

**TAGUM, Ma Nerissa B.**

**Re: Appeal; Invalidation of**

Appointment; Election Ban

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**RESOLUTION No. 040318**

Dr. Ma. Nerissa B. Tagum, Municipal Health Officer (MHO), Municipality of Irosin, Sorsogon, appeals the Orders dated May 21, 2002 and November 26, 2002 of the Civil Service Commission Regional Office (CSCRO) No. V, Legazpi City, invalidating her appointment as MHO of said municipality on the ground of violation of the 2001 election ban and denying her motion for reconsideration thereto.

The dispositive portion of CSCRO No. V Order dated May 21, 2002 reads, as follows:

*“COMELEC Resolution No. 3322 dated November 15, 2000 amending certain portions of COMELEC Resolution No. 3258 re Calendar of Activities for May 14, 2001 National and Local Elections provides that from January 2, 2001 to June 13, 2001 the transfer or detail of officers and*

*employees in the civil service, including public school teacher is prohibited.*

*“Transfer is the movement of employee from one position to another which is of equivalent rank, level or salary without break in the service involving the issuance of an appointment (Section 4, Rule III of CSC MC 40, s. 1998).*

*“Tagum was a Rural Health Physician of Irosin District Hospital, Irosin, Sorsogon when she was issued an appointment of December 22, 2000 to the position of MHO and she assumed the same in the same date as appearing on the Report of Personnel Actions (ROPA) for December.*

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“From the foregoing, the appointment of (Transfer) Tagum to the subject position only took effect on January 10, 2001 which is within the prohibitive period.

*“WHEREFORE, the approval of the appointment of Ma. Nerissa G. Tagum as MGDH (Municipal Health Officer) is hereby invalidated.”*

On the other hand, the dispositive portion of CSCRO No. V Order dated November 26, 2002 reads, as follows:

*“WHEREFORE, the instant request is hereby denied. Accordingly, the subject order of this Office invalidating the appointment of Dr. Ma. Nerissa B. Tagum and directing her reversion to her former position in the Irosin District Hospital stands.”*

In her appeal, Tagum alleged as follows:

“1.

*“CSC-REGIONAL OFFICE NO. 5 ERRED IN INVALIDATING DR. TAGUM’S APPOINTMENT AS MHO OF IROSIN, SORSOGON BY FALSELY CREATING AS AN ISSUE THE ALLEGED VIOLATIVE ‘TRANSFER’*

## “ARGUMENTS

*“What might be the simplest way of interpreting the words ‘transfer’ and ‘appointment’ in the COMELEC Rules was made complicated when the CSC Office below interpreted ‘appointment’ as sine qua non to ‘transfer’. The Office below even proceeded in invalidating appellant’s ‘appointment’ by raising as a reason her alleged violative ‘transfer’. Succinctly, the rule promulgated by COMELEC was stripped of its meaning by the CSC Office below, so to speak, contrary to COMELEC’s intent.*

*“COMELEC Resolution No. 3401 promulgated last December 15, 2000 provides:*

*‘Section 1. Prohibited acts. (a) During the election period from January 02, 2001 until June 13, 2001, no public official shall make or cause any transfer/detail whatsoever of any officer or employee in the civil service, including public school teachers, or suspended elective provincial, city, municipal or barangay official, except upon prior approval by the Commission.’ (emphasis supplied)*

*“It would be noted that then Mayor Balmes of LGU-Irosin, who appointed appellant as MHO, was not in a position to make or cause the transfer of appellant due to lack of administrative control and supervision over the latter as she was employed in Irosin District Hospital, which is under the Provincial Government of Sorsogon, before she was appointed MHO of LGU-Irosin. It can not therefore be gainsaid that Mayor Balmes caused or made the transfer of appellant to LGU-Irosin as*

he can not do so, hence above provision would not apply. Also, assuming appellant had transferred on her own within the prohibited period, without other person causing or making said transfer; still aforesaid prohibition would not apply. Further, even assuming that she was transferred, the rule is silent as to invalidation of her appointment. Where the law does not distinguish, we should not lay down distinctions. In fine, same provision can not be invoked to invalidate appellant's appointment as MHO.

