

FIRST DIVISION

[G. R. NO. 153022, April 10, 2006]

NATIONAL POWER CORPORATION, PETITIONER, VS. AGUSTIN A. ZOZOBRADO, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45 of the Rules of Court is the Decision^[1] dated 5 November 2001 of the Court of Appeals granting respondent's appeal and the Resolution^[2] dated 12 April 2002 denying petitioner's motion for reconsideration. In granting respondent's appeal, the Court of Appeals reversed the Resolution dated 14 October 1999 of the Civil Service Commission (CSC), disposing of the appeal as follows:

WHEREFORE, the instant petition is **GRANTED** and the assailed CSC Resolutions Nos. 99-2365 and 000213 are hereby **REVERSED** and **SET ASIDE**. The petitioner's reinstatement and/or continuous service is hereby ordered with full payment of backwages and other emoluments.

^[3]

While the factual background of this case is being disputed, the procedural antecedents of the case are as follows:

On 28 August 1998, respondent Agustin A. Zozobrado, a permanent employee of petitioner National Power Corporation (NPC^[4]) assigned as Pilot in the aviation group, received a letter dated 18 August 1998 from NPC President Frederico C. Puno, informing him that that he was being dropped from the rolls.

On 14 September 1998, respondent Zozobrado filed an appeal before the CSC questioning NPC's implementation of dropping him from the rolls.

On 14 October 1999, the CSC issued a Resolution dismissing petitioner's appeal, the dispositive portion whereof is as follows:

WHEREFORE, the appeal of Agustin A. Zozobrado is hereby dismissed for lack of merit. Accordingly, the Memorandum dated June 29, 1998 as approved by then NPC President Guido Alfredo A. Delgado dropping Zozobrado from the rolls is hereby affirmed.^[5]

On 9 November 1999, respondent Zozobrado filed a Motion for Reconsideration of the said Resolution, which the CSC denied in another Resolution dated 25 January 2000.

On 22 March 2000, respondent filed with the Court of Appeals a Petition for Review on *Certiorari* under Rule 43 of the Rules of Court. The Court of Appeals granted the

appeal in the assailed 5 November 2001 Decision. Petitioner filed a motion for reconsideration, but the same was denied in the 12 April 2002 assailed resolution.

Hence, this petition.

Petitioner submits the following allegations in its discussion:

1. Contrary to the Court of Appeal's findings, actual and constructive notice had been served upon respondent;^[6] and
2. Contrary to the finding of the Court of Appeals, the ratings given to respondent resulting to his dropping from the rolls, were official and regular acts by NPC based on his performance during the rating periods and by no means a premeditated design to drop respondent from the rolls.^[7]

Respondent had been dropped by petitioner from the rolls based on the following provision in the Civil Service Rules:

2. Dropped from the rolls

x x x x

2.2 Unsatisfactory or Poor Performance

- a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation.^[8]

The Court of Appeals, in finding that the respondent's separation "was made with utter lack of due process," held:

Dropping from the rolls means separation from the service. Such separation is made summarily, without any case, investigation or due process. For this reason we submit that the rule should be strictly construed in order that it may not be used as a tool for harassment, vindictiveness or removal of any employee who happens to fall out of grace of his supervisor or superior officers.

Thus, before the dropping from the rolls, it is imperative that the following requisites should be complied with:

- a) the employee concerned should be informed of his unsatisfactory performance for a semester;
- b) such notice shall be in writing;
- c) the same must be made within thirty (30) days from the end of

- the semester when the first unsatisfactory rating was given;
- d) the notice should contain a warning that a succeeding unsatisfactory performance shall warrant his separation from the service; and
- e) the notice shall contain sufficient information to enable the employee to prepare an explanation.

