



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANGEL ABAD,

Petitioner,

G.R. No. 207422

Present:

CARPIO, J., *Chairperson,*

VELASCO, JR.

DEL CASTILLO,

MENDOZA, and

LEONEN, JJ.

-versus-

HERMINIO DELA CRUZ,
Respondent.

Promulgated:
MAR 18 2015

X-----X

DECISION

LEONEN, J.:

Appointments in the civil service are made fundamentally on the basis of merit. Both the Constitution and law ensure that those appointed are fit for the position. While those who are next in rank to a vacant position may be given some preference, no one has a vested right to a government position. Seniority and salary grades should be given their due weight but should not trump the public interest.

This resolves the Petition for Review on Certiorari¹ filed by Angel Abad assailing the Court of Appeals Decision² dated April 11, 2012. The Court of Appeals affirmed the Civil Service Commission Resolution³ dated

Designated acting member per S.O. No. 1951 dated March 18, 2015.

¹ Rollo, pp. 8–20.

² Id. at 145–158. The Decision was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Rosalinda Asuncion-Vicente (Chair) and Antonio L. Villamor of the Ninth Division.

³ Id. at 50–56.

June 22, 2010. This Resolution affirmed the permanent appointment of Herminio Dela Cruz as City Government Department Head III.⁴

Mayor Jaime R. Fresnedi appointed Herminio Dela Cruz (Dela Cruz) as City Assessor⁵ of the City Government of Muntinlupa in a permanent capacity on December 28, 2006.⁶ The City Assessor is given the item of City Government Department Head III.⁷

In Resolution No. 06-361,⁸ majority of the members of the Sangguniang Panlungsod of the City Government of Muntinlupa concurred in the appointment of Dela Cruz as City Government Department Head III.⁹

Pursuant to Civil Service Commission Resolution No. 02-1235 granting the City Government of Muntinlupa the power to take final action on its appointments, the appointment of Dela Cruz was considered attested to by the Civil Service Commission.¹⁰

Angel A. Abad (Abad), Local Assessment Operations Officer V in the Office of the City Assessor, wrote the Civil Service Commission and requested the disapproval of Dela Cruz's appointment as City Government Department Head III.¹¹ Abad alleged that the position of City Government Department Head III corresponded to Salary Grade 27, nine (9) salary grades higher than Dela Cruz's former position as Local Assessment Operations Officer III with Salary Grade 18.¹² According to Abad, Dela Cruz's appointment violated Item 15 of Civil Service Commission Memorandum Circular No. 3, Series of 2001, which prohibits the promotion of an employee to a position more than three (3) salary grades above his or her former position:¹³

15. An employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's present position except in very meritorious cases, such as: if the vacant position is next-in-rank as identified in the System of Ranking Positions (SRP)

⁴ Id. at 56.

⁵ Id. at 35.

⁶ Id. at 22.

⁷ Id. at 35.

⁸ Id. at 23–25.

⁹ Id. at 24. Rules and Regulations Implementing the Local Government Code of 1991, art. 119(a) provides:

ART. 119. *Appointment of Appointive Local Officials.*—(a) Unless otherwise provided in this Rule, heads of offices and departments in the LGUs shall be appointed by the local chief executive concerned with the concurrence of a majority of all the members of the sanggunian, subject to civil service laws, rules and regulations.

¹⁰ Id. at 51. The Resolution was dated September 24, 2002.

¹¹ Id. at 26–27.

¹² Id. at 27.

¹³ Id. at 26–27.

approved by the head of agency, or the lone or entrance position indicated in the agency staffing pattern.

Abad added that being a qualified next-in-rank, he applied for the position of City Government Department Head III. However, he and three (3) other qualified applicants were allegedly excluded from the selection process, in violation of Item 10 of Civil Service Commission Memorandum Circular No. 3, series of 2001.¹⁴ This provides:

10. For vacancies in the first and second levels, all qualified next-in-rank employees shall be automatically considered candidates for promotion to the next higher position.

