, June 1, 1989, En Banc, Minute Resolution, this Court held that “a Motion for Reconsideration constitutes sufficient opportunity for the party who feels aggrieved to inform the tribunal concerned of his side in the controversy (*Maglasang v. Ople*, 63 SCRA 508 [1975]; *Dormitorio v. Fernandez*, 72 SCRA 388 [1976]; *Sumadchat v. Court of Appeals*, 111 SCRA 488 [1982]).”

However, there is merit in *Simpao*’s contention that the Civil Service Commission had committed grave abuse of discretion in nullifying his appointment. On all fours with the case at bar, is the ruling of this Court in the case of *Pintor v. Tan*, G.R. No. 84022, March 9, 1989, which is as follows:

“Appointment is an essentially discretionary power and must be exercised by the officer in which it is vested according to his best lights, the fundamental requisite being that the appointee must possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there is another better qualified who should have appointed instead. Whom to appoint among those who possess the required qualifications is a ‘political’ or administrative question involving considerations of wisdom and the interests of the service which only the appointing authority can decide (*Zulueta vs. Mamangun, et al.*, G.R. No. 85941, June 15, 1989; *Luego v. CSC*, 143 SCRA 327 [1986]; *Torres vs. Borja*, 56 SCRA 47 [1974]; *Meralco Securities Corp. vs. Savellano*, 117 SCRA 804 [1982]). There is no question that both respondent Santiago and petitioner Pintor possessed the qualifications specified for the position involved. That being so, the head of the office, the Commissioner of Internal Revenue, must be accorded ample leeway in choosing the person he regards as most suited for the position and whose appointment is, in his judgment, called for by the best interests of the service (Cited in *Dominador L. Galura vs. CSC*, G.R. No. 85812, June 1, 1989) (Underscoring supplied).

Again, in *Central Bank of the Philippines, et al. v. Civil Service Commission, et al.*, G.R. Nos. 80455--56, April 10, 1989, this Court held:

“x x x It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Laws (*Luego vs. CSC*, 143 SCRA 327, 331 [1986]). The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law.” (Cited in *Lourdes R. Zulueta vs. Marina O. Mamangun, et al.*, G.R. No. 85941, June 15, 1989 and *Dominador L. Galura vs. CSC, et al.*, G.R. No. 85812, June 1, 1989, En Banc, Minute Resolution).

In the case at bar, there is no question that *Simpao* possesses the qualifications required for the contested position. The appointing authority had exercised its discretion and had chosen its appointee fully cognizant of the respective positions previously held by the rival candidates. The comment of the Assistant Commissioner, Section Operations Officer is strongly indicative of the determination made by the appointing officer of the one most suited for the position from among the competing candidates, based on standards of competence and integrity and

as required by the interest of the service. The right of choice having been exercised, it cannot now be faulted on the ground that there is another better qualified. Respondent Commission cannot substitute its will for that of the appointing authority. In revoking the appointment thus made, it had encroached on the discretion vested in the latter (*Central Bank, et al. v. CSC, et al.*, supra; *Luego v. CSC*, No. 69137, August 5, 1986, 143 SCRA 327).

PREMISES CONSIDERED, (1) the Resolutions of the Civil Service Commission dated September 27, 1988 and November 24, 1988 are hereby SET ASIDE; (2) respondent Civil Service Commission is hereby DIRECTED to attest the appointment of petitioner Jose Cesar D. Simpao as Supervising Revenue Enforcement Officer; and (3) the temporary restraining order issued on December 28, 1988 is hereby MADE permanent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.
Feliciano, J., on leave.

[1] Penned by Patricia Sto. Tomas, Chairman, concurred in by Sanilo N. Barlongay and Marto D. Yango.

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