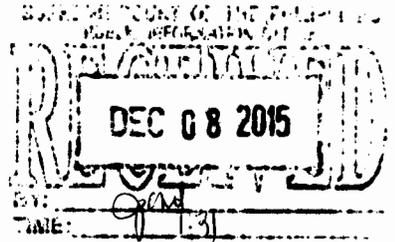




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

RAMON IKE V. SEÑERES,
 Petitioner,

G.R. No. 172902

Present:

- versus -

SERENO, *CJ.*,
 Chairperson,
 VELASCO,*
 LEONARDO-DE CASTRO,
 BERSAMIN, and
 PERLAS-BERNABE, *JJ.*

DELFIN JAY M. SABIDO IX,
VICTORIA P. GARCHITORENA,
WALDO Q. FLORES, and
ESTRELLA F. ALABASTRO,
 Respondents.

Promulgated:

OCT 21 2015

X-----X

DECISION

LEONARDO-DE CASTRO, J.:

Petitioner Ramon Ike V. Señeres assails before the Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court the (a) Decision¹ dated February 21, 2002 of the Court of Appeals in CA-G.R. SP No. 64730 dismissing for lack of merit petitioner’s suit for “Injunction and Damages with Prayer for Temporary Restraining Order and/or Preliminary Injunction” against public respondents Delfin Jay M. Sabido IX (Sabido), Victoria P. Garchitorea (Garchitorea), Waldo Q. Flores (Flores), and Estrella F. Alabastro (Alabastro), in their respective former official capacities as Director General of the National Computer Center (NCC), Head of the Presidential Management Staff, Senior Deputy Executive Secretary of the President, and Secretary of the Department of Science and Technology; and (b) Resolution² dated May 31, 2006 of the appellate court in the same case denying petitioner’s Motion for Reconsideration.

The facts are as follows:

Petitioner was a Foreign Service Officer Class III of the Department of Foreign Affairs (DFA). On August 28, 1998, petitioner was appointed by

* Per Special Order No. 2253 dated October 14, 2015.

¹ *Rollo*, pp. 52-64; penned by Associate Justice Roberto A. Barrios with Associate Justices Ma. Alicia Austria-Martinez and Bienvenido L. Reyes (now a member of this Court) concurring.

² *Id.* at 66-70.

former President Joseph Ejercito Estrada as the Executive Director/Director General of the NCC.³ On September 8, 1998, petitioner took his oath of office⁴ for the said position before the then Executive Secretary Ronaldo B. Zamora and, on September 10, 1998, he assumed the functions and duties of his new post.

Thereafter, the DFA and NCC executed, with petitioner's conformity, an undated "Secondment Agreement" containing the following terms and conditions:

1. **Section 1. Secondment of Mr. Señeres.** By virtue of the appointment issued by the President on 28 August 1998, the DFA hereby seconds, and the NCC accepts, the secondment of Mr. Señeres to the position of Executive Director [or Director General] of NCC.
2. **Section 2. Duration of Secondment Agreement.** The Agreement shall cover the period 10 September 1998, the date Mr. Señeres assumed duties at NCC up to and until 30 June 2001.
3. **Section 3. Salary of Mr. Señeres.** Payment of Mr. Señeres salaries, allowances and benefits for the duration of this Agreement, shall be borne by NCC and be chargeable against NCC funds. Mr. Señeres shall not be entitled nor authorized to draw salaries, allowances and other benefits from the DFA for the duration of this Agreement.
4. **Section 4. Status in DFA.** Mr. Señeres shall be on leave without pay in DFA for the duration of this Agreement. During this period, he may earn leave credits, which are commutable immediately thereafter, and payable by NCC.
5. **Section 5. Application for Leave.** Mr. Señeres shall submit to the Office of Personnel and Administrative Services-Administrative Services Division (OPAS-ASD) of the DFA a duly accomplished leave form corresponding to the period of his Secondment to NCC, *i.e.*, 01 September 1998 to 30 June 2001.
6. **Section 6. Clearance from Money and Property Accountabilities.** Mr. Señeres shall submit to OPAS-ASD an amortization scheme to cover his financial accountabilities while on secondment to NCC.
7. **Section [7]. Amendments.** No modification of this Agreement or any of its provisions, shall be allowed except by amendment signed by the parties.⁵

The position of NCC Director General was identified by the Career Executive Service Board (CESB) as a Career Executive Service (CES) position with a requisite qualification of Career Executive Service Officer

³ CA *rollo*, pp. 12-13.

⁴ Id. at 17.

⁵ Id. at 65-66.