According to Abad, the appointment of Dela Cruz caused “demoralization within [their] ranks.”¹⁵

In the letter¹⁶ dated January 26, 2007, the Civil Service Commission referred Abad’s letter to the City Government of Muntinlupa’s grievance machinery for proper action.

In the meantime, newly elected Mayor Aldrin San Pedro (Mayor San Pedro) assumed his office in the City Government of Muntinlupa on July 1, 2007. On August 3, 2007, the main building of Muntinlupa City Hall was gutted by fire, destroying the Office of the City Personnel. The City Government of Muntinlupa, therefore, failed to act on Abad’s Letter.¹⁷

Thus, on September 25, 2007, Abad filed with the Mayor’s Office the letter-complaint¹⁸ reiterating his request for disapproval of Dela Cruz’s permanent appointment as City Government Department Head III.

Mayor San Pedro referred Abad’s letter-complaint to the City Government of Muntinlupa’s Personnel Department.¹⁹

Finding that Dela Cruz’s promotion violated Civil Service Commission Memorandum Circular No. 3, Series of 2001 on the three-salary-grade rule,²⁰ the Grievance Committee recommended the invalidation of Dela Cruz’s permanent appointment as City Government Department Head III.²¹ This recommendation was approved by Mayor San Pedro.

¹⁴ Id. at 27.

¹⁵ Id.

¹⁶ Id. at 28–29.

¹⁷ Id. at 146.

¹⁸ Id. at 30–31.

¹⁹ Id. at 51.

²⁰ Id. at 33.

²¹ Id. at 34.

Mayor San Pedro's approval was then referred to the Civil Service Commission-National Capital Region for appropriate action.²²

In the Decision²³ dated August 17, 2009, the Civil Service Commission-National Capital Region invalidated Dela Cruz's permanent appointment as City Government Department Head III and ruled that he was appointed in violation of the three-salary-grade rule under Civil Service Commission Memorandum Circular No. 3, Series of 2001.²⁴

On Dela Cruz's appeal,²⁵ the Civil Service Commission reversed and set aside the Civil Service Commission-National Capital Region's Decision in Resolution No. 101276 dated June 22, 2010.²⁶

The Civil Service Commission found that the City Government of Muntinlupa's Personnel Selection Board ranked the applicants for City Government Department Head III based on the following criteria: performance, work history, awards, education, training, potential, and physical characteristics and personality traits. Out of nine (9) applicants, Dela Cruz ranked first with a grade of 90.67 out of 100 points. Although it conceded that Abad was not among the nine (9) applicants screened, the Commission nevertheless ruled that Dela Cruz's appointment was an exception to the three-salary-grade rule.²⁷ Dela Cruz underwent a deep selection process rendering his appointment "very meritorious[.]"²⁸

The Commission likewise noted that contrary to the rule that whoever alleges must prove, the Grievance Committee placed on Dela Cruz the burden of proving that Abad was not considered for appointment. The Grievance Committee, therefore, erred. As for Abad, he failed to prove the allegation that he was not considered for promotion.²⁹

Abad's Motion for Reconsideration was denied by the Civil Service Commission in the Resolution dated November 12, 2010.³⁰

A Petition for Review was filed before the Court of Appeals.³¹ The Court of Appeals, however, dismissed the Petition for Review in the Decision dated April 11, 2012.³²

²² Id. at 147.

²³ Id. at 35-36.

²⁴ Id. at 36.

²⁵ Id. at 37-48.

²⁶ Id. at 56.

²⁷ Id. at 54-55.

²⁸ Id. at 54.

²⁹ Id. at 55.

³⁰ Id. at 147.

³¹ Id. at 145.

³² Id. at 156.

The Court of Appeals held that the three-salary-grade rule “only gives *preference* to the person occupying the position next in rank to a vacancy, but does not by any means give [the employee next in rank] [the] exclusive right to be appointed to the said vacancy.”³³ As long as the employee appointed to the position possesses the minimum qualifications for the position, the appointment is valid.³⁴

The Court of Appeals also found that Abad failed to prove that he was the employee next in rank to the position of City Government Department Head III.³⁵ On the other hand, Dela Cruz proved that he possessed the minimum qualifications for the position and that he underwent a deep selection process where he ranked first among nine (9) applicants.³⁶ The Court of Appeals, thus, affirmed Dela Cruz’s appointment.³⁷

Both Motion for Reconsideration³⁸ and Supplemental Motion for Reconsideration³⁹ filed by Abad were denied by the Court of Appeals in its Resolution⁴⁰ dated June 4, 2013.