“Under paragraph (b) of the same Section, same COMELEC Resolution, it states:

‘Beginning March 30, 2001 until May 14, 2001, no head, official or appointing officer of any national or local government office, agency or instrumentality, including government-owned and controlled corporations, shall: (1) **appoint or hire any new employee, whether permanent, provisional, temporary or casual:** or (2) create and fill any new position, except upon prior authority of the Commission.’ (Emphasis supplied)

“Even the above prohibition will not apply to the instant case, appellant's appointment having been issued and concurred on December 22, 2000 and January 10, 2001, respectively, which are beyond the prohibited period, fixed from March 30, 2001 to May 14, 2001.”

When asked to comment, CSCRO No. V commented as follows:

“In an order dated May 21, 2001, this Office invalidated the appointment of Tagum as Municipal Government Department Head I (Municipal Health Officer) with Salary Grade 24 under Permanent status (Transfer) for being violative of COMELEC Resolution No. 3558 (Election Ban).

“Records show that on December 20, 2000, then Mayor Nathaniel G. Balmes issued an appointment to Tagum to the said position. Said appointment was concurred by the Sanggunian Bayan of Irosin on January 10, 2001.

“COMELEC Resolution No. 3322 dated November 15, 2000 amending certain portions of

*COMELEC Resolution No. 3258 re Calendar of Activities for May 14, 2001 National and Local Elections provides that from January 2, 2001 to June 13, 2001 the transfer or detail of officers and employees in the civil service, including public school teachers, is prohibited.*

*“Prior to the appointment of Tagum to the subject position, she held the position of Rural Health Physician (Salary Grade 24) of Irosin District Hospital, Provincial Government of Sorsogon. Hence, her appointment as Municipal Health Officer is in the nature of transfer. Her appointment was, however, concurred by the Sangguniang Bayan of Irosin only on January 10, 2001 which is within the prohibitive period.*

*“Paragraph 2, Section 1, Rule IV of CSC MC 40, s. 1998, provides, thus:*

*‘In case of local government units, appointment requiring concurrence of the Sanggunian Bayan, effectivity thereof shall not be earlier than the date of such concurrence.’*

*“Said concurrence of the Sanggunian is part and parcel of the appointment process. Absence thereof renders the appointment incomplete. Hence, same cannot be considered as completed appointment (CSC Resolution No. 96-0247 dated January 11, 1996 re Rosario, Romualdo; Resolution No. 020394 dated March 14, 2002 re Quinsing, Godofredo).*

*“Clearly, the subject appointment of Tagum was completed only on January 10, 2001 which is within the period prohibited by the Election Law.”*

Records show that Tagum was previously appointed by then Governor Juan Frivaldo, as Rural Health Physician (RHP) in the Irosin District Hospital, Irosin, Sorsogon, on August 16, 1993. On December 15, 2000, Tagum learned of the vacancy of the position of Municipal Health Officer in the Municipality of Irosin, Sorsogon. Being qualified and eligible for said position, she filed her application thereto. On December 22, 2000, she was appointed by Irosin Mayor Nathaniel G. Balmes as Municipal Health Officer in said municipality. MHO is a department head position; thus, Tagum’s appointment was transmitted to the Sangguniang Bayan for concurrence on December 26, 2000. Said appointment remained pending with the Sangguniang Bayan until its concurrence on January 10, 2001.

The election period<sup>[1]</sup> for May 14, 2001 National and Local Elections was set from January 2, 2001 to June 13, 2001<sup>[2]</sup>. During said period, no transfer or detail of employees of the civil service is allowed. Apparently, the concurrence of the Sangguniang Bayan of Irosin on the appointment of Tagum came only on January 10, 2001 which is within the election period. Thus, when the local government submitted its Report on Personnel Actions (ROPA) for December 2000, Director Armenio L. Montales of the Civil Service Commission Field Office (CSCFO) – Sorsogon found the appointment of Tagum to be violative of COMELEC Resolution No. 3258 (Election Ban) considering that the nature of her appointment is transfer. Thus, in a Memorandum dated May 24, 2001, Director Montales recommended the invalidation of the appointment of Tagum as MHO, as follows:

“This refers to the Report of Personnel Actions (ROPA) of LGU-Irosin, Sorsogon for the month of December, 2000.