(CESO) Rank I.⁶ However, at the time of petitioner's appointment to the said position, he had only been conferred Career Service Professional (CSP) eligibility on August 3, 1986 and a Career Service Executive (CSE) eligibility on November 15, 1996 by the Civil Service Commission (CSC).⁷ Petitioner had yet to complete his CES eligibility application process conducted by the CESB as he so far passed only the first of the four stages of his CES eligibility examinations, specifically, the Management Aptitude Test Battery (MATB) conducted sometime in December 1996.⁸

Eventually, during his incumbency as NCC Director General, petitioner passed all his CES eligibility examinations. Through Board Resolution No. 278 dated July 3, 2000, the CESB conferred upon petitioner his CES eligibility. On January 15, 2001, the CESB submitted to the Office of the President its recommendation for petitioner's appointment to a CES rank.⁹ Before this recommendation could be favorably acted upon and a CES rank conferred upon petitioner, President Estrada was ousted from his office by People Power II on January 20, 2001.

On March 2, 2001, former President Gloria Macapagal-Arroyo, President Estrada's successor, appointed respondent Sabido as NCC Director General, replacing petitioner.¹⁰ Respondent Flores transmitted to respondent Sabido his appointment papers on March 8, 2001.¹¹ Petitioner though refused to vacate his post as NCC Director General. He contended that his summary removal was illegal. Being both CSE and CES eligible, he claimed that he was entitled to security of tenure to his NCC position and that he could only be removed for cause and after due process.

Upon the request of Anna Marie Montecastro (Montecastro), NCC Special Assistant for Administration, the CSC issued Resolution No. 010581 dated March 12, 2001 approving the Secondment Agreement between the DFA and NCC as regards petitioner with modification as to the effectivity thereof – that petitioner's secondment would begin not on September 10, 1998 but on October 4, 2000, the date when the signatures of the representatives of the DFA and NCC to the said Agreement were actually completed.¹² In a letter dated March 20, 2001, petitioner informed the CSC that he was no longer interested in the approval of his secondment because the issue had become moot and academic considering that: (1) upon taking his oath as NCC Director General, petitioner had effectively resigned from the DFA so he could no longer be seconded by the DFA to NCC; (2) the actions of two cabinet members could not invalidate the President's

⁶ Id. at 76.

⁷ Id. at 14, 168-169, and 175-177.

⁸ Id. at 14.

⁹ Id. at 15.

¹⁰ Id. at 16.

¹¹ Id. at 44.

¹² Id. at 67-69.

appointment; and (3) petitioner did not authorize Montecastro to follow-up the approval of his secondment and Montecastro did so in bad faith.¹³

On March 21, 2001, then DFA Secretary Teofisto T. Guingona, Jr. issued Office Order No. 213-01 ordering the reassignment of petitioner from the NCC to his former position at the DFA.¹⁴ Petitioner still refused to vacate his post at the NCC.

In a Letter dated April 26, 2001, respondent Garchitorena explained to petitioner that his appointment as NCC Director General could be withdrawn at any time by the appointing authority since petitioner had not yet been conferred with any CES rank. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the general rule, may be appointed to it merely in an acting capacity in the absence of an appropriate eligible. Garchitorena cited jurisprudence which settled that security of tenure in the CES is acquired only after conferment of a CES rank by the President and that such right pertains only to the rank given, not to the position to which a CES member is appointed. Respondent Garchitorena, thus, advised petitioner to vacate his NCC position and to reassume his DFA post, otherwise, appropriate administrative and criminal charges would be lodged against him.¹⁵

In his Reply (to the letter of respondent Garchitorena) dated May 8, 2001, petitioner claimed that the Secondment Agreement between the DFA and NCC was null and void for it was executed only after his appointment as NCC Director General. According to petitioner, his appointment to the NCC already extinguished his position at the DFA, and so there was no longer any official or employee to be seconded by DFA to NCC. Petitioner also argued that although the President had not yet conferred CES rank upon him, the CSC already bestowed upon him CSE eligibility, which granted him security of tenure upon appointment to a third level position, based on CSC Resolution No. 964789 dated August 1, 1996, Resolution No. 97-0404 dated January 24, 1997, and Resolution No. 981940 dated July 20, 1998.¹⁶

Respondent Sabido took his oath of office before respondent Alabastro and assumed the duties and responsibilities as Director General of the NCC on May 15, 2001.¹⁷

Aggrieved by his summary removal from his NCC post, petitioner filed before the Court of Appeals on May 17, 2001 a Petition for Injunction and Damages with Prayer for Temporary Restraining Order and/or Preliminary Injunction against public respondents. After an exchange of

¹³ Id. at 134.

¹⁴ Id. at 72.

¹⁵ Id. at 18-21.

¹⁶ Id. at 22-27.