On July 25, 2013,⁴¹ Abad filed before this court the Petition for Review on Certiorari. Dela Cruz filed his Comment,⁴² after which Abad filed his Reply.⁴³

Abad insists that Dela Cruz’s promotion was void for violation of the three-salary-grade rule under Civil Service Commission Memorandum Circular No. 3, Series of 2001. Moreover, he and other employees who were allegedly next in rank to the position of City Government Department Head III were not considered for the position. Contrary to the finding of the Civil Service Commission and the Court of Appeals, the City Government of Muntinlupa’s Personnel Selection Board did not conduct any deep selection process in appointing a new City Government Department Head III.⁴⁴

Thus, Abad prays that this court invalidate Dela Cruz’s appointment and order the City Government of Muntinlupa to conduct a new selection process for the position of City Government Department Head III.⁴⁵

³³ Id. at 155.

³⁴ Id.

³⁵ Id. at 156.

³⁶ Id. at 153–154.

³⁷ Id. at 156.

³⁸ Id. at 159–169.

³⁹ Id. at 170–178.

⁴⁰ Id. at 192–193.

⁴¹ Id. at 8.

⁴² Id. at 203–215.

⁴³ Id. at 224–233.

⁴⁴ Id. at 16.

⁴⁵ Id. at 18.

Dela Cruz refutes Abad's claim of lack of deep selection process. As the Civil Service Commission and the Court of Appeals found, the City Government of Muntinlupa's Personnel Selection Board conducted a deep selection process for the position of City Government Department Head III where he ranked first out of nine (9) applicants.⁴⁶ Dela Cruz emphasizes that the factual findings of the Civil Service Commission, which was sustained by the Court of Appeals, must be accorded great respect since these have been made by the "administrative agency which [has] acquired expertise [in the field of civil service law.]"⁴⁷

The issues for this court's resolution are:

First, whether respondent Dela Cruz's promotion to the position of City Government Department Head III is void because it violated the next-in-rank rule; and

Second, whether respondent Dela Cruz's promotion to the position of City Government Department Head III is void for lack of a deep selection process.

This Petition must be denied.

I

The Civil Service Commission is the "central personnel agency of the Government[.]"⁴⁸ Its mandate is to ensure that appointments in the civil service are generally made on the basis of merit and fitness.⁴⁹ The Commission is tasked to strengthen the merit and rewards system in the civil service⁵⁰ by administering and enforcing the "constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service[.]"⁵¹

The Constitution adopts the merit system to ensure that those appointed in the civil service are competent.⁵² This is to "eradicate the system of appointment to public office based on political considerations and

⁴⁶ Id. at 209–210.

⁴⁷ Id. at 207.

⁴⁸ CONST., art. IX-B, sec. 3.

⁴⁹ CONST., art. IX-B, secs. 2(2) and 3.

⁵⁰ CONST., art. IX-B, sec. 3.

⁵¹ 1987 ADM. CODE, book V, title I, subtitle A, chapter 3, sec. 12(1).

⁵² *Meram v. Edralin*, 238 Phil. 228, 238 (1987) [Per J. Gutierrez, Jr., Third Division], *citing Gervais v. New Orleans Police Department*, 77 So 2d, 393, *Civil Service Board of City of Phoenix v. Warren*, 244 P 2d 1157, *in turn citing State ex rel. Kos v. Adamson*, 226 Min. 177, 32 N. W. 2d 281, 284.

to eliminate . . . the element of partisanship and personal favoritism in making appointments.”⁵³

“The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.”⁵⁴ Thus, all appointive local government employees are covered by civil service laws and rules.⁵⁵ Appointive local government employees must possess the qualifications provided by law for the positions they hold.⁵⁶

