



PUBLIC ATTORNEY'S OFFICE

RUEDA-ACOSTA, Persida V.

MAMA, Macapangcat A.

MOSING, Silvestre A.

VARGAS, Cynthia M.

DOMALSIN, Frisco F.

PADILLA, Tomas B.

CABRIDO, Renato T.

HIPOLITO, Salvador S.

BACUYAG, Elpidio C.

SAVELLANO, Diosdado S.

GOMEZ, Ramon N.

CALINAWAN, Marla G-Ree R.

DILOY, Florencio M.

GONZALES, Edgardo D.

GARCIA, Nunila P.

CALATRAVA, Francis A.

DUMAMBA, Datumanong A.

AREZA, Howard B.

OSIAS, Marvin R.

ALFORTE-GANANCIAL, Imelda C.

Re: De-classification of Career Executive
Service Positions; Positions in the Public
Attorney's Office
(Appeal)

X-----X

NOTICE OF DECISION

Sir/Madam:

The Commission promulgated on **February 15, 2011 Decision No. 11-0067** on the above-cited case, copy attached. Its original is on file with this Commission.

February 18, 2011.

Very truly yours,


DOLORES B. BONIFACIO

Director IV

Commission Secretarial and Liaison Office

Copy furnished:

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1101 Quezon City

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cslo/ssd/dang

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ALFORTE-GANANCIAL, Imelda C.

Re: De-classification of Career Executive
Service Positions; Positions in the Public
Attorney's Office
(Appeal)

Number: 110067

Promulgated: 15 FEB 2011

X-----X

DECISION

The Public Attorney's Office (PAO) and some of its key officials, headed by Persida V. Rueda-Acosta, Chief Public Attorney, (to be collectively referred hereinafter as Acosta, *et al.*) have appealed from the Career Executive Service Board (CESB) Resolution No. 918, dated January 12, 2011, which denied their request for the de-classification of the following PAO positions from the Career Executive Service (CES), to wit:

1. Chief Public Attorney;
2. Deputy Chief Public Attorneys;
3. Regional Public Attorneys; and
4. Assistant Regional Public Attorneys.

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Chief Personnel Specialist
Commissioner, Engineering & Liaison Office

Pertinent excerpt of the assailed CESB Resolution reads, thus:

x x x

"NOW, THEREFORE, foregoing premises considered, the Board hereby RESOLVES, as it is hereby RESOLVED, pursuant to its mandate and authority over third level positions, to deny the request for declassification of the following positions in the Public Attorney's Office as part of the Career Executive Service, to wit:

- 1. Chief Public Attorney;*
- 2. Deputy Chief Public Attorneys;*
- 3. Regional Public Attorneys; and*
- 4. Assistant Regional Public Attorneys.*

"RESOLVED FURTHER, that for purposes of security of tenure in the CES, compliance with the twin requirements of (1) CES eligibility and (2) for an incumbent to be appointed to CES rank by the President is imperative."

x x x

In their appeal, the PAO and Acosta, *et al.* have propounded the following:

x x x

"GROUNDS FOR THE APPEAL

"I

"Pursuant to Section 12, (11) Chapter 3, Title 1, Book 5, E.O. 292, the CSC has the power to review, hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Hence, the present appeal is being brought directly before the CSC.

"II

"CESB Resolution No. 918 dated January 12, 2011 has been rendered contrary to R.A. No. 9406 in relation to R.A. 10071, the 1987 Constitution and the CSC letter-opinion dated January 7, 2011. If not corrected, the same will cause injustice not only to the affected officials of the PAO but to the service and its clientele.

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Chief Personnel Specialist
Commission Region 4 - Uniform Office

"III

"The CESB Resolution No. 918 is definitely null and void on the ground that the CESB has usurped the legislative functions of Congress by requiring additional qualification for appointment thereby amending the specific and particular provisions of RA No. 9406, to wit: 'the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys shall not be removed or suspended without cause'; and that 'the incumbent officials and personnel of the Public Attorney's Office shall continue holding his/her position without the need of new appointment.'

"28. It is basic that the central personnel agency of the government is the Civil Service Commission. x x x.

x x x

"29. The questioned CESB Resolution No. 918 dated January 12, 2011 and the DOJ letter-opinion dated January 3, 2011 are contrary to law, highly improper, illegal and violative of the tenets of R.A. No. 9406, R.A. No. 10071 and the 1987 Constitution.