¹⁷ Id. at 74-75.

pleadings, the Court of Appeals promulgated its Decision on February 21, 2002 dismissing petitioner's suit for lack of merit.

At the outset, the Court of Appeals held that based on the contending parties' arguments, the Petition was not for injunction but for *quo warranto*. An individual may institute a petition for *quo warranto* in his own name to claim title to a public office or position alleged to have been usurped or unlawfully held or exercised by another. The appellate court then sustained the position of public respondents that petitioner did not possess CESO Rank I, which was required by the position of NCC Director General, and so his appointment to said position was merely in an acting or temporary capacity. Also, the terms of petitioner's secondment, bearing his conformity and signature, clearly state that he was just considered on leave without pay with the DFA while holding office with the NCC, and its effectivity was only up to June 20, 2001; hence, petitioner could not claim permanency to the position of NCC Director General nor assert unjust removal from office in violation of his security of tenure. Even granting that petitioner was already conferred CESO Rank I, it would still not entitle him to permanency to the position of NCC Director General given the ruling of the Court in *Secretary of Justice Serafin R. Cuevas v. Bacal*¹⁸ and *General v. Roco*¹⁹ that security of tenure in the CES is acquired with respect to rank and not to the position; and the guarantee of security of tenure to members of the CES does not extend to the particular positions to which they may be appointed but to the rank to which they are appointed by the President. In the absence of malice and bad faith on the part of public respondents, the appellate court did not award damages.²⁰

The Court of Appeals denied petitioner's Motion for Reconsideration in the Resolution dated May 31, 2006.

Hence, the instant Petition wherein petitioner presents the following issues before the Court:

- (a) Whether or not Petitioner can be removed without cause from his position at the National Computer Center?
- (b) Whether or not the Hon. Court of Appeals failed to appreciate the basic distinctions between a CSEE holder and a CES eligible, and in the process failed to uphold the rights of the former?
- (c) Whether or not the Hon. Court of Appeals erred in applying the ruling in the *Bacal* and *Roco* cases where the factual circumstances herein do not warrant its application?
- (d) Whether or not the Court of Appeals erred in holding that the Secondment Agreement is fatal to Petitioner's cause; and

¹⁸ 400 Phil. 1115, 1135 (2000).

¹⁹ 403 Phil. 455, 462 (2001).

²⁰ *Rollo*, p. 63.

- (e) Whether or not the Court of Appeals erred in refusing to award damages.²¹

Petitioner maintains that he cannot be removed from his post as NCC Director General for he is a CSE eligible, entitled to security of tenure.

In compliance with the mandate under the 1987 Constitution and Executive Order No. 297, otherwise known as the Administrative Code of 1987, that appointments in the Civil/Career Service shall be made according to merit and fitness to be determined, as far as practicable, by competitive examination, the CSC established the Career Service Executive Examination (CSEE) for third level positions, which cover the CES. Petitioner invokes the purpose for the CSEE as stated in CSC Resolution No. 964789 dated August 1, 1996:

WHEREAS, the foremost objective of the CSEE is to establish a **pool of eligibles** for appointment to **third level positions** on a **permanent status** so that they would **enjoy security of tenure** upon appointment to such position[.]²² (Emphases supplied.)

Petitioner likewise cites CSC Resolution No. 97-0404 dated January 24, 1997, paragraph 10 of which reads that “[t]he Career Service Executive Eligibility (CSEE) shall be appropriate to all positions in the third level.”²³

Also, petitioner relies on CSC Resolution No. 981940 dated July 20, 1998 in which said Commission resolved:

RESOLUTION NO. 981940

WHEREAS, Executive Secretary Ronaldo B. Zamora, invoking the authority of the President, has directed all non-career officials/personnel and those occupying political positions to vacate their posts effective 1 July 1998 and turn over their offices to the highest ranking career officials unless otherwise specifically retained by the Department Heads concerned or extended new appointments;

WHEREAS, the aforementioned directive has created some apprehension and raised some questions and issues for clarification;

WHEREAS, as a quasi-judicial tribunal, the Civil Service Commission is authorized to rule on issues affecting personnel actions and other civil service matters;

X X X X

WHEREAS, the apprehension and issues needing clarification mentioned earlier have affected even the executive/managerial echelons of the bureaucracy known as the third level or career executive service who belong to the Career Service;

²¹ Id. at 24-25.

²² CA *rollo*, p. 121.

²³ Id. at 127.