The qualifications the appointee must satisfy depend on whether the position belongs to the career service or the non-career service. Entrance in the career service is based on “merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications[.]”⁵⁷ On the other hand, entrance in the non-career service is based on criteria other than the “usual tests of merit and fitness[.]”⁵⁸

Positions in the career service are further grouped into three (3) levels. The first level includes positions requiring less than four (4) years of collegiate studies.⁵⁹ The second level includes positions with duties requiring at least four (4) years of college work up to the Division Chief level.⁶⁰ The third level includes positions in the Career Executive Service.⁶¹

Candidates for appointment to first and second level positions are generally screened by the Personnel Selection Board.⁶² In local government units, the Personnel Selection Board is headed by the local chief executive and is composed of members appointed by the sanggunian concerned.⁶³ The Personnel Selection Board of each local government unit “assist[s] the local chief executive in the judicious and objective selection of personnel for employment as well as . . . promotion[.]”⁶⁴

⁵³ Id.

⁵⁴ CONST., art. IX-B, sec. 2(1).

⁵⁵ LOCAL GOVT. CODE, sec. 78.

⁵⁶ CSC Memorandum Circular No. 3, Series of 2001, item 1 provides:

1. Selection of employees for appointment in the government service shall be open to all qualified men and women according to the principle of merit and fitness.

There shall be equal employment opportunity for men and women at all levels of position in the agency, provided they meet the minimum requirements of the position to be filled.

⁵⁷ 1987 ADM. CODE, book V, title I, subtitle A, chapter 2, sec. 7.

⁵⁸ 1987 ADM. CODE, book V, title I, subtitle A, chapter 2, sec. 9.

⁵⁹ 1987 ADM. CODE, book V, title I, subtitle A, chapter 2, sec. 8(1)(a).

⁶⁰ 1987 ADM. CODE, book V, title I, subtitle A, chapter 2, sec. 8(1)(b).

⁶¹ 1987 ADM. CODE, book V, title I, subtitle A, chapter 2, sec. 8(1)(c).

⁶² CSC Memorandum Circular No. 3, Series of 2001, item 8 provides:

8. All candidates for appointment to the first and second level positions shall be screened by the [Personnel Selection Board]. Candidates for appointment to third level positions shall be screened by the [Personnel Selection Board] for third level positions composed of at least three (3) career executive service officials as may be constituted in the agency.

⁶³ LOCAL GOVT. CODE, sec. 80(c).

⁶⁴ LOCAL GOVT. CODE, sec. 80(b).

The appointing authority in local government units, therefore, is the local chief executive who must assess the merits of the Personnel Selection Board's recommendation.⁶⁵ If heads of offices or departments in a local government unit are appointed, majority of the members of the sanggunian concerned must concur in the appointment.⁶⁶ Finally, the appointment must be submitted to the Civil Service Commission for attestation within 30 days from the appointment's issuance date.⁶⁷

For local government units, the appointment of an assessor is mandatory.⁶⁸ In the City Government of Muntinlupa, the City Assessor is given the item of City Government Department Head III under the City's 2007 Personnel Schedule.⁶⁹ As provided in Section 472(a) of the Local Government Code of 1991, the assessor must possess the following qualifications:

SECTION 472. *Qualifications, Powers and Duties.* - (a) No person shall be appointed assessor unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in civil or mechanical engineering, commerce, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in real property assessment work or in any related field for at least five (5) years in the case of the city or provincial assessor, and three (3) years in the case of the municipal assessor.

The 1997 Revised Qualification Standards Manual reiterates the following minimum qualifications for the position of assessor:

Education	:	Bachelor's degree preferably in Civil or Mechanical Engineering, Commerce or any related course
Experience	:	Five (5) years experience in real property assessment work or in any related field
Training	:	None
Eligibility	:	First grade or its equivalent. ⁷⁰

The Civil Service Commission-National Capital Region and the Civil Service Commission agree that respondent possesses the minimum qualifications under the law for the position of City Government Department Head III:

⁶⁵ Rules and Regulations Implementing the Local Government Code of 1991, art. 168(b).