"30. The letter-opinion of the Civil Service Commission (CSC) dated January 7, 2011 should have been binding on the CESB and the DOJ. The said CSC letter-opinion states, inter alia:

'No less than the Constitution provides that x x x among other things, practice of law as requirement for appointment thereto. x x x This means that the Constitution and the Civil Service Law prescribe RA 1080 (BAR) as the appropriate civil service eligibility therefor. Accordingly, any imposition of the third level eligibility (e.g., CESE, CSEE) is not proper, if not, illegal under the circumstances.' x x x.

x x x

"The same likewise holds true with respect to the qualification for appointment of the Assistant Regional Public Attorneys. The employment status of Assistant Regional Public Attorneys is also permanent in character as they also enjoy security of tenure, being appointed by the head of PAO, the Chief Public Attorney pursuant to RA No. 9406 and NOT by the President.

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Chief Personnel Specialist
Commissioner, Department of Labor & Employment

"The cases cited in the conflicting CESB Resolution No. 918, particularly Amores, General and Achacoso cases are not squarely applicable in the present case at bar because the entities/agencies where they are connected have no particular and special law covering and vesting them the security of tenure for permanent government workers. Unlike in the case at bar, they cannot claim that they do not need to get a third level eligibility.

"The De Jesus case cited in the said conflicting CESB Resolution, in fact, even bolsters the claim of herein appellants that 'specific statute prevails over a general statute.' R.A. No. 9406 or PAO Law is a later specific statute particularly applicable to the Public Attorney's Office (PAO) and its work force which should prevail over P.D. No. 1, inasmuch as P.D. No. 1 was deemed repealed by R.A. No. 9406 insofar as the PAO and its employees are concerned. It is basic and elementary that the later law prevails over the old law which has been modified, amended or reversed accordingly.

"The legislative intent and the spirit of the law to give security of tenure to PAO officials are clear and manifest in the wordings of R.A. No. 9406. The principal authors of R.A. No. 9406 or the PAO Law, Senator Juan Ponce Enrile and Bayan Muna Representative Teodoro Casino unmistakably confirm this legislative intent. x x x.

x x x

"From the foregoing, it is clear that the intension of the legislature is to give the PAO officials a security of tenure to guarantee the continuity of legal services to the poor. As aptly discussed by Ruben E. Agpalo in his book, 'as a general rule, the intent of the legislature to be ascertained and thereafter given effect is the intent expressed in the language of the statute. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as plain-meaning rule or verba legis. x x x.'

x x x

"The qualifications of the PAO officials are clearly delineated in the R.A. No. 9406 (PAO Law) and there is no ambiguity in the said statute. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. x x x.

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Commission Registrar & Liaison Officer

"The CESB in issuing the aforesaid conflicting resolution has overruled its mother unit, the CSC, to which it is attached. The CESB deliberately failed to consider that the basis of CSC in issuing its opinion dated January 7, 2011 were anchored on an enabling law (R.A. No. 9406) enacted by Congress particularly for the strengthening of PAO and its protection and continuity of free legal services despite changes in political situations. The CSC further based its letter-opinion categorically from Section 7 Article VIII of the 1987 Constitution, in relation to R.A. 10071, the enabling law for the Public Prosecutors whose qualification for appointment shall also be the basis for the appointment of their counterpart at the PAO. Therefore, it is clear and patent that the respondent CESB usurped the legislative functions of the Congress, the legislative branch of the government, when it (the CESB) amended and rendered nugatory the specific and particular provisions of RA No. 9406 declaring that 'the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys shall not be removed or suspended for without cause.' Thus, the said Resolution No. 918 of the CESB is definitely null and void.

"The CESB should have realized that, it belonging to the executive branch of the government, enjoys only the power to execute and implement the laws of the land; and that CESB has no power to make additions or deletions from the clear language of the law applicable particularly to the PAO."

x x x

In an Order dated January 17, 2011, the Commission, through its Office for Legal Affairs, directed the CESB to submit its comment to the appeal, together with the supporting documents, if there be any.