X X X X

WHEREAS, there are still career executives in the civil service who are occupying their positions in a temporary capacity;

WHEREAS, the [1987] Constitution provides that temporary employees of the government shall be given protection as may be provided by law;

WHEREAS, the Administrative Code of 1987 provides that in the absence of appropriate eligibles and when it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirement for the position to which he is being appointed except the appropriate civil service eligibility: Provided, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available;

WHEREAS, any immediate separation or replacement of government executives holding temporary appointment may result not only in disruption of delivery of services to the prejudice of the public, but likewise in the loss of investment on the part of the government in the training, education and development of these executives;

WHEREAS, while the appointing authority generally enjoys a wide latitude of discretion in matters of appointment, the exercise of such discretion however is circumscribed by pertinent civil service law and rules.

WHEREFORE, this Commission hereby rules and so holds that:

- **A CES/CSEE eligible who occupies a position classified as belonging to the CES enjoys security of tenure is not required to vacate his office and can be removed only for cause and after due process.**
- **A non-CES/CSEE eligible who occupies a position classified as belonging to the CES does not enjoy security of tenure and therefore may be replaced anytime but only by a qualified eligible.²⁴ (Emphases supplied.)**

By virtue of the aforementioned CSC Resolutions, petitioner posits that a CSE eligible may be appointed to a third level position, even without a CES rank. Petitioner reasons:

51. Confusion arises when one is confronted with the concepts of CES and [CSE eligibility]. They are concepts totally distinct and independent of each other. Thus, even if the position of NCC Director General has been classified as a CES position, it is nonetheless a third level position to which CSE Eligibles could be appointed in accordance

²⁴

Id. at 131-132.

with the Qualification Standards adopted by the CSC. The Administrative Law of 1987 thus puts a holder of a [CSE eligibility] in equal footing to that of a CESO Rank I because said law provides that “(T)he third level shall cover positions in the Career Executive Service.”

If the foremost objective of the CSEE is to establish a pool of eligibles for appointment to third level positions on a permanent status so that they would enjoy security of tenure upon such appointment to such position then CSEE must necessarily remain above political concern. This objective can further be achieved if the granting of the CESO rank, which may involve political considerations, as the President may or may not confer a rank, will not be used to frustrate the enjoyment of a [CSE eligible] of his right to his occupied position.

x x x x

54. The additional requirement of “appointment to rank” before a qualified [CSE eligible] may enjoy security of tenure will diminish the value and essence for which the CSEE system is established. In the end the requirements laid down by the Constitution, Administrative Code, and the CSC Resolutions will be disregarded.

55. Assuming that the position of the Director General of the NCC is a position in the Career Executive Service, with a rank equivalent of CESO Rank I, Petitioner’s [CSE eligibility] remains as an alternative eligibility for him to be entitled to security of tenure. CSC Resolution 981940 remains up to this date, a [CSE eligible] who occupies a position classified as belonging to the CES (such as NCC Director General) enjoys security of tenure.

56. The absence of the appropriate CESO rank is not fatal for the Petitioner to be qualified to the position of Director General. A [CSE eligibility] and CESO [rank] can co-exist and/or exist without each other. Such being the case, the absence of a CESO rank should not prejudice any rights acquired by a [CSE eligible] nor can a CESO rank “de-classify” a [CSE eligible] to a lower status.

x x x x

59. The inaction on the CESB recommendation on the conferment of the CESO Rank I should not be taken against the Petitioner. A change in the administration should not disregard the skills and achievements of the Petitioner x x x.

x x x x

60. [CSE eligible] must be beyond the reach of partisan politics to ensure stability in the government service. Thus, the removal of Petitioner without any investigation or charges filed against him is a flagrant violation of the policy of the State affording security of tenure to the employees.²⁵

²⁵ *Rollo*, pp. 35-38.

Distinguishing between CSE and the CES, petitioner contends that:

61. The adoption of the Career Executive Service (CES) system did not abolish the concept of the Civil Service Executive (CSE) system; rather CES system merely gave the conferment the flexibility of appointing qualified CES to government positions, provided that any reassignment will not cause any diminution in rank and privileges.

62. If a third level executive is a CSE or a CSE and CES eligible at the same time, then said person cannot be reassigned to another post without his consent because he is tenured as to his position. However, if the third level executive is a CESO or both a CSE and a CESO, the eligible allows himself to be reassigned to another post even without his consent, provided, that the rank and the privileges shall be respected.

63. Thus, while a CESO enjoys security of tenure as to his rank, a [CSE eligible] enjoys security of tenure to his position. Possession of the appropriate third level eligibility (such as duly qualified [CSE eligible]) and not “appointment to a CESO rank” determines whether or not an official occupying a third level position may be validly entitled to security of tenure in his position, as a matter of right.

64. CSEE is not inferior to CES, as the requirement of CESO ranking did not amend; much less repeal the rights afforded to CSE eligibles.²⁶ (Emphases supplied.)

Being both a CES and CSE eligible, petitioner asserts security of tenure to his position as NCC Director General.

Petitioner maintains that the Court of Appeals misapplied *Bacal* and *Roco* to his case since the previous two cases only addressed Bacal and Roco’s lack of the required CES rank and neither Bacal nor Roco claimed rights to their respective positions based on the ground that they were CSE eligible. Petitioner further faults the appellate court for using his conformity to the Secondment Agreement against him. Petitioner was not even the one who submitted the Secondment Agreement to the CSC for approval. When the CSC approved the Secondment Agreement on March 12, 2001, petitioner immediately wrote a letter dated March 20, 2001 withdrawing his conformity to said Agreement and moving for its recall and invalidation. Lastly, petitioner insists that respondents were motivated by malice and bad faith in ousting petitioner from the position of NCC Director General without just cause, in violation of his right to security of tenure under the Constitution and the Administrative Code.

The Court finds no merit in the instant Petition. Lacking the requisite qualifications for the position of NCC Director General, petitioner’s appointment to the said position was merely temporary.

²⁶ Id. at 39-40.

CES General Principles

The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned and or controlled corporations with original charters.²⁷ The 1987 Constitution mandates that “[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law.”²⁸

The Administrative Code of 1987 classifies the Civil Service into Career Service and Non-Career Service.²⁹ It defines Career Service as follows:

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

The Career Service shall include:

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

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

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.

²⁷ 1987 CONSTITUTION, Article IX(B), Section 2(1).

²⁸ Id., Article IX(B), Section 3.

²⁹ Book V, Title I, Subtitle A, Chapter 2, Section 6(2).

SECTION 8. *Classes of Positions in the Career Service.* – (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) 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;

(b) 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

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

(2) 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 the lower level. **Entrance to the third level shall be prescribed by the Career Executive Service Board.**

(3) 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.³⁰ (Emphases supplied.)

The CES traces its origin to Presidential Decree No. 1, Reorganizing the Executive Branch of the National Government, issued on September 24, 1972. Presidential Decree No. 1 adopted, approved, and made as part of the law of the land the Integrated Reorganization Plan submitted by the Commission on Reorganization. Pertinent provisions on the CES in the Integrated Reorganization Plan are reproduced below:

ARTICLE IV

Career Executive Service

1. A Career Executive Service is created to form a continuing pool of well-selected and development-oriented career administrators who shall provide competent and faithful service.

2. A Career Executive Service Board, hereinafter referred to in this Chapter as the Board, is created to serve as the governing body of the Career Executive Service. The Board shall consist of the Chairman of the Civil Service Commission as presiding officer, the Executive Secretary and the Commissioner of the Budget as ex-officio members and two other members from the private sector and/or the academic community who are familiar with the principles and methods of personnel administration.

³⁰ Book V, Title I, Subtitle A, Chapter 2.

3. The two appointive members of the Board shall serve part time and may receive per diem and allowances for meetings attended. They shall have a term of six years; provided that of the initial appointments, one shall serve for a term of three years; and the other for a term of six years.

4. The Board shall have its own technical staff composed of members of the Career Executive Service and such other personnel as may be deemed necessary. The Board may avail of professional and consultative services from the government and private sectors, whenever necessary.

5. **The Board shall promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive Service.** The Board shall set up the organization and operation of the Service in accordance with the following guidelines:

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 of 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.

b. ***Classification.*** Members of the Career Executive Service shall be classified according to rank based on broad levels of responsibility and on personal qualifications and demonstrated competence. Salary and status shall be based on rank, not on the position occupied at any given time. The number and classification of ranks in the service shall be recommended by the Board and reviewed and approved by the President.

c. ***Appointment.*** Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.

At the initial implementation of this Plan, an incumbent who holds a permanent appointment to a position embraced in the Career Executive Service shall continue to hold his position, but may not advance to a higher class of position in the Career

Executive Service unless or until he qualifies for membership in the Career Executive Service.

d. *Salaries.* Members of the Career Executive Service shall be compensated according to rank and shall be provided with attractive salaries, fringe benefits and reasonable allowances. The employing agency shall provide the funds to pay the salary, fringe benefits and allowances of the career executive assigned to it.

e. *Assignments, Reassignments and Transfers.* **Depending upon their ranks, members of the Service shall be assigned to occupy positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Board on the basis of the members' functional expertise.**

Any provision of law to the contrary notwithstanding, members of the Career Executive Service may be reassigned or transferred from one position to another and from one department, bureau or office to another; *provided* that such reassignment or transfer is made in the interest of public service and involves no reduction in rank or salary; *provided, further,* that no member shall be reassigned or transferred oftener than every two years; and *provided, furthermore,* that if the officer concerned believes that his reassignment or transfer is not justified, he may appeal his case to the President.