In the instant case, the notice required by law was not given to the petitioner. He was not given notice after the rating of unsatisfactory during the first semester of 1997 within thirty (30) days therefrom. The alleged verbal notice, to our mind, is not sufficient for the reason that it is easily concocted. And when there are conflicting allegations as to the alleged verbal notice, such that there is a clash between the word of a superior officer and that of a subordinate, the latter is usually at a disadvantage. Hence, a verbal notice cannot be considered as substantial compliance with the Civil Service Rules.

Moreover, the notice should contain sufficient information to enable the employee to prepare an explanation. This is the opportunity given the employee to explain why his efficiency had fallen - - if such were the fact - - and explain circumstances why his performance has deteriorated, so to speak, which might be considered by the rater. In any case, he is given the opportunity to improve, which is why the notice is given within thirty (30) days from the end of the rating period, so that he has sufficient time to do better, make amends, and enhance his performance at the succeeding period.

This was not done in the case at bar. On the contrary, the first unsatisfactory rating was obviously withheld from the petitioner. According to the respondent, the written notice was made on January 29, 1998, which is way beyond the 30-day period required by the rules.

What is more, the records disclose that:

1. In previous years, the petitioner was rated every semester, i.e., from January to June, and from July to December.
2. After the first rating of "unsatisfactory" in the first semester (January - June) of 1997, he was given the next rating of unsatisfactory at the middle of the second semester, i.e., for the period from July to October 1997. There is no explanation for the shift from semester to quarter, and neither is there any showing that all the other employees were rated quarterly thenceforward. As a matter of fact, after the petitioner's transfer to another unit, he was again rated for the semester January to June 1998, where he received a "very satisfactory rating".
3. In previous years, the petitioner was rated as a supervisory employee. Without any apparent change of position title nor of his duties and responsibilities, he was suddenly rated as a non-supervisory employee, which has different rating factors from those of supervisors. The shift to such category should have been

explained to him, if the same were based on reasonable grounds. However, no explanation was made, thus giving the impression that the change was made arbitrarily.

4. The NAPOCOR Performance Appraisal System (PAS) as approved by the Civil Service Commission consists of three (3) main parts, and each part has a corresponding percentage equivalent, to wit:

Part I Corporate Performance -20%
(rated by Management)

Part II Functional Performance -20%
(rated by the Oversight Committee)

Part III Individual Tasks/Assignments - 30%
(rated by Immediate Supervisor)

As shown on the rating form itself, these are rated by different raters. In addition to the above, there is a Part IV for evaluation of Behavioral Dimensions, which is assigned 30%, to make a total perfect score of 100%. In the two performance ratings under question, only Parts III and IV were rated by Gen. Jorge Lagera, the petitioner's immediate supervisor. Thus, as pointed out by the petitioner, the evaluation was incomplete. It is therefore impossible for him to get a fair rating without the other parts being accomplished.

Moreover, we observe that the petitioner had been getting "very satisfactory ratings for 8 ½ years before the controversial ratings were made solely by Gen. Lagera. All previous performance ratings appear to have complete evaluation on all factors, and signed in acknowledgement by the ratee himself.

It also appears that when the petitioner brought to the Grievance Committee the matter of his unsatisfactory ratings, the said committee recommended a review thereof to take into account the dimension of the quantity in the performance standard. However, Gen. Lagera blocked such review, claiming that it was not necessary because he had already considered the same, albeit minimally. This is an indication that Gen. Lagera really wanted to take it upon himself to solely give the rating to the petitioner, in violation of the approved PAS of NAPOCOR. Thus, the Grievance Committee had no recourse but to elevate it to the President [of NPC] for review. However, the latter, instead of making a fair and impartial review, just adopted the recommendation of Gen. Lagera.

All these are indications that there was a pattern to dislodge the petitioner from NAPOCOR's rolls. This started when he exposed certain anomalous transactions in the purchase of helicopter parts and materials. There are allegedly charges and counter charges between the petitioner and other pilots, which the respondent never categorically denied. Likewise not denied was the alleged efforts exerted by Gen. Lagera for the petitioner to withdraw his charges. Thus, at a time when he was supposed to testify in court at the hearing of a case against the other