Within the prescribed period, the CESB has adduced, instead of a comment, a pleading denominated or captioned as Motion for Clarification. However, the points raised therein are actually in the nature of a jurisdictional challenge inasmuch as the CESB is impugning the authority of the Commission to pass upon the appeal of Acosta, *et al.* Akin to a motion to dismiss, it shall therefore be treated as the CESB's comment. Therein, the CESB has essentially advanced raised the following arguments:

x x x

"3. It is the humble submission of the appellees (that is, CESB) that the Honorable Commission has no jurisdiction to settle or adjudicate issues, controversies involving questions of law between two government entities of the national government.

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Chief Personnel Specialist

Commission Registrar & Liaison Officer

"4. Not a single provision in both the Philippine Constitution and the Administrative Code of 1987 can be found to state that the Honorable Commission has been imbued with such power.

"5. In contrast, it is provided in Section 66 and 67, Chapter 14, Book IV of EO 292 that:

'Section 66. How Settled. - All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

'Section 67. Disputes Involving Questions of Law. - All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as ex officio legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.'

"6. From the above cited provisions, it is clear that aside from the courts of justice, the Secretary of Justice is expressly empowered to administratively settle or adjudicate all cases involving only questions of law, solely between or among departments, bureaus, offices, agencies and instrumentalities of the national government, including government-owned or controlled corporations.

"II.

"The Honorable Commission has no jurisdiction to pass upon issues concerning officers whose appointments are by law vested in the President of the Philippines alone; nor does it have jurisdiction over positions which are classified as CES.

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Chief Personnel Specialist

Commission on Elections & Labor Office

"8. There is nothing in the Executive Order No. 292 x x x otherwise known as the 'Administrative Code of 1987,' that, especially and/or explicitly, vest this Honorable Commission with the jurisdiction to review matters relating to the third level, and in particular, those concerning presidential appointees;

"9. Moreover, Section 4, Rule IV (Qualification Standards) of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 limits the authority of the Honorable Commission to prescribe qualification standards only to the first and second level of the career service. x x x.

x x x

"12. x x x it is clear that the enactment of RA 9406 did not change the fact that the positions of Chief Public Attorney, Deputy Chief Public Attorneys, and Regional Public Attorneys require presidential appointment.

"13. With this fact in mind, it is reiterated that the Honorable Commission has no jurisdiction over the officers of the PAO whose appointments are, under RA 9406, vested in the President alone, not to mention that the said positions are undeniably CES in nature.

"III.

"The decisions and/or resolutions of the Appellee are not appealable to the Honorable Commission since the CESB is an autonomous entity and is only attached to the CSC for purposes of policy and planning coordination.

x x x

"14. It has been significantly pronounced by the Supreme Court in the case of *Eugenio vs. CSC*, G.R. No. 115863, March 31, 1995, where it recognized the existence, mandate and authority of the appellee over third level positions and its autonomy from the CSC. The Supreme Court further enunciated that the CESB is attached only to the CSC for purposes of attaining policy and program coordination. x x x.

x x x

"15. This, in turn, is reinforced by the provisions of the Integrated Reorganization Plan x x x, implementing Presidential Decree No. 1 x x x, particularly, Paragraph 5 (h), Article IV, Part III x x x.

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Commission on Appointments & Labor Office

x x x

"16. From the foregoing, it can be concluded that any decision and/or resolution rendered or issued by the appellee, on matters pertaining to the CES, is appealable to the Office of the President and not to the Honorable Commission.

"IV.

"Assuming that the Honorable Commission has jurisdiction to hear and decide the instant appeal, it is still precluded from passing upon the issues herein under the doctrine of concurrent jurisdiction.

x x x

"19. To reiterate, Chapter 67, Chapter 14, Book IV of EO 292 in relation to Section 66 thereof, empowers the Secretary of Justice to administratively settle or adjudicate all cases involving only questions of law solely between or among the departments, bureaus, offices, agencies and instrumentalities of the national government x x x.

x x x

"20. Assuming that the Honorable Commission has jurisdiction over the instant appeal and exercises a concurrent jurisdiction with that of the Secretary of Justice on the controversy involving questions of law between the CESB, appellee and the PAO and its officials, appellants, this concurrence should not be viewed as a contest between these bodies as to which will first issue a resolution on the matter.

"21. It is undeniable that this whole controversy was initiated within the Department of Justice through the letter of Deputy Chief Public Attorney Mosing, dated 9 November 2010 x x x and being the government agency which first took cognizant of the issues presented in the instant appeal, the Honorable Commission is then excluded from taking cognizance hereof pending the resolution of the Secretary of Justice.

