



CAABAY, Clyde A.
Re: Recall of Approval of Appointment
(Petition for Review)
(NDC-2016-04046)

Number: 160891
Promulgated: 12 AUG 2016

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DECISION

Clyde A. Caabay, Information Technology Officer I, City Information Management System Division, Office of the City Mayor, Puerto Princesa City, Palawan, files a Petition for Review of Decision No. 12-0088 dated April 2, 2012 issued by the Civil Service Commission Regional Office (CSCRO) No. IV, Quezon City, denying his protest against the appointment of Roneson M. Sendaydiego to the position of Information Technology Officer II of the same office. His Motion for Reconsideration was denied in Resolution No. 15-01109 dated December 29 2015.

Pertinent portion of Decision No. 12-0088 dated April 2, 2012 read, as follows:

x x x


"As shown by the records, the questioned PSB of the Puerto Princesa was properly constituted and thereafter, convened accordingly. Despite the absence of the Local Chief Executive (LCE) during the PSB meetings, the former can still be properly represented by his alternate. The Presiding officer of the Sangguniang Panglungsod (SP), Jimmy L. Carbonell, acted as the PSB Chairman. The applicable resolution does not strictly mandate that in all instances, the LCE should act as the Chairman. It must be noted that as the LCE of the City Government of Puerto Princesa, Palawan, Mayor Hagedorn cannot absolutely and entirely devote himself to such chairmanship because there are other functions and responsibilities to discharge, thus, it recognizes the principle of delegation in this instance.

"There was no violation of the Civil Service Law or rule here because the composition of the PSB was properly sanctioned by the adopted SP resolution. All the aforestated mandatory members of the PSB were duly represented and it was incorrect to say that no quorum was reached.

x x x

"A careful evaluation of the records shows that the PSB went through the tedious process of screening and evaluating the qualifications of applicants for the vacant position of Information Technology Officer II in the City Government of Puerto Princesa, Palawan. Both applicants, Sendaydiego

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SEYMOUR R. PAJARES
Chief Personnel Specialist
Commission Secretariat & Liaison Office

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and Caabay met the minimum qualification requirements for the position of Information Technology Officer II, however, in the submitted copy of the Assessment Summary (Promotion), Sendaydiego obtained a total rating of 93.67%, higher than the 93.48% total rating of Caabay. The rating on the applicants' ranking was not so huge but it remains as a fact that Sendaydiego still topped the PSB assessment.

"Anent the issue of violation of the rule on three (3) salary grade limitation, this Office disagrees with Caabay. Said rule is not absolute because it admits certain exceptions. One of the exceptions as provided by the Civil Service Commission (CSC Memorandum Circular (MC) No. 3, s. 2001 is that an applicant may be promoted to a position more than three (3) grades higher than his previous position in meritorious cases. In the instant case, Sendaydiego emerged as more superior candidate than Caabay in terms of other aspect of assessment and evaluation. Thus, Sendaydiego was the one appointed to the position of Information Technology Officer II.

x x x

"WHEREFORE, premises considered, the protest of CLYDE A. CAABAY on the appointment of RONESON M. SENDAYDIEGO as Information Technology, Officer II in the City Government of Puerto Princesa, Palawan is hereby DENIED for lack of merit."

In his present Petition for Review, Caabay represents that:

x x x

"In gross violation of the provisions of the Memorandum Circular No. 03, s. 2001, the Board went on to the selection process with the following Promotion Selection Board composition on June 3 and 16, 2011:

1. Sangguniang Panlungsod Representative, Member/ Acting Chairman in the person of Hon. Jimmy L. Carbonell;
2. Sangguniang Panlungsod Representative, Member, in the person of Hon. Vicky de Guzman;
3. City Personnel Officer in the person of Mr. Felimon R. Sabas;
4. PPCGEA 2nd Level Representative in the person of Jeannette D. Asuncion; and

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5. PPCGEA 1st Level Representative in the person of Aquillino B. Carino.

"The attention of this Honorable office is respectfully invited as to the fact appearing on the record that the above given composition was in fact and in truth not in consonance with the composition prescribed by MC Number 03, s. 2001 and the civil service-approved Merit Selection Plan (MSP) x x x; not even within the provisions of SP Resolution Number 364-2006.

x x x

"When Miss Jeanette D. Asuncion attended the PSB meeting, she was not duly authorized by the PPCGEA to represent the second level career employees of the city government and she has no personality to be so because on June 16, 2011, Miss Jeanette D. Asuncion was no longer an incumbent officer of the PPCGEA. Her term as an officer of the PPCGEA had expired in 2009 and she was not even appointed to act as PPCGEA representative through the General Assembly.

x x x

"The Assessment Summary Form x x x used for assessing the comparative degree of competence of the employee applicants to the position Information Technology Officer II, has these criteria and corresponding equivalent point score:

- 'a) Performance (40%)
- 'b) ETE (Education, Training and Experience) (15%)
- 'c) Written Exam (15%)
- 'd) PSPT (Psycho-social Attributes and Personality Traits) (20%)
- 'e) Potential (10%)'

"Notably, from the criteria used the written exams, which in this case was just in a form of an essay writing, took the place of Experience and Outstanding Accomplishments, one of the major criteria in the deep assessment of the competence of the applicant employee.

x x x

"Applying the decision to the instant case, since it unequivocally stresses that the non-observance of the general rule of the three (3) salary grade, steps or pay limitation will cause the disapproval of the promotion (then the promotion) of Sendaydiego, therefore, should be disapproved by this Honorable office since the promotion of Sendaydiego will result to a more than three (3) salary grade higher than his salary as Computer Programmer

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III, the latter being Salary Grade 18 and while the ITO position has Salary Grade 22.