f. *Functional Groupings.* Members of the Career Executive Service shall be divided into a number of broad functional groupings based on subject-matter of specialization, not on the particular department in which the work is done.

g. *Training and Career Development.* The Board, in collaboration with the Philippine Executive Academy, shall prepare a program of training and career development for members of the Career Executive Service.

h. *Discipline.* Investigation and adjudication of administrative complaints against members of the Career Executive Service shall be governed by Article VI, Chapter II and Paragraph 1 (d) of Article II, Chapter III of this Part; provided that appeals shall be made to the Career Executive Service Board instead of the Civil Service Commission. 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.³¹

For a position to be considered as CES, two elements are required, namely: (a) The position is among those enumerated under Book V, Title I, Subtitle A, Chapter 2, Section 7(3) of the Administrative Code of 1987 or a position of equal rank as those enumerated and identified by the CESB to be

³¹ Part III, Chapter 1.

such position of equal rank; and (b) The holder of the position is a presidential appointee.³²

There are also two requisites that must concur for an employee in the CES to attain security of tenure, to wit: (a) CES eligibility; and (b) Appointment to the appropriate CES rank.³³ Said two requisites may be acquired in the following manner:

The rules and regulations promulgated by the CES Board to implement the Integrated Reorganization Plan are equally clear in providing that –

Career Executive Service Eligibility

Passing the CES examination entitles the examinee to a conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Conferment of CES eligibility is done by the Board through a formal Board Resolution after an evaluation of the examinee's performance in the four stages of the CES eligibility examinations.

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Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, *an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.*

There are six (6) ranks in the CES ranking structure. The highest rank is that of a Career Executive Service Officer I (CESO I), while the lowest is that of CESO VI.

The appropriate CESO rank to which a CES eligible may be appointed depends on two major qualification criteria, namely: (1) level of managerial responsibility; and, (2) performance.

Performance is determined by the official's performance rating obtained in the annual CESPES. On the other hand, managerial responsibility is based on the level of the general duties and responsibilities which an eligible is performing, as follows:

*Levels of Duties and
Responsibilities*

Rank Equivalent

³² *De Castro v. Carlos*, G.R. No. 194994, April 16, 2013, 696 SCRA 400, 411.

³³ *General v. Roco*, supra note 19 at 462.

if level of managerial responsibilities are comparable to that of an Under-secretary	I
if comparable to that of an Assistant Secretary	II
if comparable to that of a Bureau Director or a Department Regional Director	III
if comparable to that of an Assistant Bureau Director, Department Assistant Regional Director or Department Service Chief	IV
if comparable to that of a Bureau Regional Director	V
if comparable to that of a Bureau Assistant Regional Director	VI

As a general rule, a CES eligible will be recommended for appointment to the rank equivalent of the level of his managerial responsibility if his performance rating is *Satisfactory* or higher. If the performance rating is *Outstanding*, he will be recommended one rank higher than his level of managerial responsibility.³⁴

Book V, Title I, Subtitle A, Chapter 5, Section 27 of the Administrative Code of 1987 provides the general rules on the status of an appointment in the career service, *viz.*:

SECTION 27. *Employment Status.* – Appointment in the career service shall be permanent or temporary.

(1) *Permanent status.* A permanent appointment shall be issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

(2) *Temporary appointment.* In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: *Provided*, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

³⁴ *Secretary of Justice Serafin R. Cuevas v. Bacal*, supra note 18 at 1134-1135.

The Court expounded in *Achacoso v. Macaraig*³⁵ that:

It is settled that a permanent appointment can be issued only “to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed.” Achacoso did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and “at a moment’s notice,” conformably to established jurisprudence.

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The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated. (Citation omitted.)

Moreover, the Court declared in *Bacal* that the distinguishing feature of the CES is mobility and flexibility in the assignment of personnel, the better to cope with the exigencies of public service. Security of tenure in the CES is thus 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. Within the CES, personnel can be shifted from one office or position to another without violation of their right to security of tenure because their status and salaries are based on their ranks and not on their jobs.

The Court reiterated in *Roco* that:

[I]t must be stressed that the security of tenure of employees in the career executive service (except first and second-level employees in the civil service), pertains only to rank and not to the office or to the position to which they may be appointed. Thus, a career executive service officer may be transferred or reassigned from one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a CESO suffers no diminution of salary even if assigned to a CES position with lower salary grade, as he is compensated according to his CES rank and not on the basis of the position or office he occupies.³⁶ (Citation omitted.)