"V.

"Assuming that the Honorable Commission has jurisdiction to hear and decide the instant appeal, it will not be able to render an unbiased decision and/or resolution in favor of the appellants and against the appellee since it has previously issued a


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*legal opinion dated 7 January 2011, Re:
Appropriate Eligibility for the Key Positions
in PAO, favoring the former.*

x x x

"24. In the instant appeal, the officials of the Honorable Commission who will render the decision and/or resolution hereof are likened to judges and as such they are expected not only to be neutral, impartial, fair and free from bias but also to appear as such.

"25. With due respect, however, it would be difficult to expect a determination and/or resolution which would in favor of the appellee when in fact a legal opinion x x x has been previously issued favoring the appellant."

x x x

In due time, Acosta, *et al.* have proffered their reply, where they have vigorously rebutted the averments of the CESB, and resolutely stood by the jurisdiction of the Commission to hear and decide their case.

As may be reconstructed from the available documents, the present controversy arose when the DOJ, through the Office of the Secretary, circulated to all its subordinate offices and units the CESB Report dated September 13, 2010, which indicated, among others, that in PAO, thirty-three (33) positions thereat are occupied by non-CES eligibles.

Reacting to the Report, PAO Deputy Chief Public Attorney Silvestre A. Mosing, one of the parties herein, wrote to the CESB, clarifying that the positions of Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys are given security of tenure pursuant to Republic Act (RA) No. 9406 or PAO Law.

After the lapse of more than a month without receiving any answer to their earlier missive, Deputy Chief Public Attorney Mosing, by authority of the Chief Public Attorney (Rueda-Acosta), addressed to the CESB another letter (dated November 9, 2010), citing additional legal authorities to bolster their position that PAO officials, like him, are already permanent appointees and need not be reappointed anymore. On even date, the same PAO official sent a separate letter to the DOJ Secretary, re-echoing their view that PAO officials should not be included in the Data on CES Occupancy since they are, by virtue of law, permanent appointees.

In a letter dated January 3, 2011, the DOJ, through Chief State Counsel Ricardo V. Paras III, belied the claim of the PAO and opined that the top level positions in that agency were deemed part of the CES necessitating the possession of CES or third level eligibility. Since the incumbent PAO officials do not have the requisite eligibility, they were, at best, temporary, and not permanent, appointees.

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Thereafter, the PAO, through its top officials, sought legal opinion from the Commission on the matter. Responding thereto, the Commission *en banc* issued a legal opinion dated January 7, 2011, stating that third level eligibility is not mandated for purposes of permanent appointment to the positions of Chief Public Attorney, Deputy Chief Public Attorney, and Regional Public Attorney. Only RA 1080 (Bar) civil service eligibility is necessary.

A few days later, the CESB promulgated the impugned resolution.

Aggrieved by the turn of events, Acosta, *et al.* have commenced the appeal at bar, where the primordial issue to be resolved is whether their positions, indeed, call for the possession of third level eligibility and CESO rank for purposes of security of tenure.

But before proceeding to tackle the said gut issue, the Commission shall first address itself to the issue of jurisdiction. It is to be noted that the CESB, in its motion for clarification, has taken pains in pointing out that the Commission has no power to decide the case at bar. It posits that under the Administrative Code of 1987, any dispute involving governmental agencies, such as the instant controversy, should be taken cognizance of by the DOJ. It likewise contends that issues concerning presidential appointees as well as those that relate to CES positions are beyond the competence of the Commission. In the same vein, it submits that being an autonomous entity, its decisions or resolutions are outside the revisory power of the Commission. Further, it asserts that since a similar action was previously lodged with the DOJ, the Commission has been ousted of jurisdiction thereover in accordance with the rule on concurrent jurisdiction, and that even then, it cannot be expected to render an impartial disquisition, it being the fact that the Commission had earlier issued an opinion on the matter that favored Acosta, *et al.*

To these arguments, Acosta, *et al.* have taken exception. They allege, *inter alia*, that the CESB cannot claim to be independent of the Commission inasmuch as the latter, by express provisions of law, has authority over all levels of position in the civil service, including that of third level, which is the very class of positions being administered by the CESB. They also insist that the CESB cannot capitalize on its being attached to the Commission only for policy and program coordination to conclude that the latter has no business passing upon its actions. According to them, to say that the Commission has no power to pass upon the decision or resolution of the CESB would be to unduly delimit its integrity as a constitutional body. They asseverate, too, that the present case is not cognizable by the DOJ on the ground that what is involved herein is actually a dispute involving the CESB and the Commission and the latter is excluded from the DOJ's authority to settle issues among government agencies.