⁶⁶ Rules and Regulations Implementing the Local Government Code of 1991, art. 119(a).

⁶⁷ Rules and Regulations Implementing the Local Government Code of 1991, art. 168(f).

⁶⁸ LOCAL GOVT. CODE, sec. 472(a).

⁶⁹ *Rollo*, p. 35.

⁷⁰ *Id.*

A comparative evaluation of the qualifications of Dela Cruz as indicated in his Personal Data Sheet (PDS) *vis-à-vis* the qualification standards for the position of City Assessor III shows that he meets all the requirements for appointment thereto. Likewise, he satisfies the requirements prescribed by RA 7160. Hence, Dela Cruz qualifies for the issuance of permanent appointment as City Assessor III.

Moreover, the appointment of Dela Cruz was confirmed by the Sangguniang Panlungsod ng Muntinlupa in Resolution No. 06-361 dated December 7, 2006.⁷¹

With its constitutional mandate, the Civil Service Commission has acquired “specialized knowledge and expertise”⁷² in the field of civil service law. Consequently, its findings of fact, if based on substantial evidence, are “accorded great respect and even finality”⁷³ by appellate courts, this court included. Absent grave abuse of discretion, this court will not disturb the findings of fact of the Civil Service Commission.⁷⁴

II

Petitioner contends, however, that he is a qualified next-in-rank who was bypassed for appointment to the position of City Government Department Head III. Thus, respondent’s appointment is void notwithstanding his possession of the qualifications for the position.

In promotions,⁷⁵ the appointing authority must automatically consider the employees next in rank as candidates for appointment. Section 21, paragraphs (2) and (3) of the Civil Service Law provide for the next-in-rank rule:

SEC. 21. *Recruitment and Selection of Employees.* — . . .

(2) When a vacancy occurs in a position in the first level of the Career Service as defined in Section 6, *the employees in the department who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil service eligibility shall be considered for promotion.*

(3) When a vacancy occurs in a position in the second level of the Career Service as defined in Section 8, *the employees in the government*

⁷¹ Id. at 35 and 53.

⁷² *Japson v. Civil Service Commission*, 663 Phil. 665, 675 (2011) [Per J. Nachura, En Banc].

⁷³ Id.

⁷⁴ Id.

⁷⁵ See *Panis v. Civil Service Commission*, G.R. No. 102948, February 2, 1994, 229 SCRA 589, 593 [Per J. Quason, En Banc] and *Medenilla v. Civil Service Commission*, G.R. No. 93868, February 19, 1991, 194 SCRA 278, 289–290 [Per J. Gutierrez, Jr., En Banc], where this court held that the next-in-rank rule only applies in cases of promotion.

service who occupy the next lower positions in the occupational group under which the vacant position is classified and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil service eligibility shall be considered for promotion.
(Emphasis supplied)

“Promotion is the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.”⁷⁶ Employees next in rank are those “who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil service eligibility[.]”⁷⁷

The reason behind the next-in-rank rule is to maintain the policy of merit and rewards in the civil service.⁷⁸ Since appointments in the civil service are based on merit and fitness, it is assumed that the appointments of employees next in rank are equally meritorious. Appointments that consider rank, salary grades, and seniority promote progressiveness and courtesy in the civil service.⁷⁹

Still, the next-in-rank rule is a *rule of preference* on who to consider for promotion.⁸⁰ The rule does not give employees next in rank a vested right to the position next higher to theirs should that position become vacant.⁸¹ Appointment is a discretionary power of the appointing authority.⁸² So long as the appointee possesses the qualifications required by law, the appointment is valid.⁸³

Who to appoint is “a political question involving considerations of wisdom which only the appointing authority can decide.”⁸⁴ For the betterment of government service, the appointing authority may consider other “abstract criteria[.]”⁸⁵ aside from the minimum qualifications set by

⁷⁶ Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, rule VI, sec. 1.

⁷⁷ 1987 ADM. CODE, book V, title I, subtitle A, chapter 5, sec. 21, pars. (2) and (3).