*“The following are our findings in the course of our review and monitoring:*

*“1. That the appointment of Dra. Nerissa G. Tagum as Municipal Health Officer was signed by the appointing authority on December 22, 2000 but it was only concurred by the Sangguniang Bayan on January 10, 2001 which upon evaluation of Ms. Cecilia R. Nieto, Director III of this Office found to be violative of COMELEC Resolution No. 3258 (Election Ban) considering that the nature of her appointment is transfer.*

*“2. That the position of Liaison Aide is not found in the Index of Occupational Services as provided under Local Budget Circular No. 61, s. 1996.*

*“Hence, this office finds the justification of Mayor Nathaniel G. Balmes of Irosin, Sorsogon without merit, therefore we are requesting for the invalidation of the appointments of Dra. Tagum and Ms. Lustestica as Municipal Health Officer and Liaison Aide, respectively.”*

After an evaluation of the abovequoted memorandum, Director IV David E. Cabanag issued CSCRO No. V Order dated May 21, 2002, invalidating the appointment of Tagum as MHO. Tagum moved for the reconsideration of said order but it was denied in CSCRO No. V Order dated November 26, 2002.

Hence, the instant appeal.

The issue to be resolved in this case is whether CSCRO No. V is correct in invalidating the appointment of Tagum.

Before proceeding to the issue, it should be made clear that an appeal on the disapproval of an appointment must be made by the proper appointing authority. However, the Commission is inclined to relax the application of this rule in the instant case. It is to be noted that when the appointment of Tagum was invalidated by Director Cabanag of CSCRO No. V on May 21, 2002, Mayor Balmes, then Mayor of Irosin who appointed Tagum to the MHO position, was no longer the Mayor of Irosin, having lost in the 2001 local election. In view thereof, there could be no other person who can file such an appeal at that time except Tagum herself (**CSC Resolution No. 99-2208 Re: TOMADA, Senen D.**). Thus, the herein appeal is given due course.

Relevant to the present case are the provisions of **Section 261 (g) and (b) of the Omnibus Election Code of the Philippines**, as follows:

*“xxx – The following shall be guilty of an election offense:*

*x x x*

*“(g) Appointment of new employee, creation of new position, promotion, or giving salary increase – During the period of **forty five (45) days before a regular** or **thirty (30) days before a special election**, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new positions, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned; and that the position shall not be filled up in a manner that may influence the election.*

*“As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need. Provided, however, That the notice of the appointment shall be given to the Commission within three days for the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.*

*“(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege of any government official or employee, including those in government-owned or controlled corporations.*

*“(h) Transfer of officers and employees in the civil service – Any public official who makes or causes any transfer or detail whatsoever of any officer or employee in the civil service including public school teachers, within the elections period, except upon prior approval of the Commission.”  
(underscoring ours)*

Pursuant to the above provision, and for purposes of the May 14, 2001 election, the Commission on

Elections issued **COMELEC Resolution No. 3401** dated **December 15, 2000**, the relevant portions of which read, as follows:

*“Section 1. Prohibited acts. (a) During the election period from January 02, 2001 until June 13, 2001, no public official shall make or cause any transfer/detail whatsoever of any officer or employee in the civil service, including public school teachers, or suspend elective provincial, city, municipal or barangay official, except upon prior written approval by the Commission.*

*“(b) Beginning March 30, 2001 until May 14, 2001, no head, official or appointing officer of any national or local government office, agency or instrumentality, including government-owned and controlled corporations, shall: (1) appoint or hire any new employee, whether permanent provisional, temporary or casual; or (2) create and fill any new position, except upon prior authority of the Commission.*

*“( c ) During the same period of 45 days before May 14, 2001, no government official shall promote or give any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.” (underscoring ours)*

Based on the abovequoted provisions of law, it becomes clear that there are certain personnel actions that are prohibited at certain times during the election period. For instance, for purposes of the May 14, 2001 national and local elections, **transfer** of employees in the civil service is prohibited during the entire election period which is from January 2, 2001 to June 13, 2001. On the other hand, **promotion** of government officials and employees is prohibited forty-five (45) days before election day or from March 30, 2001 until May 14, 2001.