To resolve the clashing views as to whether or not the Commission can actually decide the case, it is incumbent to look into what essentially comprises its jurisdiction.

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In the study of law, it is noteworthy to mention that jurisdiction, which is the power to hear and decide a case, is classified into jurisdiction over the subject matter and over the person. Inasmuch as the present case does not raise any issue regarding the latter aspect of jurisdiction, the ensuing discussion should therefore be confined to that of jurisdiction over subject matter. On this score, it is well-settled to the point of being elementary that the jurisdiction of a court or an administrative agency over a subject matter does not depend on the will or consent of the parties but is conferred by the Constitution or by acts of Congress. In the herein case, the scope of authority of the Commission is spelled out both under the Constitution and the Administrative Code of 1987.

On the one hand, the 1987 Philippine Constitution has marked in broad strokes the mandate of the Commission. It provides that as the central personnel agency of the government, the Commission shall, among others, strengthen the merit and rewards system; integrate all human resources development programs for all levels and ranks; and institutionalize a management climate conducive to public accountability.

Upon the other hand, the Administrative Code of 1987, in carrying out the broad provisions of the Constitution, has threshed out, in more particular terms, the actual metes and bounds of the jurisdictional competence of the Commission. Pursuant to Items 5 and 11, Section 12, Chapter 3, Title I-A, Book V of the aforesaid Administrative Code, the Commission is empowered to issue binding opinions and rulings dealing with civil service and personnel matters and also, to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it.

Jurisprudence has amplified and elaborated on the civil service matters that the Commission can rightfully pass upon in line with its legal mandate as defined by the Constitution and by relevant laws. Consistent with long-established judicial *dicta*, the Commission is said to possess jurisdiction over administrative disciplinary cases as well as cases involving "personnel actions" affecting employees in the civil service including "appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation." As a matter of fact, the jurisprudential teaching that has evolved through time is that with respect to the aforementioned subject, the jurisdiction of the Commission is undeniably exclusive in character. Instructive on this point is the incisive pronouncement of the Supreme Court in the case of **Mantala vs. Salvador** (G.R. No. 101646, February 13, 1992), to wit:

"Disciplinary cases, and cases involving 'personnel actions' affecting employees in the civil service—including 'appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation,' and, of course, employment status and qualification standards—are within the exclusive jurisdiction of


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the Civil Service Commission. The Constitution declares the Commission to be 'the central personnel agency of the Government,' having power and authority to administer the civil service; to promulgate its own rules concerning pleadings and practice before it or before any of its offices; and to render decision in 'any case or matter brought before it within sixty days from the date of its submission for decision or resolution,' x x x."

A judicious evaluation of the appeal lodged by Acosta, *et al.* shows that it is concerned with employment status and qualification standards. Be it noted that the group of Acosta is assailing the decision of the CESB, denying their request for the exclusion of their positions from the coverage of the CES, which would then exempt them from the third level eligibility requirement for CES positions. At a blush, therefore, the Commission, as the sole arbiter of all contests in the civil service, is imbued with the requisite power to delve into the substantive merit of the appeal of Acosta, *et al.*

Yet, as stated above, the CESB firmly opposes the Commission's assumption of jurisdiction over the present case. However, upon its thorough assessment of the grounds interposed by the CESB to support its jurisdictional challenge, the Commission finds them untenable.

The argument that the case under consideration presents an inter-agency dispute between the CESB and the PAO, which should be submitted to the DOJ for resolution pursuant to the express provisions of the Administrative Code, does not persuade. The power of the DOJ to resolve disputes, claims and controversies between and among government offices is not comprehensive and all-encompassing. A reading of the applicable provisions of the Administrative Code, *i.e.*, Sections 66 and 67, Chapter 14, Book IV thereof, reveals that this power is restricted to where the dispute, claim or controversy pertains solely to government offices. Deductively, where there are other interests involved, then the DOJ cannot effectively assert jurisdiction over a case. Herein, the material and substantial interests are not confined to that of the CESB and the PAO as governmental institutions. The interests of the individual parties, particularly that of Acosta, *et al.*, are also closely and intimately linked and intertwined in the case such that its outcome would invariably impact on their employment status. Indeed, should it be ruled that the subject positions of PAO properly belong to the third level which requires third level eligibility and CESO rank, the most likely outcome would be the separation of Acosta, *et al.* from the service considering their lack of appropriate eligibility and rank.

