

NENITA E. DELA CRUZ, PETITIONER, VS. THE HONORABLE CIVIL SERVICE COMMISSION AND CYNTHIA C. CRUZ, RESPONDENTS.

G.R. No. 88333. December 02, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari assailing the decision of respondent Civil Service Commission dated May 13, 1989, reversing the decision of the Department of Science and Technology Reorganization Appeals Board dated March 24, 1988, for having been rendered with grave abuse of discretion. The dispositive portion of the questioned decision reads:

"Wherefore, foregoing premises considered, the Commission resolved to find as it hereby finds the appeal meritorious. The position of International Science Relations Officer IV should be given to Cynthia Cruz and the Information (sic) Science Relations Officer III position to Nenita dela Cruz."

The antecedent facts of the case are as follows:

The National Science and Technology Institute, including its agencies, was reorganized into the Department of Science and Technology (DOST, for short), pursuant to Executive Order No. 128 issued on January 30, 1987. Several positions were thereby created and declared vacant, among them the positions to which herein petitioner and private respondent were appointed. Petitioner Nenita dela Cruz was promoted and appointed to the position of International Science Relations Officer IV (ISRO IV), while private respondent Cynthia Cruz was promoted and appointed to the position of International Science Relations Officer III (ISRO III). These ISRO positions were intended primarily for the Typhoon Committee Secretariat (TCS, for short), a unit of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA, for short).

Prior to their respective promotional appointments, petitioner held the position of Meteorological Aide [Rank 2] with an annual salary of P14,532, while private respondent held the position of Feature Writer [Rank 11], with an annual salary of P30,636, both likewise under PAGASA.

Private respondent Cruz neither accepted nor rejected her appointment. Instead, she contested the appointment of petitioner dela Cruz before the DOST Reorganization Appeals Board (Appeals board, for short). She argued that she is higher in rank than petitioner, and should therefore have been the one appointed to the position of ISRO IV under civil service rules and regulations.

The contested position, ISRO IV [Rank 13], carries with it an annual salary of P39,216, and is under the Public Information and International Affairs Staff (PIIAS, for short), Office of the PAGASA Director [not PAGASA - International Science Relations Division, Special Projects Service, as erroneously stated in the decision of the DOST Reorganization Appeals Board, p. 83 Rollo]. The qualification requirements therefor are the following:

"1. Education and experience - B.S. degree in any of the sciences supplemented by at least 10 units of graduate academic studies with two (2) years experience of demonstrated ability to carry out a program aimed at

promoting international scientific cooperation.

2. Civil Service Eligibility - relevant Second Level Eligibility; Career Service (Professional)" [Rollo, p. 28]

The contestants have the following qualifications:

"PETITIONER NENITA DELA CRUZ:

(a) Performance for the last two (2) years:

No performance rating issued by PAGASA

(b) Education:

B.S.C. Accounting

(c) Work Experience:

Weather Observer Aide (Contractual, PAGASA)

Weather Observer (Contractual, PAGASA)

Senior Weather Observer (Permanent, PAGASA)

(d) Training (in-service):

Meteorological Observer Training Course

Pre-membership Education Course

Basic Supervision Training Course

Word Processing and Spreadsheets Course

(e) Civil Service Eligibility:

Career Service (Professional); Career Service (Sub-Professional); Meteorological Observer (u)

PRIVATE RESPONDENT CYNTHIA CRUZ:

(a) Performance for the last two (2) years:

No performance rating issued by PAGASA

(b) Education:

A. B. English

(c) Work Experience:

Secretary (Permanent, PAGASA)

Supervising Information Officer I (Permanent, PAGASA)

(d) Training (in-service)

Meteorological Observer Training Course

Seminar on Security

Seminar-Workshop on Records Management

Cultural Development Course for Executives
Effective Communication Seminar-Workshop
Graphic Arts/Announcer and Radio Production
Technique
Computer Training Course
Basic Supervisory Management Course

(e) Civil Service Eligibility:

Stenographer; First Grade" (p. 29, Rollo)

It is evident from the foregoing that both petitioner and private respondent are qualified for appointment to the contested position.

Nevertheless, private respondent maintained during the proceedings before the Appeals Board that in effect, she is more entitled to the contested position because the latter and her currently held item of Feature Writer are under the same unit of PAGASA, and are in the same hierarchy line of positions. In contrast, petitioner holds a technical position under another unit of PAGASA, which item is eleven (11) ranks lower than private respondent's position. Therefore, private respondent concludes, she, and not petitioner, should have been the logical choice for appointment to the contested position.