Under **Section 4 ( c ) and (d) of the Revised Omnibus Rules on Appointments and other Personnel**

**Actions (CSC MC Number 40, series of 1998, as amended by CSC MC No. 15, series of 1999), promotion and transfer are distinctly defined as follows:**

*“c. **Promotion** – is the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Promotion may be from one department or agency to another or from one organizational unit to another within the same department or agency.”*

*“d. **Transfer** is the movement of employee from one position to another which is equivalent rank, level or salary without break in the service involving the issuance of an appointment.*

*“Transfer may be from one department or agency to another or from one organizational unit to another in same department or agency: Provided, however, that any movement from the non-career service to the career service shall not be considered a transfer.” (underscoring ours)*

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Based on the abovequoted definition of transfer as distinguished from promotion, it becomes clear that the personnel movement is considered **“transfer”** if the movement of an employee is from one position to another which is equivalent in rank, level or salary. Pointedly, the transfer of an employee may be from one department or agency to another or a transfer from one organizational unit to another in the same agency. In other words, a personnel movement can only be referred to as transfer if the movement to another position does not result in an increase or decrease in rank, level, or salary.

On the other hand, **promotion** is an advancement from one position to another with an increase in duties and responsibilities without necessarily having an increase in salary. Interestingly, in promotion, the movement may be

from one department or agency to another or within the same department or agency. Hence any movement from one position to another even if the movement is from one agency to another or within the same agency as long as the same involves an increase in duties and responsibilities, the personnel movement shall be referred to as promotion.

In the light of the abovequoted analysis of the personnel action of *transfer* as distinguished from *promotion* , it is imperative that we determine whether the personnel action involved in the appointment of Tagum as MHO is a transfer or a promotion, so that if it is a transfer, it is prohibited during the entire election period of 120 days from January 2 to June 13, 2001; or if it is a promotion, it is only prohibited 45 days prior to the May 14, 2001 election (March 30, 2001).

While it is true that the nature of Tagum's appointment as stated therein is transfer, a careful analysis of the earlier quoted definition of transfer and promotion reveals that Tagum's appointment as MHO is in reality a promotion. It should be noted that the movement of Tagum from the position of RHP to MHO falls squarely within the definition of promotion because of the following: First, the movement of Tagum from RHP to MHO resulted in the increase of duties and responsibilities. Second, the position of MHO is entitled to a higher Representation and Transportation Allowance (RATA). Third, the MHO position is a Department Head position whereas, the position of RHP is not. And fourth, under the Qualification Standards Manual, the position of MHO requires a higher experience requirement which is three years relevant experience compared to only two years of relevant experience for RHP.

Verily, while the position of MHO to which Tagum was appointed bears the same salary grade as that of her former position as RHP, the same is still considered a promotion since there is obviously an increase in duties and responsibilities. The position of MHO is a Department Head position whereas the position of RHP is not **(Nacaytuna, Marydole L. CSC Resolution No. 00-0929 dated April 6, 2000)**. It is therefore understood that

physicians holding department head level positions normally receive a higher Representation and Transportation Allowance (RATA) than those physicians holding positions not considered as department head level positions **(Rodriguez-Lazo Maribel V. CSC Resolution No. 00-2072 dated September 7, 2000)**.

Based on the foregoing disquisition, the Commission is convinced that the nature of appointment of Tagum as MHO is a promotion and not a transfer. Hence, being a promotion, the same is prohibited only during the 45-day period before election day or from March 30, 2001 to May 14, 2001. Since the appointment of Tagum as MHO was issued on December 22, 2000 and was concurred in by the Sangguniang Bayan on January 10, 2001, there is, therefore, no violation of Section 261 of the Omnibus Election Code and COMELEC Resolution No. 3401.

**WHEREFORE**, the appeal of Ma Nerissa B. Tagum is hereby **GRANTED**. Accordingly the Civil Service Commission Regional Office No. V Orders dated May 21, 2002 and November 26, 2002, which invalidated the appointment of Ma. Nerissa G. Tagum as Municipal Health Officer of Irosin and denied the motion for reconsideration thereof, respectively, are hereby **REVERSED and SET ASIDE**. The appointment of Tagum as Municipal Health Officer of Irosin, Sorsogon, is hereby declared **VALID**.

Quezon City, March 30, 2004

(SGD.)

**KARINA CONSTANTINO-DAVID**

Chairman

(SGD.)

**J. WALDEMAR V. VALMORES**

Commissioner

VACANT

Commissioner

Attested by:

(SGD.)

**REBECCA A. FERNANDEZ**

Director IV

Commission Secretariat and Liaison Office

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[1] Sec. 9 Article IX-C of the 1987 Constitution – *“(T)he election period shall commence ninety days before the day of the election and shall end thirty days thereafter”*

[2] Comelec Resolution No. 3258 dated September 28, 2000, as amended.