

**CONRADO C. CORTEZ, PETITIONER, VS. CIVIL SERVICE COMMISSION, BERNARDINO B. TUAZON, RESPONDENTS.***G.R. No. 92673. March 13, 1991*

Ponente: CRUZ, J.

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On April 1, 1987, petitioner Conrado C. Cortez was appointed by resolution of the board of directors of the Philippine National Railways to the position of Chief Engine Crew Dispatcher. The appointment was approved as temporary by the respondent Civil Service Commission effective May 15, 1987. On November 24, 1987, respondent Bernardino B. Tuazon filed a protest with the Merit Systems Protection Board on the ground that he was better qualified for the position and, as Engine Crew Dispatcher In-Charge, entitled to preference in promotion under the next-in-rank rule. After considering the said protest and the Comment thereon filed by the PNR, the Board revoked the petitioner's appointment, holding that he did not possess the minimum requirements for the position while the protestant did, and that "accordingly, Mr. Tuazon should be appointed to the position of Chief Engine Crew Dispatcher." [1] On appeal, this decision was affirmed by the Civil Service Commission in its resolution dated September 28, 1989. [2]

In this petition for certiorari, the public respondent is faulted for holding that Tuazon is better qualified than the petitioner and for substituting its own discretion for that of the PNR which, as appointing authority, should be allowed to choose its own personnel "in the paramount interest of the service."

The petitioner submits that he has all the minimum qualifications for the disputed position and is therefore eligible even if it be supposed that other persons have better qualifications. It is also his contention that the private respondent is not next-in-rank and that, at any rate, the next-in-rank rule is not absolute.

Invoking decisions of this Court, the petitioner stresses that as long as the appointee possesses the minimum requirements, the discretion of the appointing authority in selecting him must be respected by the Civil Service Commission. The Commission cannot countermand that discretion and direct the appointment of another person who in its own belief is better qualified.

He further contends that even if it be assumed that he did not have the necessary eligibility at the time of his appointment, he would still qualify as Chief Engine Crew Dispatcher under R.A. No. 6850, Section 1, providing as follows:

Section 1. All government employees, as of the approval of this Act who are holding career Civil Service positions appointed a total of seven (7) years of efficient service may be granted the civil service eligibility that will qualify them for appointment to their present positions.

Required to submit his Comment, the Solicitor General asked to be excused on the ground that he could "not agree with the CSC's ruling revoking the appointment of the General Manager of the PNR." The Court therefore resolved, pursuant to the exception allowed in *Orbos v. Civil Service Commission* [3] and on motion of the Solicitor General himself, to give an opportunity to the Civil Service Commission to file its own Comment.

In defense of the challenged resolution, the Commission points out that all candidates for the vacant post were considered and properly evaluated, including Cortez and Tuazon. The PNR Promotion and Evaluation Committee ranked Tuazon first with a total rating of 93.01 points, with Cortez obtaining a total rating of only 85.11 points. Nevertheless, the PNR management disregarded these ratings and chose Cortez instead of Tuazon.

Comparing the qualifications of the two candidates, the public respondent observes:

Private respondent Bernardino Tuazon is a graduate of Bachelor of Science in Commerce. He held the position of Shop Apprentice, Fugonero, Third Class Maquinista, Second Class Maquinista, Second Class Train Engineer, First Class Locomotive Driver and Engine Crew Dispatcher In-Charge. He possesses a Railway Officer eligibility. He joined the service of the PNR in 1949.

On the other hand, petitioner Cortez' highest educational attainment is third year college. He held the position of General Mechanic, C & W Fitter, STL Mechanic B, Car Foreman, First Class Storekeeper and Assistant Shed Foreman. He possesses a Railway Assistant eligibility. He joined the service of the PNR in 1962.

The Commission stresses that the petitioner does not question the qualifications of the private respondent. And no less significantly, Cortez has not shown that he himself possesses even the minimum qualifications, to wit:

EDUCATION :

College graduate

EXPERIENCE :

At least ten (10) years experience as Assistant Chief Crew Dispatcher; Engine Crew Dispatcher; First Class Locomotive Driver; Third Class Locomotive Driver; and First Class Assistant Locomotive Driver.

ELIGIBILITY :

First Grade, Career Service (Professional) on Railways Officer Civil Service eligibility.

The respondents also argue that, as Engine Crew Dispatcher In-Charge, Tuazon is next-in-rank to the position of Chief Engine Crew Dispatcher. While it is true that the next-in-rank rule is not absolute, it should always be taken into consideration in filling up vacancies in the Civil Service, for the promotion of the quality and morale of its personnel.

The Court has studied the records of this case and agrees with the respondents that the petitioner does not meet the minimum qualifications prescribed for the position in question. The civil service eligibility he claims under R.A. 6850 qualifies him for appointment to his present position only, not for promotion to another position. Neither does he have the prescribed 10-year experience nor has he proved that he is a college graduate, as also required.

The petitioner denies that he reached only third year college, insisting that he is a college graduate as found by the PNR. In support of this claim, he cites Annex "C" of his petition, which is merely the Comment of the PNR on Tuazon's appeal and does not mention anything about the petitioner being a college graduate. It does not even make the general statement that he has all the minimum qualifications.

It is revealing that he cannot offer any evidence more convincing than that equivocal Comment. It would have been a simple matter for him to present his diploma or a transcript of his academic records or some similar certification to establish his claim that he is a college graduate. The fact that he has not done so strongly suggests

that he really does not possess the claimed credential and that he falls short of the minimum requirements for the position he seeks.

The petitioner is ensnared by his own words. In his Reply, he says, "The law only requires that the person appointed must have the minimum qualifications at the time of the appointment." In the same breath, he adds, "While he may be short of the minimum requirements of eligibility, petitioner submits that he is deemed eligible under R.A. 6850" (which, we repeat, is not applicable).

We agree that many factors are taken into account in evaluating the qualifications of prospective appointees and that formal examinations, work experience and educational attainment are only some of them. Such abstract criteria as loyalty, cordiality, initiative resourcefulness, discipline, and other personality traits are also properly considered. When making this evaluation, the appointing authority should be given the widest possible leeway and cannot be controlled by the Commission. The Commission cannot, even for the best of motives, substitute its own discretion for that of the appointing authority in derogation of the latter's prerogative.[4] As we said categorically in *Luego v. Civil Service Commission*[5] and have repeated in many other subsequent cases:

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.

As long as the appointee possesses the minimum qualifications prescribed by law or regulations, there is no question that his appointment must be respected by the Civil Service Commission even if it be proved that there are others with superior credentials. However, this rule does not cover those cases where it is found by the Commission, after examining the appointment papers, that the appointee does not satisfy the minimum qualifications for the position in question. In these cases, the Commission would be well within its right - and responsibility - in refusing to approve the appointment.

According to Section 9(h) of the Civil Service Decree, the Commission shall have the power to:

9(h). Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. (*Italics supplied.*)

As it has been shown in the case at bar that the petitioner does not possess the minimum qualifications for the position to be filled, that was reason enough for the Commission to revoke his appointment pursuant to the Civil Service Decree and the Constitution. The Commission would have been less than vigilant, and in fact would have been remiss in its constitutional duty, if it had allowed the appointment to pass.

Let it be stressed that this is not a case where the competing candidates both possess the minimum qualifications and the Commission substitutes its own choice for that of the appointing authority on the ground that the former is better qualified. We have repeatedly ruled that this cannot be done. In the case at bar, the Commission has revoked the petitioner's appointment on the ground that he is not qualified while also finding that Tuazon possesses better qualifications. We affirm the ruling insofar as it rejects the petitioner's claim to the position for lack of the minimum requirements.

A careful perusal of the challenged resolution shows that it does not direct the appointment of Tuazon but merely concludes that he should be appointed. We interpret this as a mere suggestion and not a directive. If it was in fact intended as an order addressed to the PNR, we hereby reverse it as inofficious and unlawful. It bears repeating

that the Civil Service Commission has no right to dictate the exercise by the appointing authority of the discretion conferred upon it by law in the choice of the appointee.

Interpreting the afore-quoted Section 9 (h) in *Luego*, the Court made the following observations:

However, a full reading of the provision, especially of the underscored parts, will make it clear that all the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. 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 says, "approves" or "disapproves" - an appointment made by the proper authorities.

Significantly, the Commission on Civil Service acknowledged that both the petitioner and the private respondent were qualified for the position in controversy. That recognition alone rendered it *functus officio* in the case and prevented it from acting further thereon except to affirm the validity of the petitioner's appointment. To be sure, it had no authority to revoke the said appointment simply because it believed the private respondent was better qualified for that would have constituted an encroachment on the discretion vested solely in the city mayor.

Having laid down the above rulings, the Court finds it no longer necessary to determine whether or not the next-in-rank rule is applicable to the case at bar.

When it disapproves an appointment because the appointee does not possess the minimum qualifications for the position, the Civil Service Commission is properly performing its constitutional task of protecting and strengthening the Civil Service. As long as it confines itself to this task and does not encroach on the prerogatives of the appointing authority by controlling its discretion, the Commission has the full support and encouragement of this Court.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

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

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[1] Rollo, p. 25.

[2] Rollo, pp. 15-17; Chairman Sto. Tomas with Commissioners Barlongay and Yango.

[3] G.R. No. 92561, September 12, 1990.

[4] In Re: Elvira C. Arcega, 89 SCRA 318; *Luego v. Civil Service Commission*, 143 SCRA 327; *Central Bank v. Civil Service Commission*, 171 SCRA 744; *Galura v. Civil Service Commission*, G.R. No. 85812, June 1, 1989.

**[5] 143 SCRA 327.**

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