

## **ARSENIO O. PELEO, JR., REGIONAL DIRECTOR, NATIONAL CAPITAL REGION, TELECOMMUNICATIONS OFFICE, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.**

*G.R. No. 93719, August 16, 1991*

Ponente: PARAS, J.

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### **PARAS, J.:**

Under Executive Order 125, as amended, the Department of Transportation and Communications (DOTC) including the Telecommunications Office (TELOF), one of its sectoral offices, was reorganized. In the new staffing pattern of the TELOF, there are three (3) positions of Telecom Traffic Supervisor. The Placement and Selection Board of the said office, after evaluating the qualifications of the candidates, recommended the appointment of Antonio de Guzman, Evelyn Tan and Juanito Esteves for these positions. Cecilia de Guzman who was given a reorganizational appointment as Teletype Technician, (the same position which he occupied prior to the reorganization) protested the appointment of Juanito Esteves only, alleging that there is violation of Memorandum Circular No. 10, series of 1986 and Memorandum Circular No. 3, series of 1988 which gave preference to permanent and regular employees considering that Esteves was a casual employee (Temporary Management and Audit Analyst) when he was issued such appointment.

It appears that Juanito Esteves has been in the service for thirty (30) years, starting as Temporary; Laborer in 1956; Clerk in 1957; Auditing Aide I in 1962; Auditing Examiner II in 1966; Technical Property Inspector in 1972 and Administrative Officer I in 1975 until his retirement in 1983 under RA 1616. He was reinstated as Temporary Management and Audit Analyst in February 10, 1987 until his appointment to his now questioned position of Telecom Traffic Supervisor. He is a graduate with a Bachelor of Science degree, a holder of three (3) civil service eligibilities - first grade, auditor and general clerical.

Upon the other hand, the qualification standards for a Telecom Traffic Supervisor shows the following requirements:

Education - Any bachelor's degree preferably in Electronics and Communication Engineering or related course.

Experience - Four years in a supervisory capacity in the Telecommunications operations.

Civil Service Eligibility - RA 1080, Electronics Communication Engineering, First grade, career service professional.

The NCR Regional Capital Director of the Telecommunications Office, herein petitioner, Arsenio O. Peleo, Jr., affirmed the appointment of Juanito Esteves.

Consequently, Cecilio de Guzman appealed to the DOTC Reorganization Appeals Board (RAB). In the said appeal, de Guzman stressed the fact that when Esteves was reinstated as Temporary Management Analyst he was at most a casual employee. His appointment therefore to the contested position of Telecom Traffic Supervisor grossly violated CSC MC No. 10 series of 1986 and No. 3 series of 1988.

The Regional Director (petitioner Peleo) defended Esteves' appointment stating that the position of Telecom Traffic Supervisor is a position which requires capacity to manage a vital section in the reorganization. An appointee thereto must first attain varied experience in the communications operations for at least four (4) years in a supervisory capacity as required in the qualification standards. The present item of de Guzman is a Teletype Technician, a first level position with a salary range of 49. The last regular position of Esteves was Administrative Officer I, a second level position with a salary range of 64. He was the Chief of the Administrative Division for eight (8) consecutive years.

In a Resolution dated October 6, 1989, the DOTC Reorganization Appeals Board (RAB) upheld the decision of the Regional Director. The pertinent portion of the said Resolution reads:

"Easily noticeable from the foregoing is the balance made by the Regional Director between the quality of the personnel selected for a certain position, and the 'order' of preference (from permanent to casuals) in selecting an employee. Obviously, the Regional Director had exercised its discretion and had chosen its appointee, cognizant of the respective positions previously held by the rival candidates. Even assuming that Mr. Esteves, prior to his appointment as Telecom Traffic Supervisor, was a mere casual employee, he is still an employee qualified to be considered for placement within the organization because, per representation by the appointing authority and in the context of M.C. 10 itself, Mr. Esteves also 'possess the qualification requirements for permanent appointment to positions in the approved staffing pattern.

"As regards the issue of whether or not Memorandum Circular No. 3, series of 1988 was violated, the Chairman of the Civil Service Commission in her letter dated 21 January 1988, has explained the clear mandate of the Circular which merely requires that '...all items or positions in the approved staffing pattern or Reorganized Agencies should be filled up by regular appointments, and not by other modes of designations, so that said Agencies render service in accordance with their thrusts and thus become more effective in delivering productive services to the public.' And, in no uncertain terms, the Chairman concluded that 'your (Esteves) proposed appointment as recommended by the Placement and Selection Board to a regular and permanent supervisory position for which you are expected to continue service until you are compulsorily retired, is not inconsistent with, nor in violation of the subject Circular.