⁷⁸ *Meram v. Edralin*, 238 Phil. 228, 238 (1987) [Per J. Gutierrez, Jr., Third Division].

⁷⁹ *Id.*, citing *Samson v. Court of Appeals*, 230 Phil. 59, 63 (1986) [Per J. Alampay, Second Division].

⁸⁰ *Español v. Civil Service Commission*, G.R. No. 85479, March 3, 1992, 206 SCRA 715, 722 [Per J. Regalado, En Banc]; *Taduran v. Commissioner of Civil Service, et al.*, 216 Phil. 57, 61 (1984) [Per J. Melencio-Herrera, First Division].

⁸¹ *Español v. Civil Service Commission*, G.R. No. 85479, March 3, 1992, 206 SCRA 715, 723 [Per J. Regalado, En Banc].

⁸² *Abila v. Civil Service Commission*, G.R. No. 92573, June 3, 1991, 198 SCRA 102, 106 [Per J. Feliciano, En Banc].

⁸³ *Español v. Civil Service Commission*, G.R. No. 85479, March 3, 1992, 206 SCRA 715, 721 [Per J. Regalado, En Banc].

⁸⁴ *Id.*

⁸⁵ *Cortez v. Civil Service Commission*, G.R. No. 92673, March 13, 1991, 195 SCRA 216, 221 [Per J. Cruz, En Banc].

law in making appointments. As this court explained in *Cortez v. Civil Service Commission*:⁸⁶

[M]any factors are taken into account in evaluating the qualifications of prospective appointees and that formal examinations, work experience and educational attainment are only some of them. Such abstract criteria as loyalty, cordiality, initiative, resourcefulness, discipline, and other personality traits are also properly considered. When making this evaluation, the appointing authority should be given the widest possible leeway and cannot be controlled by the Commission. . . .

. . . .

As long as the appointee possesses the minimum qualifications prescribed by law or regulations, there is no question that his appointment must be respected by the Civil Service Commission even if it be proved that there are others with superior credentials.⁸⁷

To successfully protest the issuance of an appointment, the employee next in rank must prove his or her status as a qualified next-in-rank; otherwise, the protest shall be dismissed.⁸⁸ Being next in rank is a legal conclusion that would be the result of inference from evidence properly alleged and proven. The burden of proof rests on the employee alleging that he or she is next in rank.⁸⁹

Petitioner failed to discharge his burden of proving that he was a qualified next-in-rank. He failed to prove that his position of Local Assessment Operations Officer V has been previously determined to be next-in-rank to the position of City Government Department Head III in the Office of the City Assessor of the City Government of Muntinlupa.⁹⁰

Petitioner, therefore, has no right to protest the appointment of respondent.

III

Petitioner further contends that respondent was appointed in violation of the three-salary-grade rule found in Item 15 of Civil Service Commission Memorandum Circular No. 3, Series of 2001. Therefore, respondent's appointment should be recalled.

⁸⁶ G.R. No. 92673, March 13, 1991, 195 SCRA 216 [Per J. Cruz, En Banc].

⁸⁷ Id. at 220–221.

⁸⁸ CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, rule V, sec. 67(a).

⁸⁹ RULES OF COURT, Rule 131, sec. 1.

⁹⁰ CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, rule I, sec. 2(n).

Item 15 of Civil Service Commission Memorandum Circular, Series of 2001 on the three-salary-grade rule states that “[a]n employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee’s present position[.]” However, this rule is subject to the exception of “very meritorious cases.” These “very meritorious cases” are provided in Civil Service Commission Resolution No. 03-0106 dated January 24, 2003:

Any or all of the following would constitute a meritorious case exempted from the 3-salary grade limitation on promotion:

1. The position occupied by the person is next-in-rank to the vacant position, as identified in the Merit Promotion Plan and the System of Ranking Positions (SRP) of the agency[;]
2. The position is a lone, or entrance position, as indicated in the agency’s staffing pattern;
3. The position belongs to the dearth category, such as Medical Officer/Specialist positions and Attorney positions;
4. The position is unique and/or highly specialized such as Actuarial positions and Airways Communicator;
5. *The candidates passed through a deep selection process, taking into consideration the candidates’ superior qualifications in regard to:*