The CESB likewise cannot seek refuge in its contention that since Acosta, *et al.* are all presidential appointees, the Commission is devoid of any power to rule on their appeal. It must be emphasized that in delineating its functions, the Constitution declares that the Commission shall administer the civil service, which covers "all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters." (Sections 1 [1] and 2 [1], Article IX-B, 1987 Philippine Constitution) Furthermore, it stipulates that the

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Commission shall "strengthen the merit and rewards system" and "integrate all human resources development programs for all levels and ranks." (Section 3, Article IX-B, *supra*.) All these constitutional injunctions starkly unveil the intent of the framers of the Constitution to endow the Commission with broad and plenary authority reaching throughout the length and breadth of the civil service system on matters and incidents appurtenant thereto.

That the Administrative Code of 1987 invests the CESB with the authority to prescribe the entrance to the third level, to which the positions of Acosta, *et al.* belong, does not necessarily oust the Commission of jurisdiction to hear and decide cases and matters connected therewith. In empowering the CESB to lay down the entrance requirements for the third level, the Administrative Code should not be interpreted as cutting off the reach of the Commission over this particular class of positions. Being an exception to the constitutional mandate of the Commission, the statutory authority conferred on the CESB should be viewed stringently and meticulously so as not to defeat the intendment of the Constitution. This is all the more so when the same Administrative Code ordains the Commission to administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks (Section 12 [1], Chapter 3, Title I-A, Book V of the Administrative Code of 1987). Consequently, it may be said that the appeal at bar, involving as it does a civil service matter, properly lies within the realm of the Commission, notwithstanding the fact that the parties thereto happen to be presidential appointees. Apropos to this is the pronouncement of the High Tribunal in the case of *Corsiga vs. Defensor, et al.* (G.R. No. 139302, October 28, 2002), to wit:

"The Civil Service Commission has jurisdiction over all employees of Government branches, subdivisions, instrumentalities, and agencies, including government-owned or controlled corporations with original charters. As such, it is the sole arbiter of controversies relating to the civil service." (Bold captioning for emphasis)

It will not also win the day for the CESB to assert that being an autonomous entity, whose attachment to the Commission is only for policy and program coordination as explained in the case of *Eugenio vs. CSC* (G.R. No. 115863, March 31, 1995), its actions are beyond the pale of the Commission's review power. The pertinent provision of the Administrative Code, specifying the review power of the Commission, cannot be any clearer. Section 12 (11), Chapter 3, Title I-A, Book V of the Administrative Code of 1987, reads, to wit:

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

x x x



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Chief Personnel Specialist
Commission Registrar & Liaison Office.

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x.
(Underscoring supplied for emphasis)

The underscored portion above categorically provides that decisions and actions of offices and agencies attached to the Commission are subject to its review. Being an attached agency of the Commission, it logically follows that it has appellate jurisdiction over any decision or resolution of the CESB.

It is worth noting, as well, that in case of an attachment, an office or agency is not entirely and totally insulated from the department to which it is attached. While larger measure of independence is accorded to the attached office, the mother department still retains revisory power over the former. This much is implied in the case of *Beja vs. CA, et al.* (G.R. No. 97149, March 31, 1992), where permissive recourse to the department from an action of an attached agency was not foreclosed by the Court.

The provision of the Integrated Reorganization Plan (which implemented PD No. 1), mandating that "administrative cases involving members of the service on assignment with the Board shall be investigated and adjudicated by the Board with the right to appeal to the Office of the President," does not fortify the posturing of the CESB on this point. To put it bluntly, reliance on the said provision is utterly misplaced. Pointedly, the provision in question contemplates of disciplinary proceedings involving members of the CES assigned or designated to the CESB, where the decisions of the latter are appealable to the Office of the President. The instant case is non-disciplinary in nature and *Acosta, et al.* are not certainly assigned with the CESB.

