

EN BANC

[G.R. NO. 162215, July 30, 2007]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

DECISION

CORONA, J.:

This Court is once again called upon to settle a controversy between two independent constitutional bodies and delineate the limits of their respective powers. In the exercise of its mandate, this Court reaffirms its commitment to constitutionalism and the rule of law.

This controversy traces its roots to Ombudsman Simeon V. Marcelo's letter^[1] dated July 28, 2003 to the Civil Service Commission (CSC) requesting the approval of the amendment of qualification standards for Director II positions in the Central Administrative Service and Finance and Management Service of the Office of the Ombudsman. The letter read:

This is in relation to the career positions of Director II of the Central Administrative Service and the Finance and Management Service of this Office. The qualification standards set for said Director II positions pursuant to Civil Service Commission Memorandum Circular No. 1 dated January 24, 1997 are as follows:

Education	: Bachelor's degree
Experience	: 3 years of supervisory experience
Training	: None required.
Eligibility	: Career Service Executive Eligibility (CSEE)/Career Executive Service (CES)

The requirement for a Civil Service Executive Eligibility (CSEE)/Career Executive Service (CES) eligibility presupposes that the Director II position belongs to the third level and positions therein are covered by the Career Executive Service.

However, in the Decision of the Court of Appeals dated January 18, 2001 on CA-G.R. SP No. 49699 as affirmed by the Supreme Court with finality on July 2, 2002 in G.R. No. 148782 entitled "Khem N. Inok vs. Civil Service Commission", it is stated in said Decision that the letter and intent of the law is to circumscribe the Career Executive Service (CES) to CES positions in the Executive Branch of Government, and that the Judiciary, the Constitutional Commissions, the Office of the Ombudsman and the Commission on Human Rights are not covered by the CES

governed by the Career Executive Service Board. Said Decision effectively granted the petition of Mr. Inok for security of tenure as Director III of the Commission on Audit despite the absence of a CES eligibility.

Accordingly and consistent with the provision of Section 22(2), please be advised that the Office of the Ombudsman has established the qualification standards for the positions of Director II of the Central Administrative Service and Finance Management Service as follows:

Education : Bachelor's degree
Experience : 3 years of supervisory experience
Training : None required.
Eligibility : Career Service Professional/
Relevant Eligibility for Second
Level Position

In view of the foregoing, it is respectfully requested that the Commission approve the qualification standards for the above positions.^[2]

Acting thereon, the CSC issued Opinion No. 44, s. 2004^[3] dated January 23, 2004 disapproving the request.

This refers to [the Office of the Ombudsman's] proposed qualification standards (QS) for Director II position in the Central Administrative Service and Finance Management Service, Office of the Ombudsman, which was forwarded to this Office by Director Agnes Padilla of CSC-NCR.

Invoking the Decision of the Court of Appeals in the Inok case, that Office established the QS for the position of Director II of the Central Administrative Service and Finance Management [Service], as follows:

Education : Bachelor's degree
Experience : 3 years of supervisory experience
Training : None required.
Eligibility : Career Service Professional/
Relevant Eligibility for Second
Level Position

Under the 1997 Revised Qualification Standards Manual, the qualification requirements for Director II positions are as follows:

Education : Bachelor's degree
Experience : 3 years of supervisory experience
Training : None required.
Eligibility : Career Service Executive
Eligibility
(CSEE)/Career Executive Service
(CES)

The Commission strictly subscribes to the policy that Director II position being third level eligibility and [is] covered by the Career Executive Service.^[4] In CSC Resolution No. 030919 dated August 28,

2003, the Commission rule[d] as follows:

"The pronouncement of the Court of Appeals in the Inok case cannot be made the basis for changing the employment status of De Jesus. Let it be stressed that nowhere in the aforesaid decision states that the Office of the Ombudsman or other constitutional agencies mentioned therein are exempt or are not covered by Civil Service Law and Rules. On the contrary, the same decision declares that these bodies are covered by the civil service system.

Basic is the rule that all appointments in the government service, particularly the career service, must be in accordance with the qualification requirements as laid down under existing civil service rules and regulations. x x x"

The Commission, as the central personnel agency of the government, is mandated by the Constitution to administer all levels in the civil service, including that of the third level. The Administrative Code enumerated the powers and functions of the Commission, worthy to mention are the following:

"Section 12. Powers and Functions. – The Commission shall have the following powers and functions:

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

x x x

(4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions; x x x"

The Ombudsman and other constitutional offices are covered by the civil service system. To set aside the authority of the Commission to require third level eligibilities to said offices would be to nullify and strike down the very core of the civil service, that is, the promotion of merit and fitness principle in all aspects of personnel administration including the establishment of qualification standards for all levels and ranks in the government.

In view of the foregoing, we regret that [the Office of the Ombudsman's] request for approval of the qualification standards for the position of Director II at the Central Administrative Service and Finance Management Service, Office of the Ombudsman, cannot be granted.^[5]

The Office of the Ombudsman, claiming that its constitutional and statutory powers were unduly curtailed, now seeks to set aside and nullify CSC Opinion No. 44, s. 2004 via this petition for certiorari.^[6]

The Office of the Ombudsman asserts that its specific, exclusive and discretionary

constitutional and statutory power as an independent constitutional body to administer and supervise its own officials and personnel, including the authority to administer competitive examinations and prescribe reasonable qualification standards for its own officials, cannot be curtailed by the general power of the CSC to administer the civil service system. Any unwarranted and unreasonable restriction on its discretionary authority, such as what the CSC did when it issued Opinion No. 44, s. 2004, is constitutionally and legally infirm.

We agree with the Office of the Ombudsman.

The CSC's opinion that the Director II positions in the Central Administrative Service and the Finance and Management Service of the Office of the Ombudsman are covered by the CES is wrong. Book V, Title I, Subtitle A, Chapter 2, Section 7 of EO^[7] 292, otherwise known as "The Administrative Code of 1987," provides:

SECTION 7. Career Service. – The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) **Positions in the Career Executive Service;** namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant 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;**

x x x x x x x x (emphasis supplied)

Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC*:^[8]

From the above-quoted provision of the Administrative Code, **persons occupying positions in the CES are presidential appointees.** x x x (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.^[9] 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