The Appeals Board disregarded the foregoing argument, and noted that:

"x x x appellant's (private respondent's) former position of feature writer is not comparable or allied to the contested new position (ISRO IV) in point of title and duties as to give her preferential right to the latter position under the guidelines on reorganization placements prescribed by CSC Memorandum Circular No. 10, Series of 1986. What appellant is seeking in effect, is a promotional appointment in the reorganization, which nowhere in the CSC Guidelines is claimable as a matter of right. In this regard, this Board notes that the proposed reappointment of appellant to the position of ISRO III already represents a promotion in her favor." (Underscoring supplied, p. 30, Rollo)

Consequently, the Appeals Board rendered a decision in favor of petitioner Nenita dela Cruz, and dismissed the appeal of private respondent. The Appeals Board justified the selection of petitioner to the contested position by giving total credence and weight to the evaluation of personnel conducted by the Typhoon Committee Secretariat (TCS, for short), the unit for which the International Science Relations Officer positions are intended. In said evaluation, private respondent Cruz obtained a total assessment rating of 57.5 % while petitioner dela Cruz obtained a higher rating of 68.7%. The Board likewise noted that while both contestants are just about equal as far as the circumstances of education, training and relevant experience are concerned, petitioner is ahead in performance: 30.5 % for petitioner and 21 % for private respondent. In addition, petitioner was observed to have had longer exposure to the work of the TCS, having been assigned there since 1977. On the other hand, private respondent was assigned to the TCS only in 1983.

On appeal to the Civil Service Commission (respondent Commission, hereafter), the decision of the Appeals Board was reversed and set aside, and the contested position was awarded to private respondent Cynthia Cruz on the ground that the latter is better qualified for appointment to the contested position than petitioner Nenita dela Cruz.

Respondent Commission's decision is predicated on the following considerations: First, based on the 1987

Plantilla of Personnel of the PAGASA, the position of Feature Writer is very much higher in rank than the Meteorological Aide position held by petitioner dela Cruz. Secondly, the position of Feature Writer held by private respondent Cruz is under the PIIAS Staff, while the position of petitioner dela Cruz is under another unit of the PAGASA. Thus, according to respondent Commission, it cannot be said that the position of Feature Writer held by private respondent is not fundamentally related to the contested position. Thirdly, "x x x protestant (private respondent) should enjoy preference over protestee (petitioner). She belongs to a higher salary range than protestee." (p. 25, Rollo)

In conclusion, respondent Commission ruled, to wit:

"It is noted that in the RAB decision it is indicated that both the contending parties have no performance ratings for the last two years which supports the claim of protestant that the performance ratings of protestant were hurriedly done. There is however, a certification dated January 31, 1987 issued by Romeo D. Estrella, Chief, Personnel and Records Division of PAGASA stating that the last two performance ratings on record of Ms. Cynthia Cruz were both "Very Satisfactory." The RAB also considered the fact that the protestee (petitioner) has longer exposure to the work of TCS because she was assigned thereat much earlier than protestant (private respondent). It is also to be emphasized that when candidates are evaluated, they are rated in connection with the duties and responsibilities of the item/position under consideration. Their TCS assignment is only temporary. They can be recalled anytime prior to the dissolution of the TCS which is only an ad hoc committee. In the absence of a showing that Nenita dela Cruz is better qualified than the protestant, there is no sufficient reason to appoint her to the position of International Science Officer IV, which is higher than that given to the protestant." (p. 26, Rollo)

In the instant petition, the decision of respondent Commission is assailed on several grounds.

Respondent Commission ruled that the position held by private respondent Cruz (Feature Writer) and the contested position belong to the PIIAS and are therefore functionally related. Petitioner claims that this is not necessarily the case. The two positions are not comparable nor allied in point of title and duties.

Petitioner likewise avers that it was erroneous for respondent Commission to have found that the parties have no performance ratings for the last two years, according to the Appeals Board decision. What said decision states is that no performance rating was issued, but it does not say that no incentive ratings were conducted by PAGASA four times a year up to December 31, 1987, which reflects the relative performance of the employees belonging to the same categories. Based on this performance/incentive ratings, petitioner was chosen as one of the PAGASA Model Employees of the Year in a special order dated December 17, 1986 (Annex "I," p. 62, Rollo). In the accompanying testimonial, petitioner is cited for having "consistently topped the rankings among TCS personnel for the periodic incentive pay award during the last few quarters." (Annex "I-1," p. 63, Rollo)

Similarly, in the assessment ratings made by the TCS (Annex "G," p. 57, Rollo), petitioner obtained a higher rating than private respondent, thereby clearly showing that petitioner is better qualified for appointment to the contested position than private respondent. According to petitioner, these ratings should be accorded great weight since the TCS is the very unit for which the contested position is intended. Moreover, petitioner argues, the fact that the previous rank and salary range of private respondent is relatively higher than those of petitioner, is no gauge to conclude that the former is better qualified.