³⁵ 272-A Phil. 201, 205-206 (1991).

³⁶ *General v. Roco*, supra note 19 at 462.

Guided by the foregoing general principles governing the CES, the Court now proceeds to address the particular issues in the present case.

Although petitioner is already CES eligible, he has not yet been appointed to a CES rank; thus, his appointment as NCC Director General was merely temporary.

It is undisputed that the position of NCC Director General is a CES position equivalent to CESO Rank I. The Certification³⁷ dated June 1, 2001 issued by the CESB reads:

CERTIFICATION

This is to certify that the position of Director General, National Computer Center, is a Career Executive Service position equivalent to CESO Rank I.

This is to certify further that MR. RAMON IKE V. SEÑERES was conferred Career Executive Service Eligibility on July 3, 2000 per Board Resolution No. 278. **He was recommended by the CES Board for appointment to CESO Rank I on January 10, 2001. The recommendation was received by the Office of the President on January 15, 2001.** (Emphases supplied.)

Equally uncontested is the fact that petitioner is already CES eligible, but no President has yet appointed petitioner to any CES rank (despite the previous recommendation of the CESB for petitioner's appointment to CESO Rank I). Therefore, petitioner's membership in the CES is still incomplete. Falling short of one of the qualifications that would complete his membership in the CES, petitioner cannot successfully interpose violation of security of tenure.³⁸

Petitioner's appointment to the position of NCC Director General could only be construed as temporary, and he could be removed any time even without cause. As the Court ruled in *Amores v. Civil Service Commission*³⁹:

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. This rule, according to *De Leon v. Court of Appeals*, *Dimayuga v. Benedicto*, *Caringal v. Philippine Charity Sweepstakes Office*, and *Achacoso v.*

³⁷ CA rollo, p. 76.

³⁸ *General v. Roco*, supra note 19 at 462-463.

³⁹ 605 Phil. 232, 241-243 (2009).

Macaraig, is invariable even though the given appointment may have been designated as permanent by the appointing authority.

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All told, we reiterate the long-standing rule that the mere fact that a particular position belongs to the career service does not automatically confer security of tenure on its occupant. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it in an acting capacity in the absence of appropriate eligibles.

The Court also consistently adjudged in *Ong v. Office of the President*⁴⁰ that:

The Court is categorical in the *Amores* case that an appointee without the requisite CES eligibility cannot hold the position in a permanent capacity. Temporary appointments are made if only to prevent hiatus in the government's rendition of public service. However, a temporary appointee can be removed even without cause and at a moment's notice. As to those with eligibilities, their rights to security of tenure pertain to ranks but not to the positions to which they were appointed.

Even assuming that petitioner was already conferred with a CES rank, his appointment would be permanent as to his CES rank only but not as to his position as NCC Director General. As member of the CES, petitioner could be reassigned or transferred from one position to another from one department, bureau, or office to another provided that there would be no reduction in his rank or salary and that his reassignment/transfer was not oftener than every two years, among other conditions.

Petitioner's CSE eligibility is not sufficient to qualify him for the position of NCC Director General.

Petitioner cannot claim security of tenure to the position of NCC Director General by reason of his CSE eligibility alone. His interpretation of and pure reliance on Resolution No. 964789 dated August 1, 1996, Resolution No. 97-0404 dated January 24, 1997, and Resolution No. 981940 dated July 20, 1998 issued by the CSC are specious.

While it is true that the CSC is generally granted the authority to administer the civil service, it should be borne in mind that Presidential Decree No. 1 and the Administrative Code of 1987 created the CESB to be the governing board of the CES and specifically conferred upon the CESB the authority to promulgate rules, standards, and procedures on selection,

⁴⁰ 680 Phil. 429, 444 (2012).

classification, compensation, and career development of members of the CES. Since there is no question that the position of NCC Director General is a CES position, then it is just as beyond question that only a qualified member of the CES may be appointed as NCC Director General.

It is worthy to note that the CESB, in its Resolution No. 548 dated August 10, 2004, adopted a policy closely similar to petitioner's arguments herein and declared that as of the date of said Resolution, "the attainment of CES eligibility by an incumbent of a CES position is enough to enjoy security of tenure in the CES provided he or she has met the other basic requirements of the position established in the qualification standards set or approved by the CSC based on the recommendation of the Department or Agency concerned." Thus, a person with CES eligibility (but no appointment to a CES rank), together with a CSE eligibility, could already be entitled to security of tenure in the CES. However, given the pronouncements of the Court in *Bacal* and *Roco*, the CESB issued Resolution No. 719 dated February 21, 2008 expressly stating that Resolution No. 548 dated August 10, 2004 did not conform with law and jurisprudence, and resolving to amend its policy on security of tenure in the CES, as follows: "Henceforth, an official in the Career Executive Service (CES) may only acquire security of tenure after meeting two (2) significant requisites, namely: 1.) CES eligibility; 2.) Appointment to the appropriate CES rank."