There is similarly no force and credence to the assertion of the CESB that since the DOJ and the Commission enjoy concurrent jurisdiction over the present controversy, and since *Acosta, et al.* had earlier lodged their case before the former via a letter dated November 9, 2010, the latter is thereby excluded from taking cognizance thereof. It is said that when several tribunals or administrative agencies have concurrent jurisdiction over a case, the first court or agency which acquires jurisdiction retains it to the exclusion of the others. What this implies is that the subsequent filing of an identical case before other another forum with concurrent jurisdiction is proscribed since the latter is already deprived of the authority to hear and decide it. At bar, the contents of the aforesaid letter and the present appeal, while related, are not exactly the same. On the one hand, the letter was an expression of sentiments of *Acosta, et al.* that the DOJ should not include them in the Data on CES Occupancy of the department for the reason that their positions are exempted from the third level eligibility requirement. On the other hand, the subject appeal is foisted against the resolution of the CESB denying their request for de-classification of their positions as CES. Consequently, the Commission can properly rule on the appeal independently of the action of the DOJ on the letter of *Acosta, et al.*

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Finally, contrary to the claim of the CESB, the previous rendition of an opinion by the Commission on the matter does not necessarily mean that it would no longer be an impartial body to decide the appeal of Acosta, *et al.* It is the rule that officials are presumed to act in good faith and in regular manner, and any imputation or allegation of partiality or bias must be adequately proven, which is not obtaining in the present case. In so saying, the Commission does not lose sight of the jurisprudential dictum that a judge should disqualify himself should he be called upon to review a matter on which he had previously given his opinion. Yet, to unreservedly or unqualifiedly apply the said precept to the instant case would be to lead to an absurd spectacle—where the Commission would be inhibiting itself from the case, and thereby reneging on its constitutional mandate as the sole arbiter of all issues in the civil service.

Coming now to the merits of the case, the Commission, after mature deliberation, finds the impugned CESB resolution not in order.

At bottom, the group of Acosta is assailing the CESB resolution on the ground that their tenurial security to their positions in the PAO is not anchored or predicated on their possession of third level eligibility and CESO rank as per Republic Act (RA) No. 9406 or the PAO Law. According to them, the CESB erred in declaring that the said requirements are necessary for the incumbents of the positions of Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys to enjoy security of tenure.

The contention of Acosta, *et al.* is well-taken. Under the revised charter of the PAO, the qualifications of the abovementioned positions are the following:

1. The Chief Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of the Chief State Prosecutor of the National Prosecution Service;
2. The Deputy Chief Public Attorneys shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of the Assistant Chief State Prosecutor of the National Prosecution Service; and,
3. The Regional Public Attorney and the Assistant Regional Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of a Regional State Prosecutor and the Assistant Regional State Prosecutor of the National Prosecution Service, respectively.

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At the time of the passage of the PAO Law in 2007, the law governing the National Prosecution Service was Presidential Decree (PD) No. 1275. Notably, PD No. 1275 provided a uniform qualification for Chief State Prosecutor, the Assistant Chief State Prosecutor as well as the Regional State and Assistant Regional State Prosecutor. Appointees thereto should be selected from among qualified and professionally trained members of the legal profession who are of proven integrity and competence and have been in the actual practice of the legal profession for at least five (5) years prior to their appointment or have held during like period, any position requiring the qualifications of a lawyer.

Not long after, however, a new law was enacted covering the National Prosecution Service. This is embodied in RA No. 10071. Among other things, the law has re-titled the Chief State Prosecutor to Prosecutor-General and exactly patterned its qualifications to that of the Presiding Justice of the Court of Appeals (CA). As regards that of Assistant Chief State Prosecutor, it has been re-titled to Senior Deputy State Prosecutor and ranked as Prosecutor V with the qualification similar to that of an Associate Justice of CA. The same qualification holds true to the Regional State Prosecutor, whose new position title is that of Regional Prosecutor (Prosecutor V). With regard to the Assistant Regional State Prosecutor, the same now bears the title of Deputy Regional Prosecutor (Prosecutor IV), the qualifications of which are equivalent to a judge of the Regional Trial Court.

