

MELANIO N. ESQUIG, PETITIONER, VS. CIVIL SERVICE COMMISSION AND EDNA D. FERRER, RESPONDENTS.*G.R. No. 92490. July 30, 1990*

Ponente: GRINO-AQUINO, J.

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The petitioner, Melanio Esquig, had been the Land Registration Examiner in the National Land Titles and Deeds Registration Administration (NALTDRA) since 1984. Edna Ferrer was a Senior Clerk at the NALTDRA office in Lingayen, Pangasinan. In 1983, the position of Records Officer IV in the office of the Register of Deeds in Lingayen, Pangasinan, became vacant. Both Esquig and Ferrer applied for promotion to that position.

On October 27, 1987, the Secretary of Justice appointed Ferrer to the vacant position. Esquig sought a reconsideration of the Secretary's action but without success.

He appealed to the Merit Systems Promotion Board (MSPB) of the Civil Service Commission. On January 18, 1989, the MSPB decided in his favor. It was Ferrer's turn to ask for a reconsideration, but the MSPB denied her motion on May 12, 1989. On June 8, 1989, she appealed to the Civil Service Commission (CSC). On November 21, 1989, the CSC decided in her favor on the ground that as both Esquig and Ferrer possess the qualification standards for the position in question and neither of them is next-in-rank* to the vacant position of Records Officer IV, the appointing authority has discretion to choose whom he deems to be best qualified and the loser who is not next-in-rank is without legal personality to protest against the Secretary's choice. The relevant observations of the Commission are quoted hereunder as follows:

"x x x Esquig has no legal personality to question the appointment of Edna Ferrer, on the ground that he is not a next-in-rank employee as erroneously pointed out by the Board in its decision dated January 18, 1989. On this point Section 14 of Resolution 83-343 states in part:

'x x x a next-in-rank employee who is competent and qualified and who feels aggrieved by the promotion of another may file a protest. x x x'

Stated in another manner, if one is not a next-in-rank employee, he is not within the contemplation of this particular provision.

"Taking this into consideration, the Commission finds that the appointing official has not acted in grave abuse of discretion in selecting the appointee for the position. That being so, and as the protestant-appellee is not an employee next-in-rank, the choice of the appointing authority must not be disturbed and should be upheld. On this point, it is said thus: 'The power to appoint is, in essence discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. (Pamantasan ng Lunsod ng Maynila v. Court of Appeals, 140 SCRA 22.)

"Thus, aside from the fact that the promotional appointment of Ferrer to the position of Records Officer IV is found to be within the sound discretion of the appointing authority, Protestant Esquig is found to have no

personality to question the same." (pp. 22-23, Rollo.)

Esquig's motion for reconsideration was denied by the Commission, hence, this petition for review.

The only issue raised in the petition is the CSC's jurisdiction to review the decision of the MSPB since, as found by the latter, Ferrer's appeal was "a scrap of paper" because she did not furnish the appellee (Esquig) with a copy of her appeal (p. 17, Rollo).

The Commission held, however, that Ferrer's omission to furnish the appellee with a copy of her appeal "would not stop the Commission in deciding the case on the merits" for "we do not strictly adhere to legal technicalities" (p. 21, Rollo). That ruling is supported by jurisprudence (Sunga, et al. vs. NLRC, G.R. No. 82278, May 12, 1989; ASPREC vs. Itchon, 16 SCRA 921; Mangubat vs. De Castro, 163 SCRA 608).

On the timeliness of Ferrer's appeal to the CSC, the latter found:

"x x x contrary to the allegation of Esquig that Ferrer filed her appeal beyond the reglementary period, the records reveal that Ferrer received a copy of the MSPB decision on her motion for reconsideration dated May 12, 1989 only on May 30, 1989. The appeal was filed on June 5, 1989 which is well within the 15-day reglementary period." (p. 26, Rollo.)

This factual finding, based on the records of the case, is presumed to be correct (Manila Mandarin Employees Union v. National Labor Relations Commission, 154 SCRA 368). Moreover, administrative proceedings are not bound by the rigid requirements of the Rules of Court (Adamson & Adamson, Inc. v. Amores, 152 SCRA 237). The important consideration is that both parties were afforded an opportunity to be heard and they availed themselves of it to present their respective positions on the matter in dispute.

WHEREFORE, the petition for review is denied for lack of merit. Costs against the petitioner.

SO ORDERED.

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

* next-in-rank is Records Officer II

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