"WHEREFORE, PREMISES considered, the Board upholds the appointment of Mr. Juanito Esteves as Telecom Traffic Supervisor.

"APPROVED AND ADOPTED by the DOTC Reorganization Appeals Board in its meeting held on October 6, 1989.

"SO ORDERED." (pp. 25-26, Rollo)

From the foregoing Resolution, de Guzman appealed to the Civil Service Commission.

The Civil Service Commission, while finding that Esteves meets the minimum requirements for appointment to the contested position, and that de Guzman does not, nevertheless ruled that Esteves' appointment to the said position runs counter to CSC Memorandum Circular No. 10, series of 1986. Thus, in its said Resolution dated January 19, 1990, the Civil Service Commission stated:

"From the foregoing, it is shown that Esteves meets the minimum requirements for appointment to the position, he being a bachelor's degree holder and a former supervisor as Administrative Officer for a number of years in the Telecommunications Office. However, being a casual employee of the TELOF as of February 1, 1987 and immediately before its reorganization, Esteves had no preferential right for reappointment as Telecom Traffic Supervisor to the prejudice and disadvantage of permanent employees of the TELOF. Hence, the issuance of his appointment to the contested position runs counter to CSC Memorandum Circular No. 10, series of 1986, as amended, which requires that all permanent incumbents should be placed first in an agency's

new staffing pattern before the next category of employees namely, temporary, casual, contractual.

"On the other hand, de Guzman does not appear to have any supervisory experience to qualify him for the contested position. Hence, he is considered to be not meeting the minimum requirements thereof.

"Wherefore, foregoing premises considered, the Commission hereby resolved to dismiss the instant appeal of Cecilio de Guzman. The position issued to Juanito Esteves as Telecom Traffic Supervisor is not in order and is hereby declared vacant." (p. 29, Rollo)

The Regional Director (petitioner Peleo) moved for reconsideration. He vigorously maintained that the appointment in question is proper, regular and in order for the following reasons:

"1. CSC Memorandum Circular No. 10 s. 1986 primary objective is to prioritize the placement and retention of permanent employees over the other categories of employment. This was religiously, satisfactorily and fully complied with by this Office. Our records show that all personnel of this region covered by its old plantilla were properly placed and accommodated in the new plantilla without a single case of demotion nor phase out of any employee. Definitely, CSC MC 10 was not violated in the appointment of Mr. Esteves to the position in question.

"2. MC 10 does not close the door to casual employee for possible appointment during the reorganization, nor does it pre-empt the appointing authority to select only from permanent employees over better qualified casual employees.

"3. The operation of the provision in Section 24-D, Article VIII, P.D. 807 that reinstated employee may be appointed to the same level of position for which he is qualified was neither superseded nor suspended by the operation of said MC. Construing this proviso further, the appointment referred to here is permanent in nature and Mr. Esteves retained his former ranking. It may be stated here that Mr. Esteves was not even granted a comparable level of position as that of Administrative Officer which currently carried (as) the allocation of Grade 24 with a salary of P10,132.00 per month. Likewise, CSC Memorandum Circular No. 3 S. 1988 supports the appointment of Mr. Esteves and definitely cures its defect of having been first employed as temporary.

"4. Applying the privilege of choice of the Appointing Authority, a case settled by the Supreme Court in *Dominador L. Galura v. Manuel F. San Pedro*, BIR, the appointment of Mr. Esteves is perfectly in order considering that even CSC Case No. 519 promulgated on January 19, 1990 explicitly admits, 'that Esteves meets the minimum requirement to the position.' Considering further that there was no violation of CSC MC #10, why then should the appointment of Mr. Esteves be considered not in order and the position declared vacant.

"5. Before signing his appointment, there was a clarification letter of that Commission that there was no legal impediment to Mr. Esteves' proposed appointment, (Appendix A).