We find merit in the contentions of petitioner.

The decisive issue in this case is whether or not respondent Commission is empowered to reverse and set aside the appointment extended to petitioner by the Department of Science and Technology.

Well-settled is the rule that the authority of the Civil Service Commission is limited to reviewing appointments on

the basis of the Civil Service Law. When the appointee is qualified and all the other legal requirements are satisfied, the Commission has no choice but to attest to the appointment in accordance with the Civil Service Law. Thus, in *Luego vs. Civil Service Commission*, 143 SCRA 327 [1986], this Court held:

“The Civil Service Commission is not empowered to determine the kind or nature of the appointment extended by the appointing officer, its authority being limited to approving or reviewing the appointment in the light of the Civil Service Law. When the appointee is qualified and all the other legal requirements are satisfied, the Commission has no choice but to attest to the appointment in accordance with the Civil Service Laws.

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Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should 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.”

In the case at bar, it is clear that respondent Commission revoked the appointment of petitioner not because she failed to meet the qualification requirements for the contested position, but because private respondent was found to be more qualified than her. This clearly runs counter to the aforequoted pronouncements of this Court.

Private respondent however, contends that the next-in--rank rule should be applied to resolve the instant dispute. This rule is not absolute as the Civil Service Commission allows vacancies to be filled by transfer of present employees, reinstatement, reemployment, or appointment of outsiders who have appropriate eligibility, pursuant to Section 19 (5), Article VIII of P.D. 807 as amended, otherwise known as the Civil Service Law.

Furthermore, the position of Feature Writer held by private respondent is not the position next lower in rank to the contested position precisely because the latter item was newly-created and did not even exist in the plantilla prior to the reorganization. Hence, private respondent cannot properly insist that she is next-in-rank to the contested position.

However, even assuming that private respondent is indeed next-in-rank, it has already been settled that while preferential consideration is accorded the next-in-rank employee in the event of a vacancy for a higher position, such consideration does not serve to ensure appointment in his favor. Thus, in *Santiago, Jr. vs. Civil Service Commission*, 178 SCRA 433 [1978], this Court ruled:

“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.

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The power to appoint is a matter of discretion. The appointing authority has a wide latitude of choice as to who is best qualified for the position.” (citing *Ocampo vs. Subido*, 72 SCRA 443 [1976])

In fine, the exact nature of the power of the Civil Service Commission to approve or disapprove appointments has already been succinctly defined in the *Luego* case (*supra.*), to wit:

“All the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualification. 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 (P.D. 807, as amended) 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)." [p. 333]

In the case at bar, respondent Commission concedes that petitioner possesses the qualifications for the contested position. It should have stopped there and approved petitioner's appointment, in accordance with law and settled jurisprudence. Nonetheless, respondent Commission opted to overstep legal boundaries by invoking its constitutionally-mandated duty of establishing a system of merit and fitness and efficiency in the civil service as basis for its decision. Respondent Commission asserts that to allow the promotion of an employee with a position ten salary ranges lower to the prejudice of incumbents with higher salary range positions, simply because the former meets the minimum requirements, is not in keeping with the spirit and intent of the law. This is highly erroneous.

There is no question that the Civil Service Commission is tasked to ensure that promotions and appointments in the government service shall be based on merit and fitness. However, it cannot lawfully perform such duty if, as an incident thereto, the authority of the appointing power is subverted. Time and again, the power of the Commission in this regard has been defined and delimited by the Supreme Court. Neither in the Constitution nor in the Civil Service Law is there a provision which empowers the Civil Service Commission to substitute its judgment for that of the appointing authority in the guise of promoting the merit system in the civil service.

WHEREFORE, the petition is hereby GRANTED, and the decision of the Civil Service Commission dated January 13, 1989 and its Resolution dated May 13, 1989 in CSC Case No. 108 are hereby REVERSED and SET ASIDE. The decision of the Department of Science and Technology Reorganization Appeals Board in DOST-RAB Case No. 41 dated March 24, 1988 is hereby REINSTATED. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Grino-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.
Fernan, C.J., on leave.

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