"Neither would the promotion of Sendaydiego fall under the exception mentioned in the provision under consideration since the position (Computer Programmer III) was not next in rank to the position to which he was appointed to, (which is) ITO II, neither is he the lone applicant to the position; the position ITO II is also not an entrance position indicated in the government staffing pattern x x x to exempt the Protestee from complying with the policy on three (3) salary grade limitation.

x x x

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission that the assailed Decision No. 12-0088 dated April 02, 2012 and the Resolution No. 15-01109 dated December 29, 2015 be reconsidered and set aside and the appointment order of Roneson M. Sendaydiego as ITO II be recalled/revoked accordingly and his appointment be considered DISAPPROVED."

Records show that Caabay and Sendaydiego both applied for the position of Information Technology Officer (ITO) II at the City Information Management System Division, Office of the City Mayor, Puerto Princesa City. On June 16, 2011, the two (2) applicants were interviewed by the Personnel Selection Board (PSB) of the City Government of Puerto Princesa. The PSB Chairman, then City Mayor Edward S. Hagedorn, was not able to attend said interview since he had some urgent matters to attend to and he requested Hon. Jimmy L. Carbonell, Sangguniang Panlungsod Representative to the PSB, to preside over the meeting.

On July 18, 2011, the PSB convened again and deliberated the ratings given to the applicants for various positions in the City Government, including the ratings of Caabay and Sendaydiego for the ITO II position. The said deliberation was presided over by Mayor Hagedorn and was also attended by the Department Heads of the City Government. Results of the deliberation showed that for the ITO II applicants, Sendaydiego was ranked number one with a rating of 93.67% while Caabay came in second with a rating of 93.48%. Sendaydiego was eventually appointed to the ITO II position on August 1, 2011. Said appointment was approved by the Civil Service Commission Field Office (CSCFO)-Palawan on June 8, 2012.

Caabay filed a protest with the City Government's Grievance Committee against the appointment of Sendaydiego as ITO II. Said protest was dismissed for lack of jurisdiction, pursuant to CSC Memorandum Circular No. 4, s. 2010, which provides that a protest on appointment shall not be acted upon through the grievance machinery. Caabay then filed his protest action with the CSCRO No. IV which issued the assailed Decision No. 12-0088 on April 2, 2012. Caabay filed a Motion for Reconsideration, which was denied in Resolution No. 15-01109 dated December 29, 2015.

¹ Minutes of the June 16, 2011 Meeting of the PSB of the City Government of Puerto Princesa

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Aggrieved by the denial of his Protest and subsequent Motion for Reconsideration, Caabay filed the instant Petition for Review before the Commission.

The sole issue to be resolved is whether the instant Petition for Review can be given due course.

At the outset, the Commission would like to emphasize that the action filed by Caabay should not have been treated as a protest. Sections 79 and 80, Rule 17, Revised Rules on Administrative Cases in the Civil Service (RRACCS)² provide that:

x x x

"RULE 17

"PROTEST

"Section 79. Protest; Who may File. – Only a qualified next-in-rank employee may file a protest against an appointment made in favor of another who does not possess the minimum qualification requirements.

"Section 80. Where to File. – A qualified next-in-rank employee shall have the right to appeal initially to the head of agency, then to the Civil Service Commission Regional Office, and then to the Civil Service Commission Proper." (Emphasis supplied)

Based on the foregoing, a protest against an appointment is filed by a qualified next-in-rank on the ground that the person appointed does not possess the minimum qualifications required for the position to which he/she was appointed to.

In the case at bar, Caabay did not raise as an issue the qualification of Sendaydiego to the ITO II position both in the initial action that he filed at CSCRO No. IV and in the instant petition for review. The issues that he raised all pertain to the process in evaluating the applicants to the ITO II position, alleging that the evaluation was done in violation of the approved Merit Selection Plan of the City Government of Puerto Princesa and existing Civil Service rules and regulations. Further, under the rule cited above, protest must be initially filed before the head of the agency.

Thus, the Commission shall treat the instant case not as a protest case but as an action to recall a previously approved appointment.

The Commission is not precluded from resolving the case at bar. Section 20, Rule VI, Omnibus Rules Implementing Book V, Executive Order No. 292 empowers the Commission to recall a previously approved appointment under specific circumstances, thus:

x x x

² CSC Resolution No. 1101502 dated November 18, 2011

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"Section 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds:

x x x

"(d). Violation of other existing Civil Service law, rules and regulations."

