

EN BANC

[G.R. No. 179255, April 02, 2009]

**NATIONAL TRANSMISSION CORPORATION, PETITIONER, VS.
VENUSTO D. HAMOY, JR., RESPONDENT.**

DECISION

TINGA, J.:

This treats of the petition for review of the decision^[1] and resolution^[2] of the Court of Appeals dated 30 May 2007 and 7 August 2007, respectively, in CA-G.R. SP No. 96837 entitled, *Venusto D. Hamoy, Jr. v. National Transmission Corporation & Civil Service Commission*, ordering the immediate return of Venusto Hamoy, Jr. to his original position as Vice-President for VisMin Operations & Maintenance.

The antecedents follow.

The National Transmission Corporation (petitioner), through Resolution No. TC 2003-007^[3] dated 5 February 2003, appointed Venusto D. Hamoy, Jr. (respondent) as Vice President under Item No. 700010-CY2003 VisMin Operations & Maintenance. Accordingly, petitioner's President and Chief Executive Officer (CEO) Alan Ortiz (Ortiz) issued on 1 March 2003 Civil Service Commission (CSC) Form No. 33 which states that respondent has been appointed "(VICE-PRESIDENT JG-18) VICE-PRESIDENT SG-28 with PERMANENT (status) at the National Transmission Corporation."^[4] Respondent assumed his duties on 1 March 2003.

On 19 January 2004, Ortiz issued Office Order No. 2004-173 detailing respondent to petitioner's Power Center-Diliman, "under the Office of the President and CEO, to handle Special Projects."^[5] Office Order No. 2004-173 was later amended by Office Order No. 2004-1229^[6] under which Ortiz assigned respondent additional duties of providing "over-all supervision, monitoring and control of all activities related to the sale of petitioner's sub-transmission assets and placed under his supervision certain personnel of the Sub-Transmission Divestment Department.

In a memorandum dated 24 January 2005 from petitioner's Human Resources Department, respondent was notified of the impending expiration of the temporary appointment of some of petitioner's key officials and the fact that he was being considered for one of the positions to be vacated.^[7] Yet on 15 February 2005, Office Order No. 2005-0256 was issued designating respondent as Officer-In-Charge (OIC) of the Power Systems Reliability Group (PSRG), concurrent with his duties as Vice President for Special Projects.^[8]

On 16 February 2005, respondent wrote Ortiz, asking that he be returned to his original assignment as Vice President of VisMin Operations & Maintenance. He reasoned that his detail under Office Orders No. 2004-173 and No. 2004-1229

already exceeded one (1) year, and that his designation under Office Order No. 2005-0256 violated Section 2 of CSC Memorandum Circular No. 21, s. 2002 because he did not give his consent thereto.^[9] However, on the same date, Office Order No. 2005-0284 was issued superseding Office Order No. 2004-173 and amending Office Order No. 2005-0256, the latter order stating that respondent was designated as OIC of the Power Systems Reliability Group (PSRG).^[10] Respondent was thus constrained to write another letter to Ortiz, requesting reconsideration of Office Order No. 2005-0284 and reiterating the reasons he cited in his previous letter.^[11]

On 1 March 2005, Ortiz issued a memorandum informing respondent that his detail to the President's Office was no longer in effect and, in view of the vacancy created by the expiration of the temporary appointment of the Vice President of the PSRG, respondent was designated as its OIC. He further stated that the matter of reassignment would be formally raised at the Board meeting and, should the Board confirm it, a corresponding Office Order would be issued reassigning respondent as head of the PSRG.^[12] On 27 April 2005, the Board issued Resolution No. TC 2005-018,^[13] approving and confirming respondent's reassignment to PSRG, and announcing the opening of selection for the position of Vice President for VisMin Operations & Maintenance.

Respondent appealed to the CSC, praying for the annulment of Resolution No. TC 2005-018 and Office Order No. 2005-0284 on the ground that the reassignment violated his security of tenure. ^[14]

In Resolution No. 061030 dated 8 June 2006,^[15] the CSC denied respondent's appeal. It found that respondent failed to show that his reassignment was tainted with abuse of discretion. According to the CSC, the position to which respondent was appointed was classified as a third-level position, which was not station-specific, and thus he could be reassigned or transferred from one organizational unit to another within the same agency, without violating his right to security of tenure.^[16] Moreover, the CSC ruled that his detail did not exceed the one-year period, as it was superseded initially by his reassignment; and that his designation and reassignment had both been done to meet the needs of the company, without making him suffer reduction in salary status and rank. Respondent sought reconsideration of the decision, but his motion was denied by the CSC through Resolution No. 061840 promulgated on 16 October 2006.^[17]

Respondent brought the matter to the Court of Appeals (CA) which disagreed with the findings of the CSC. Citing the Administrative Code,^[18] *Home Insurance Guaranty Corporation v. Civil Service Commission*,^[19] and *Office of the Ombudsman v. Civil Service Commission*,^[20] the Court of Appeals held that only presidential appointees belong to the third-level or career executive service. Thus, respondent, having been appointed by petitioner's president and not the President of the Philippines, occupies a second-level position only.^[21] The appellate court also ruled that respondent's position was station-specific, despite the absence of a place of assignment in CSC Form No. 33, since the said form specifically referred to petitioner's Board Resolution No. TC 2003-2007, which indicated that his appointment is to the position of Vice President under "Item No. 700010-VisMin Operations & Maintenance." The position of respondent being station-specific, his

reassignment could not exceed one (1) year per Memorandum Circular No. 2.^[22]