Corollary to the foregoing, the positions of the Presiding Justice and the Associate Justice of the CA shall have the same qualifications as provided in the Constitution for Justices of the Supreme Court (SC), as per Batas Pambansa (BP) Blg. 129 or the Judiciary Reorganization Act of 1980, as amended. Under the 1987 Constitution, an SC Justice should be a natural-born citizen of the Philippines, at least forty years of age, and must have been for fifteen years or more, a judge of a lower court or engaged in the practice of law in the Philippines. Meanwhile, an RTC judge should be a natural-born Filipino citizen, at least thirty-five years of age, and for at least ten years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

The foregoing elaboration shows the qualifications of the subject PAO positions under the existing laws. It is gleaned that nowhere in these laws is there a reference to third level eligibility and CESO rank as qualification requirements for attaining tenurial security. All that the laws uniformly prescribe for the positions in question is practice of law for certain period of time, which presupposes a bar license. This being the case, the CESB cannot, in the guise of enforcing and administering the policies of the third level, validly impose qualifications in addition to what the laws prescribe. It cannot add another layer of qualification requirement which is not otherwise specified in the statutes. As an administrative agency, the CESB can only promulgate rules and regulations which must be consistent with and in harmony with the provisions of the laws, and it cannot add or subtract thereto. Most evidently, therefore, in promulgating the assailed resolution, which

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sets out additional qualifications for the subject positions in the PAO, the CESB has overstepped the bounds of its authority. Albeit not in all fours with the present case, the ratification of the Supreme Court in the consolidated cases of **Social Justice Society vs. DDB and PDEA (G.R. No. 157870, November 3, 2008; G.R. No. 158633, November 3, 2008; and G.R. No. 161658, November 3, 2008)** may prove pertinent. In those cases, one of the issues raised was whether the qualifications provided for by the Constitution for the Senate position may be increased or augmented by an act of congress and by an administrative regulation. Answering in the negative, the Court expostulated:

"In the same vein, the COMELEC cannot, in the guise of enforcing and administering election laws or promulgating rules and regulations to implement Sec. 36 (g), validly impose qualifications on candidates for senator in addition to what the Constitution prescribes. If Congress cannot require a candidate for senator to meet such additional qualification, the COMELEC, to be sure, is also without such power. The right of a citizen in the democratic process of election should not be defeated by unwarranted impositions of requirement not otherwise specified in the Constitution.

"Sec. 36 (g) of RA 9165, as sought to be implemented by the assailed COMELEC resolution, effectively enlarges the qualification requirements enumerated in the Sec. 3, Art. VI of the Constitution. As couched, said Sec. 36 (g) unmistakably requires a candidate for senator to be certified illegal-drug clean, obviously as a pre-condition to the validity of a certificate of candidacy for senator or, with like effect, a condition sine qua non to be voted upon and, if proper, be proclaimed as senator-elect. The COMELEC resolution completes the chain with the proviso that '[n]o person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test.' Viewed, therefore, in its proper context, Sec. 36 (g) of RA 9165 and the implementing COMELEC Resolution add another qualification layer to what the 1987 Constitution, at the minimum, requires for membership in the Senate. x x x."

In so saying, the Commission does not lose sight of the power of the CESB to identify other positions equivalent to those enumerated in the Administrative Code of 1987 as being part of the third level or CES for as long as they come within the ambit of the appointing prerogative of the President. Yet, such grant of authority is derived from a general law (the Administrative Code) and hence, it must be deemed circumscribed or qualified by the special law governing the PAO. Reiteratively, the PAO Law, in conjunction with other laws, merely fixes practice of law as the principal qualification requirement for the positions of Acosta, *et al.*

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WHEREFORE, foregoing premises considered, the instant appeal is hereby **GRANTED**. Accordingly, the CESB Resolution No. 918 dated January 12, 2011 is **REVERSED AND SET ASIDE** for not being in conformity with law and jurisprudence. It is declared that the following key positions in the Public Attorney's Office do not require third level eligibility and CESO rank for purposes of tenurial security:

1. Chief Public Attorney;
2. Deputy Chief Public Attorneys;
3. Regional Public Attorneys; and
4. Assistant Regional Public Attorneys.

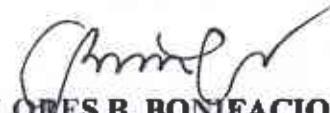
Quezon City.


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner


FRANCISCO T. DUQUE III
Chairman

VACANT
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV

Commission Secretariat and Liaison Office

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