The aforesaid power was confirmed by the Supreme Court when it ruled in the case of **Debulgado vs. Civil Service Commission (G.R. No. 11147, September 26, 1994)** that:

x x x

"The Commission is empowered to take appropriate action on all appointments and other personnel actions, e.g., promotions. Such power includes the authority to recall an appointment initially approved in disregard of applicable provisions of Civil Service law and regulations."

In his petition for review, Caabay alleged that the composition of the PSB of the City Government of Puerto Princesa was not in accordance with the approved Merit Selection Plan of the City when it convened on June 16, 2011 to interview the applicants for the ITO II position. He is questioning the validity of said interview because of the absence of then Mayor Hagedorn, the PSB Chairman. Further, Caabay is also assailing the authority of Jeanette Asuncion as PCGEA Representative (2nd Level) to the PSB. He claims that Asuncion has no more authority to serve as a representative of the (Puerto Princesa City Government Employees Association (PPCGEA) to the PSB since she was no longer an officer of the association.

Both contentions are without merit. The absence alone of then Mayor Hagedorn as PSB Chairman does not invalidate the interview conducted by the PSB on June 16, 2011 there being a quorum since all of the other PSB members were in attendance and the Mayor has expressly delegated one of the PSB members to serve as the presiding officer. Further, Caabay also failed to consider the fact that the PSB convened again on July 18, 2011 to deliberate on the ratings given to the applicants and the deliberation was presided over by then Mayor Hagedorn. As such, the PSB, as a whole, had evaluated the applicants for the ITO II position.

On the issue of Asuncion acting as PCGEA representative to the PSB, it must be emphasized that representatives of employees association in the PSB need not necessarily be officers of said association. As long as one is a member of the association and she is authorized by the association, as in the case of Asuncion, then she can serve as representative of the association to the PSB until his/her authorization is revoked by the association or she was promoted to an executive/managerial position.

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On the issue of the criteria used to assess the comparative degree of competence of applicants for promotion, it must be stressed that agencies are not precluded from including additional measures (e.g., written examination) to determine the competency of the applicants, pursuant to their approved MSP. In the case at bar, the MSP of the City Government of Puerto Pinesa expressly provides that, as part of the preliminary evaluation of applicants, all initially qualified applicants shall undergo further assessment such as written examination, skills test, and interview.

As regards the claim of Caabay that the promotion of Sendaydiego violated the Three (3)-Salary Grade Limitation Rule, such contention is misplaced. **Item No. 15, CSC Memorandum Circular (MC) No. 3, s. 2001**, provides, thus:

x x x

"An employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's position except in very meritorious cases, such as if the vacant position is next-in-rank as identified in the System of Ranking Positions (SRP) approved by the head of agency, or the lone entrance position indicated in the agency staffing pattern." (Underscoring supplied)

Based on the foregoing, the promotion of Sendaydiego is exempted from the rule on three (3) salary grade limitation considering that position of Computer Programmer III, which was Sendaydiego's former position, is next-in-rank to the ITO II position based on the City Government's approved System of Ranking Positions.

Lastly, the Commission would like to emphasize that the power of appointment rests solely in the sound discretion of the appointing authority, the only condition being that the appointee should possess the minimum qualifications required by law. This rule was elucidated in the case of **Gaspar v. Court of Appeals (G.R. No. 90799, October 18, 1990)** where the Supreme Court stated that:

x x x

"The determination of who among several candidates for a vacant position has the best qualifications is vested in the sound discretion of the Department Head or appointing authority and not in the Civil Service Commission. Every particular job in an office calls for both formal and informal qualifications. Formal qualifications such as age, number of academic units in a certain course, seminars attended, etc., may be valuable but so are such intangibles as resourcefulness, team spirit, courtesy, initiative, loyalty, ambition, prospects for the future, and best interests, of the service. Given the demands of a certain job, who can do it best should be left to the Head of the Office concerned provided the legal requirements for the office are satisfied. The Civil Service Commission cannot substitute its judgment for that of the Head of Office in this regard."

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WHEREFORE, the Petition for Review of Clyde A. Caabay is hereby **DISMISSED**. Accordingly, Decision No. 15-0022 of the Civil Service Commission-Regional Office No. IV, Quezon City, denying his protest against the appointment of Roneson M. Sendaydiego to the position of Information Technology Officer II, is **AFFIRMED with MODIFICATION** that the protest filed by Caabay is treated as an action to recall an approved appointment which the Commission finds to be devoid of merit.

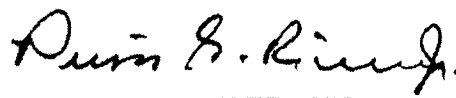
Quezon City.


ALICIA dela ROSA-BALA
Chairperson


ROBERT S. MARTINEZ
Commissioner

VACANT
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office

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