The Court of Appeals also discussed the various personnel movements effected on respondent. Thus, when he reported to his new assignment as "Vice President of Special Projects" per Office Order No. 2004-173, as amended by Office Order No. 2004-1229, such movement was a reassignment and not a mere detail, since there was a movement from one organizational unit to another within the same department or agency; that is, from his station at the office of the Vice President VisMin Operations & Maintenance to the Office of the President and CEO. Respondent remained in his place of reassignment beyond 16 February 2005 because he was designated additional duties, virtually extending his reassignment beyond the one-year period. The third personnel movement on 16 February 2005, as OIC of the PSRG, was also a nullity because it extended further his original reassignment, and worse, the appointment was made despite respondent's vigorous objection, said the Court of Appeals.^[23] Finally, it concluded that while respondent's position, rank and salary had remained unchanged throughout the said movements, he suffered much financial deprivation, considering that he had to spend for his own travel expenses to Cebu City to be with his family.^[24]

Petitioner filed a motion for reconsideration, but its motion was denied on 7 August 2007 for lack of merit.^[25]

Before this Court, petitioner imputes the following errors to the Court of Appeals, thus:

- a. in classifying the position held by Hamoy, Jr. as TransCo Vice President as a mere second level and not a third level position;
- b. in declaring that presidential appointment is a requirement for a position to be classified as belonging to the third level thus disregarding the clear provisions of CSC Memorandum Circular No. 21, series of 1994 and prevailing jurisprudence;
- c. in holding that Hamoy, Jr. was appointed to a station-specific position;
- d. in classifying the first movement of Hamoy from his original assignment in the VisMin Operations and Maintenance to the office of the president as a "reassignment" and not a "detail;"
- e. in declaring that Hamoy's reassignment was not made in accordance with civil service laws, rules, and regulations.^[26]

On the other hand, respondent maintains that he was appointed to a second-level position and, thus, he is not under the Career Executive Service (CES). He adds that he was, in fact, appointed to a station-specific position. Moreover, he claims that his reassignments were made in violation of the rules and constitute constructive dismissal.^[27]

The petition has no merit.

In arguing that respondent belongs to the CES, petitioner invokes Memorandum Circular No. 21, which reads in part:

1. Positions covered by the Career Executive Service

(a) x x x

(b) In addition to the above identified positions and other positions of the same category which had been previously classified and included in the CES, all other third level positions of equivalent category in all branches and instrumentalities of the national government, including government owned and controlled corporations with original charters are embraced within the Career Executive Service provided that they meet the following criteria:

1. the position is a career position;
2. the position is above division chief level;
3. the duties and responsibilities of the position require the performance of executive and managerial functions.

Petitioner also cites *Caringal v. Philippine Charity Sweepstakes Office (PCSO)*^[28] and *Erasmio v. Home Insurance Guaranty Corporation*^[29] to show that a presidential appointment is not required before a position in a government corporation is classified as included in the CES. ^[30] We are not convinced.

The Administrative Code specifies the positions in the Civil Service as follows:

Section 8. *Classes of positions in the Career Service.*---(1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

- (a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;
- (b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief levels; and
- (c) The third level shall cover positions in the Career Executive Service.^[31]

Positions in the CES under the Administrative Code include those of Undersecretary, Assistant Secretary, Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.^[32] Simply put, third-level positions in the Civil Service are only those belonging to the Career Executive Service, or those appointed by the President of the Philippines. This was the same ruling handed down by the Court in *Office of the*

Ombudsman v. Civil Service Commission,^[33] wherein the Court declared that the CES covers presidential appointees only.

In the said case, the CSC disapproved the Office of the Ombudsman's (OMB's) request for approval of the proposed qualification standards for the Director II position in the Central Administrative Service and Finance Management Service. The OMB proposed that said position required "Career Service Professional/Relevant Eligibility for Second Level position." According to the CSC, the Director II position belonged to third-level eligibility and is thus covered by the Career Executive Service. Settling the issue, this Court ruled thus:

Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC*:

"From the above-quoted provision of the Administrative Code, **persons occupying positions in the CES are presidential appointees.** xxx" (emphasis supplied)

Under the Constitution, the Ombudsman is the appointing authority for all officials and employees of the Office of the Ombudsman, except the Deputy Ombudsmen. Thus, a person occupying the Position of Director II in the Central Administrative Service or Finance and Management Service of the Office of the Ombudsman is appointed by the Ombudsman, not by the President. As such, he is neither embraced in the CES nor does he need to possess CES eligibility.^[34]

Respondent was appointed Vice-President of VisMin Operations & Maintenance by Transco President and CEO Alan Ortiz, and not by the President of the Republic. On this basis alone, respondent cannot be considered as part of the CES.

Caringal and *Erasmio* cited by petitioner are not in point. There, the Court ruled that appointees to CES positions who do not possess the required CES eligibility do not enjoy security of tenure. More importantly, far from holding that presidential appointment is not required of a position to be included in the CES, we learn from *Caringal* that the appointment by the President completes the attainment of the CES rank, thus:

Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either in (1) vesting the appointing power for non- CES positions in the President, in violation of the Constitution; or (2) including in the CES a position not held by presidential appointee, contrary to the Administrative Code^[35]