*Educational achievements
Highly specialized trainings
Relevant work experience
Consistent high performance
rating/ranking; and*

6. The vacant position belongs to the closed career system.⁹¹ (Emphasis supplied)

Consistent with the next-in-rank rule, the appointing authority shall consider for promotion qualified next-in-rank employees. However, there are instances when the employees next in rank occupy positions whose salary grades are more than three (3) grades lower than that corresponding to the vacant position. These instances should not prevent the appointing authority from filling the vacancy, but whoever is appointed must undergo a deep selection process and demonstrate his or her superior qualifications and

⁹¹ *Rollo*, p. 54.

competence.⁹² This is to maintain the standard of merit and fitness for appointment in the civil service.

The Civil Service Commission found that respondent's appointment fell under the fifth exception provided in Civil Service Commission Resolution No. 03-0106 dated January 24, 2003.⁹³ Contrary to petitioner's claim, the Personnel Selection Board conducted a deep selection process, ranking the candidates for the position of City Government Department Head III based on the following criteria: performance, 25 points; work history, 25 points; awards, 5 points; education, 5 points; training, 10 points; potential, 10 points; and physical characteristics and personality traits, 20 points.

The document denominated as Merit Promotion and System of Ranking Position shows that out of nine (9) candidates, respondent ranked first with a grade of 90.67 out of 100 points.⁹⁴ Respondent's case, therefore, is a "very meritorious case." His promotion from Local Assessment Operations Officer III with Salary Grade 18 to City Government Department Head III with Salary Grade 27 is valid.

IV

Even if petitioner were next in rank, he failed to present evidence conclusively showing that he was not considered for promotion. The document denominated as Merit Promotion and System of Ranking Position contains only nine (9) names; hence, it appears to be a short list of those ranked for promotion. To be shortlisted, however, is different from being considered for promotion. Petitioner might have been considered for promotion, but he did not make it to the short list. Absent contrary evidence, the presumption that the City Government of Muntinlupa's Personnel Selection Board performed its duties with regularity applies.⁹⁵

In any case, we cannot order the invalidation of respondent's appointment in the present proceedings. To do so would necessarily result in his removal from an office he has physically possessed for almost nine (9) years. Respondent has been discharging the duties of the City Assessor, at the very least, under a color of title to the position especially since he possesses the qualifications for it. Analogous to a *de facto* officer, respondent's title to his office may only be attacked through a petition for

⁹² CSC Memorandum Circular No. 3, Series of 2001, item 13 provides:
13. The appointing authority may appoint an applicant who is not next-in-rank but possesses superior qualification and competence, and has undergone selection process.

⁹³ *Rollo*, p. 54.

⁹⁴ *Id.* at 54–55.

⁹⁵ RULES OF COURT, Rule 131, sec. 3(m). *See Barrozo v. Civil Service Commission*, G.R. No. 93479, June 25, 1991, 198 SCRA 487, 492 [Per J. Cruz, En Banc].

quo warranto filed by the Government or by the person claiming title to the office.⁹⁶

In *Tayko v. Capistrano*,⁹⁷ this court held that “[t]he title of a *de facto* officer cannot be indirectly questioned. . . . Having at least colorable right to the office[,] [the *de facto* officer’s] title can be determined only in a *quo warranto* proceeding or information in the nature of a *quo warranto* at suit of the sovereign.”⁹⁸

Respondent possesses the minimum qualifications for the position of City Government Department Head III. Moreover, his promotion from a Salary Grade 18 to a Salary Grade 27 position was a “very meritorious case” since he has gone through a deep selection process. Respondent Herminio Dela Cruz’s appointment as City Government Department Head III, therefore, is valid.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals’ Decision dated April 11, 2012 is **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

⁹⁶ RULES OF COURT, Rule 66, secs. 1(a), 2, and 3.

⁹⁷ 53 Phil. 866 (1928) [Per J. Ostrand, En Banc].

⁹⁸ Id. at 873.


JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice