

EN BANC

[G.R. NO. 159940, February 16, 2005]

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

D E C I S I O N

CARPIO-MORALES, J.:

Before this Court is a petition for certiorari under Rule 65 of the 1997 Revised Rules of Court seeking to set aside and nullify Resolution No. 030919 of the Civil Service Commission (CSC) dated August 28, 2003.

The antecedents of the case are as follows:

By letter^[1] dated March 7, 1994 addressed to then Ombudsman Conrado M. Vasquez, the CSC approved the Qualification Standards for several positions in the Office of the Ombudsman (petitioner) including that for Graft Investigation Officer III. The Qualification Standards for said position are:

EDUCATION :	Bachelor of Laws
EXPERIENCE:	5 years of experience in the practice of law, counseling, investigation/ prosecution of cases, hearings of administrative/ criminal cases, legal research or other related work.
TRAINING :	24 hours of relevant training
ELIGIBILITY :	RA 1080 (BAR)

The Career Executive Service Board (CESB) subsequently advised the Ombudsman, by letter of May 29, 1996,^[2] that pursuant to CSC Memorandum Circular No. 21, s.1994, the position of Graft Investigation Officer III, among other positions in petitioner therein mentioned, was classified as a Career Executive Service (CES) position, hence, governed by the rules of the CES pertaining to eligibility, appointment to CES ranks, and performance evaluation, among other things.

On September 29, 1999, the members of the Constitutional Fiscal Autonomy Group (CFAG), namely: the Commission on Elections (COMELEC), CSC, Commission on Audit (COA), Commission on Human Rights (CHR), petitioner and this Court adopted Joint Resolution No. 62^[3] reading:

JOINT RESOLUTION NO. 62

WHEREAS, the independence of the members of the Constitutional Fiscal Autonomy Group (CFAG) is guaranteed by the Constitution;

WHEREAS, the Constitution has several provisions that guarantee and protect such independence, among which are Sections 4 and 5 of Article IX, A thereof, which respectively grant them Fiscal Autonomy and authorize them to appoint their own officials and employees in accordance with law;

WHEREAS, Section 7(3), Title I, Book V of the Administrative Code of 1987 enumerates exclusively and restrictively the specific positions under the Career Executive Service, all the holders of which are appointed by the President and are required to have CES eligibility;

WHEREAS, in case of Home Insurance Guaranty Corporation vs. Civil Service Commission and Daniel Cruz, G.R. No. 95450, dated 19 March 1993, the Supreme Court nullified the classification by the CSC of the position of Corporate Vice President as belonging to the third level of the Career Executive Services;

WHEREAS, the Court declared in the above cited case that said position is not among those enumerated by law as falling under the third level, nor one of those identified by the CES Board as equivalent rank to those listed by law, nor was the incumbent appointed by the President;

WHEREAS, in the case of Sixto Brillantes, Jr. vs. Haydee T. Yorac, G.R. No. 93867, dated 18 December 1990, the Supreme Court ruled that "Article IX-A, Sec. 1 of the Constitution expressly describes all Constitutional Commissions as 'Independent.' Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions."

WHEREAS, only the Chairmen and Commissioners of the Constitutional Commissions, the Commission on Human Rights, Justices and Judges, as well as the Ombudsman and his Deputies, are appointed by the President;

WHEREAS, the Constitutional Commissions, the Supreme Court, the Commission on Human Rights, and the Office of the Ombudsman are empowered to appoint officials and employees to positions belonging to first level up to third level of their respective agencies, and that they are not presidential appointees;

WHEREAS, Section 22 par. 1, Chapter 5, Subtitle A, Title I, Book V, of the Administrative Code of 1987, provides in part that "[t]he degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular positions[,]" and par. 2 thereof provides that "[t]he establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency, with the assistance and approval of the Civil Service Commission...;"

NOW, THEREFORE, the CFAG jointly resolves:

1. That **all third level positions under each member agency are career positions;**
2. That, where appropriate and proper, taking into consideration the organizational set-up of the agency concerned, the overall screening and selection process for these positions shall be a collegial undertaking, provided that the appointment paper shall be signed only by the Head of the member agency;
3. That **all career third level positions identified and classified by each of the member agency are *not* embraced within the Career Executive Service (CES) and as such shall *not* require Career Service Executive Eligibility (CSEE) or Career Executive Service (CES) Eligibility for purposes of permanent appointment;**
4. That should CFAG member agencies develop their respective eligibility requirements for the third level positions, the test of fitness shall be jointly undertaken by the CFAG member agencies in coordination with the CSC;
5. That in case the test of fitness shall be in written form, the CSC shall prepare the questionnaires and conduct the examinations designed to ascertain the general aptitude of the examinees while the member agency shall likewise prepare the questionnaires and conduct in conjunction with the CSC, the examinations to determine the technical capabilities and expertise of the examinees suited to its functions;
6. That the resulting eligibility acquired after passing the aforementioned examination shall appropriate for permanent appointment only to third level positions in the CFAG member agencies;
7. That the member agencies shall regularly coordinate with the CSC for the conferment of the desired eligibility in accordance with this Resolution; However this is without prejudice to those incumbents who wish to take the Career Service Executive Examination given by the Civil Service Commission or the Management Aptitude Test Battery given by the Career Executive Service Board. (Underscoring in the original omitted; emphasis, italics and underscoring supplied)

On July 31, 2002, Melchor Arthur H. Carandang, Paul Elmer M. Clemente and Jose Tereso U. de Jesus, Jr. were appointed Graft Investigation Officers III of petitioner by the Ombudsman. The CSC approved the appointments on the condition that for the appointees to acquire security of tenure, they must obtain CES or Civil Service Executive (CSE) eligibility which is governed by the CESB.

By January 2, 2003 letter to the CSC, the Ombudsman requested for the change of status, from temporary to permanent, of the appointments of Carandang, Clemente and De Jesus effective December 18, 2002. Invoking the Court of Appeals ruling in

Khem N. Inok v. Hon. Corazon Alma de Leon, et al. (CA-G.R. SP No. 49699), "as affirmed by the Supreme Court," the Ombudsman wrote:

X X X

In the Decision of the Court of Appeals dated January 28, 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 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 thereby effectively granted the petition of Mr. Inok for security of tenure as Director II of the Commission on Audit despite the absence of a CES eligibility.^[4] (Emphasis and italics supplied)

The relevant portions of the cited CA decision read:

Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines, provides the following levels of position in the career service, viz:

SEC. 7. Classes of Positions in the Career Service. –

(a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(1) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(2) 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 level; and

(3) **The third level shall cover positions in the Career Executive Service.**

(b) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in a lower level. **Entrance to the third level shall be prescribed by the Career Executive Service Board.**

(c) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should however, have previously passed the examination for that level.

The last sentence of Section 7(b) of P.D. No. 807 is similar to the provision of P.D. No. 1, Article IV, par. IV, par. 5(a), to wit:

(a) Membership. A person who meets such managerial experience and other requirements and passes such examinations as may be prescribed by the Board shall be included in the register of career service eligibles and, upon appointment to an appropriate class in the Career Executive Service, become an active member in the Service. In exceptional cases, the Board may give unassembled examinations for eligibility. The area of recruitment shall be government-wide, with provisions to allow qualified or outstanding men from outside the government to enter the service.

Thus, it could be gleaned from P.D. No. 1 of the Career Executive Service (CES), which has been [d]rafted into Executive Order No. 292, that the letter and intent of the law is to circumscribe the Career Executive Service to CES positions in the Executive Branch of government. Verily, consistent with the principle of the *ejusdem generis* in legal hermeneutics, the phrase "other officers of equivalent rank" could encompass only such persons occupying positions in the Executive Department. In the contemporaneous case of the **The Secretary of Justice Serafin R. Cuevas, et. al. vs. Atty. Josefina G. Bacal**, the Supreme Court lent credence to this postulate, viz:

Security of tenure in the career executive service is acquired with respect to rank and not to position. **The guarantee of security of tenure to members of the CES** does not extend to the particular positions to which they may be appointed – a concept which is applicable only to first and second level employees in the civil service – but **to the rank to which they are appointed by the President.** x x x

Prescinding from the foregoing disquisition, We are loathe to stamp our imprimatur to the Commission's stance that the "positions of Director III, including that of the COA, belong to the third level. Hence, appointees thereto should possess the x x x Career Executive Service (CES) Eligibility in accordance with the Qualification Standard of the said position."

Ineluctably, 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 CESB. The power of these constitutional offices to appoint their own officers and employees is mainly intended to safeguard their independence, which is the same power of appointment