"6. The appointment of Mr. Esteves was upheld by the Appeals Board of the Department of Transportation and Communications, recognizing its merits and therefore, it is in order." (pp. 30-31, Rollo)

The Regional Director further argues that the merits of the appointment of Esteves was not taken into consideration by the Civil Service Commission as it decided merely "on the issue of the employment status of the appointee which has no bearing on the basic requirement which is the more encompassing element of a sound appointment." (p. 31, Rollo)

In its Resolution dated May 4, 1990, the Civil Service Commission denied the motion for reconsideration filed by the Regional Director (petitioner Peleo), ruling in part as follows:

"The contention of Esteves and the TELOF NCR Director that his (Esteves) being a casual employee before

the TELOF reorganization is not bar to his placement in the new staffing pattern of the agency is not tenable. The fact that there were many reorganization protests, including the instant protest of de Guzman in the TELOF shows that the guidelines were not strictly complied with, or at least there were dissatisfied sectors in that reorganization. Moreover, the alleged ruling of the Commission that Esteves, after retirement, can be reappointed to new positions in the TELOF staffing pattern is merely a clarification of CSC MC 3, s. 1988 of then CSC Chairman Celerina Gotladera that positions should be filled up by regular appointments. Moreover, as a former retiree, Esteves cannot be rehired in government without authority from the Commission. The reply of CSC Executive Director Alfredo Deza to the query of Esteves on whether he is qualified for reinstatement is not an authority to be reemployed but a statement that he is qualified for appointment to his former supervisory position at the time he retired.

"That the power of appointment is essentially a management prerogative is accepted as a general rule. However, it is not absolute as it must be in accordance with the Civil Service Law and Rules, such as MC No. 10, s. 1986.

"In fine, there is no cogent reason to modify, reverse or set aside the Commission Resolution dated January 19, 1990 in CSC Case No. 519.

"WHEREFORE, foregoing premises considered, the Commission resolved to deny the instant motions for lack of merit." (p. 33, Rollo)

Hence, this petition.

CSC Memorandum Circular No. 10, series of 1986, as amended requires that all permanent incumbents should be placed first in an agency's staffing pattern before the next category of employees, namely, temporary, casual and contractual. Therefore, being a casual employee in the TELOF as of February 1, 1987 and immediately before its reorganization, Juanito Esteves had no preferential right to reappointment as Telecom Traffic Supervisor to the prejudice and disadvantage of permanent employees of the TELOF. But records show that Esteves' questioned appointment did not result in the displacement of any incumbent permanent or temporary employee in the TELOF. De Guzman, the lone protestant to the position or even respondent Civil Service Commission itself has not identified a single incumbent employee of the TELOF who was displaced or prejudiced one way or the other by Esteves' appointment. The fact is, all the incumbent personnel of the said office were given appointments under the new staffing pattern and none was demoted or dismissed from the service as a result of the reorganization. As correctly argued by petitioner, MC No. 10 does not close the door to casual employee for possible appointment during the reorganization, nor does it pre-empt the appointing authority to select only from permanent employees over better qualified casual employees.

In the case at bar, Esteves was appointed to the questioned position because aside from being qualified for the position, no other incumbent employee of the TELOF was qualified. De Guzman, the lone protestant, was found by the Civil Service Commission as not qualified for the position. The other "reorganization protest" mentioned by the Civil Service Commission in its Resolution did not involve the alleged violation of MC No. 10 and did not question the appointment of Esteves. The common issue raised therein was whether the protestant was "more qualified" for the contested position than the protestee. Besides these protests were just minor ones and there were only about three (3) that reached the Civil Service Commission.

As to respondent Commission's claim that "as a former retiree, Esteves cannot be rehired in government without authority from the Commission", suffice it to say that the records show that respondent Commission itself, through Director Romeo C. de Leon of the National Capital Region, authorized the rehiring of Esteves. The 2nd Indorsement dated October 1, 1987 of the CSC, National Capital Region states:

"This refers to the request for the authority to reinstate Mr. JUANITO ESTEVES as Temporary Management

Analyst, in that Office. He retired under R.A. 1616 on March 15, 1983.

"In the exigencies of the service and as the requirements of the Commission on this matter are properly observed and complied with, the request for the authority to reinstate Mr. Esteves is hereby granted."

WHEREFORE, the questioned resolutions of respondent Commission dated January 19, 1990 and May 4, 1990 are ANNULLED. Consequently, the Court upholds the appointment of Juanito Esteves as Telecom Traffic Supervisor.

**SO ORDERED.**

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

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