

DUMOGHO, Eleuterio C.

Re: Disapproved Appointment

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RESOLUTION NO. 011759

Gwendolyn P. Gana, Chief of Staff, Office of the Senate President, Senate of the Philippines, requests reconsideration from the disapproval by then Chairperson Corazon Alma G. De Leon, this Commission, of the coterminous/temporary appointment of Eleuterio C. Dumogho as Director IV, Office of Senator Aquilino Q. Pimentel, Jr., on the ground that said appointee is already over sixty-five (65) years old in violation of Section 12, Rule XIII of CSC MC No. 15, s. 1999.

The pertinent portions of the request read, as follows:

“May we inform that said appointments have co-terminous-temporary status and are primarily confidential in nature in the Office of Senator Pimentel. Thus, as provided in CSC Memorandum Circular No. 35 s. 1993 re: APPOINTMENT TO PRIMARILY CONFIDENTIAL POSITIONS, subject appointees can be appointed to their respective positions. Furthermore, previous appointments with similar status and nature of subject appointees were approved by the CSC.”

Briefly, the facts of the case are, as follows:

On September 28, 2000, then Senate President Franklin M. Drilon appointed Dumogho as Director IV under coterminous/temporary status and assigned at the office of Senator Pimentel, Jr. However, then Chairperson De Leon disapproved Dumogho’s appointment considering that the appointee is already seventy (70) years old which makes the appointment in violation of Section 12, Rule XIII of Civil Service Commission Memorandum Circular No. 15, series of 1999 on the age prohibition.

In a letter dated December 13, 2000, Gana requested reconsideration from the disapproval of Dumogho’s appointment and

filed the same with the Civil Service Commission Field Office – Department of Foreign Affairs (CSCFO - DFA). The CSCFO-DFA forwarded Gana's request to the Civil Service Commission – National Capital Region (CSC-NCR) and recommended the denial thereof in view of the Senate's failure to furnish the Commission a copy of the authority of Gana to file the said request. In a Memorandum dated March 20, 2001, the CSCRO – NCR referred Gana's request to the Commission.

The issues to be resolved are two-fold:

1. Whether or not Gana has the personality to file the instant motion for reconsideration; and
2. Whether or not the appointment of Dumogho as Director IV should be approved.

As regards the first issue, **Section 2, Rule VI of the Revised Omnibus Rules on Appointments and other Personnel Actions**^[1] provides:

"Sec. 2. Request for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment."

In this case, it was then Senate President Drilon who appointed Dumogho as Director IV. Considering, however, that there has been a change in the hierarchy in the Senate and Senator Pimentel has assumed the Senate Presidency, with the further consideration that Gana is the Chief of Staff of then Senate President Pimentel, the act of Gana in filing the motion for reconsideration must be deemed to have the imprimatur of Senate President Pimentel. As a matter of fact, in **CSC Resolution No. 01-1110 dated July 2, 2001, Re: BAUTISTA, Andrea M.**, the Commission recognized the personality of Gana to file a motion for reconsideration and/or appeal from a disapproved appointment in the Senate. Besides, it would be better to rule on the merits of this case than to dismiss it automatically based on a technicality.

As regards the main issue, it was provided under **Section 12, Rule XIII of CSC Memorandum Circular No. 40, series of 1998** that *"(n)o person who has reached the compulsory retirement age of 65 can be appointed to any position in the government, except to primarily confidential positions, provided that the appointment shall be under temporary status"*.

(Underscoring supplied)

The above-quoted provision appears to have been amended by **Section 12, Rule XIII of CSC Memorandum Circular No. 15, series of 1999** which provides, thus:

“Sec. 12. No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government.” (Underscoring supplied)

However, in CSC Resolution No. 01-0043, *supra.*, which involved the same appointee, the Commission ruled that Section 12, Rule XIII of CSC Memorandum Circular No. 15, series of 1999 prohibiting the appointment of a person who has reached the compulsory retirement age of 65 can be appointed to any position in the government did not repeal the exception provided under Section 12, Rule XIII of CSC Memorandum Circular No. 40, series of 1998. In this resolution, the Commission declared that Dumogho can be appointed to a co-terminous/temporary position notwithstanding the fact that he has already reached retirement age. Very recently, the Commission, citing the Dumogho case, reiterated this ruling in CSC Resolution No. 01-0933^[2] and held:

“Thus, the appointment of Valmayor may be approved regardless of the fact that he is already 74 years old.”

Hence, despite the amendments made by **Section 12, Rule XIII of MC 15, series of 1999**, a person who is 65 years of age or above may still be appointed to a primarily confidential position.

Relevantly, it must be pointed out that the position to which Dumogho was appointed (Director IV) is a primarily confidential position pursuant to the *Bautista* case. As declared by the Commission in said case:

*“Although, the said position was not declared by this Commission to be primarily confidential, the same may be considered as such since Bautista is the personal or confidential staff of Senator Revilla. Relevant to the discussion is the pertinent portion of **Section 9, Chapter 2, Subtitle A, Title I, Book V of the Revised Administrative Code of 1987 (Executive Order No. 292)** which provides:*

"Moreover, upon the instruction of the Commission, the Civil Service Field Office - Bangko Sentral ng Pilipinas (CSFO-BSP) determined where Bautista's appointed position is attached. Hence, on April 3, 2001, Director Mercedes P. Tabao of the said field office, with the concurrence of CSC-NCR Director Agnes E. Padilla, submitted her findings to wit:

'This pertains (sic) promotional appointment of Andrea Bautista as Director IV, coterminous with his (sic) father, Senator Ramon Revilla at the Senators (sic) Office, Philippine Senate, which was recommended for disapproval.

'x x x

'We were advised that the Office of the Senators do not maintain a Plantilla of Personnel. Their guide in filling up positions is their approved budget. They appoint their employees to positions of their choice, provided they will not exceed their budget allocation.

'The position of Andrea Bautista is Head, First Committee (Director IV), SG 28 appearing in the . . . Committee Budget Staffing Pattern.

'Considering that all positions under the Office of the Senators are coterminous in nature, it is recommended that the said appointment be approve as proposed.'

*"From the foregoing, it can be deduced that all offices of the Senators have no plantilla of positions. Moreover, the composition of the said office will depend on the budget allocated to it. A person may be appointed to a position allocated to a Committee headed by a Senator whose office he/she would then belong to. In the present case, Bautista is appointed as Head, First Committee (Director IV), SG 28 (**Committee Budget Staffing Pattern**), headed by Senator Revilla. It is also noted that all appointments of this nature are co-terminous. Since the appointment issued to Bautista is in accordance with the said Committee Budget Staffing Pattern then the same may be approved as co-terminous."*

WHEREFORE, the request for reconsideration filed by Gwendolyn P. Gana is hereby **GRANTED**. The appointment of Eleuterio C. Dumogho as Director IV under coterminous status at the Office of Senator Aquilino Q. Pimentel, Jr. is approved. Accordingly, the Civil Service Commission – National Capital Region (CSC-NCR) is directed to reflect the approval of Dumogho’s appointment in his service record.

Quezon City, **November 5, 2001**

(SIGNED)

KARINA CONSTANTINO-DAVID

Chairman

(SIGNED)

JOSE F. ERESTAIN, JR.

Commissioner

(SIGNED)

J. WALDEMAR V. VALMORES

Commissioner

Attested by:

(SIGNED)

ARIEL G. RONQUILLO

Director III

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[1] CSC Memorandum Circular No. 40, series 1998, as amended by CSC Memorandum Circular No. 15, series 1999.

[2] VALMAYOR, Jose V. dated May 21, 2001.