At present, the CES eligibility examination process has four stages, namely: (1) Written Examination; (2) Assessment Center; (3) Performance Validation; and (4) Board Interview. Based on CESB Resolution No. 910 dated November 16, 2010, a CSE eligible is, at best, deemed to have completed the Written Examination and Board Interview stages of the CES eligibility examination process, and allowed to finish the other two stages of said examination process, *viz.*, Assessment Center and Validation Center, in order to become CES eligible. In no way, though, can CSE eligibility take the place of any or both of the two requisites for membership and security of tenure in the CES.

As a matter of contemporaneous interpretation of the law, CESB Resolution No. 719 dated February 21, 2008 and Resolution No. 910 dated November 16, 2010 have persuasive value. Moreover, it is undisputed that in administrative law, contemporaneous and practical interpretation of law by administrative officials charged with its administration and enforcement carries great weight and should be respected, unless contrary to law or manifestly erroneous.⁴¹

It matters not that CESB Resolution No. 719 dated February 21, 2008 and Resolution No. 910 dated November 16, 2010 were issued and took effect after the events in this case had already taken place. Said CESB

⁴¹ *Amores v. Acting Chairman, Commission on Audit*, G.R. No. 45998, February 4, 1993, 218 SCRA 409, 413.

Resolutions only set policies consistent with *Bacal* and *Roco*, and significantly, the factual antecedents in *Bacal* and *Roco* took place in around the same time as the instant case, the late 1990s and early 2000s. Therefore, the rulings in *Bacal* and *Roco* are applicable to herein petitioner, as well as the subsequent CESB Resolutions interpreting and implementing the same. Additionally, because petitioner was appointed as NCC Director General on August 28, 1998 and assumed such office on September 10, 1998 and was deemed removed and replaced by respondent Sabido as NCC Director General on May 15, 2001, petitioner cannot seek solace and protection under CESB Resolution No. 548, which was in effect from its date of issuance on August 10, 2004 until its date of repeal on February 21, 2008.

Petitioner voluntarily accepted his secondment from the DFA to the NCC.

A secondment is a movement of an employee from one department or agency to another which is temporary in nature. It may or may not require the issuance of an appointment, and may involve an increase in compensation and benefits. Acceptance of a secondment is voluntary on the part of the employee.⁴²

Petitioner does not deny that he actually signed his conformity of his secondment covered by a Secondment Agreement between the DFA and the NCC. Petitioner's signature on the said agreement shows that he was not merely aware of, but that he voluntarily accepted his secondment from the DFA to the NCC and his temporary appointment as NCC Director General. Petitioner only subsequently renounced the same when there was already an apparent threat of his removal from the position of NCC Director General given the change in the Presidency.

Furthermore, a secondment being temporary in nature, the payment of salaries of a seconded employee shall be borne by the receiving agency and the seconded employee shall be on leave without pay in his mother agency for the duration of his secondment.⁴³ Clearly, petitioner's contention that, upon his appointment and/or assumption of duties as NCC Director General, he had effectively resigned from the DFA and that his position at the DFA had already been extinguished, is untenable. As aptly observed by the Court of Appeals in its assailed Decision:

The terms of Señeres's secondment x x x bearing his conformity and signature, clearly put it that he was just considered on leave without pay with the DFA while holding office with the NCC, and its effectivity was only up to June 30, 2001. Thus, as advanced by the respondents, he was indeed merely a "seconded" officer and in such capacity he could not claim permanency to the Directorship at NCC nor assert that he had been unjustly removed from office in violation of his

⁴² Section 6(b), Rule III, CSC Memorandum Circular No. 15-99 issued on August 27, 1999.

⁴³ Id.

security of tenure. This is further supported by the Office Order of Sec. Guingona recalling him to his original post at the DFA so as not to leave him on floating status after he was replaced by respondent Sabido.

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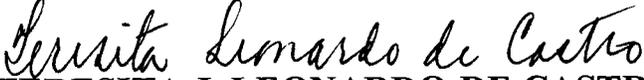
In fine, Señeres definitely has no right to latch on to the position of Director General at the NCC. **He had a fall back position at the time with the DFA but which may no longer be tenable because of his manifestation of intent to resign in his letter to the CSC Chairman dated March 20, 2001.** X X X.⁴⁴

Petitioner is not entitled to any award for damages.

With the conclusions of the Court herein that petitioner was only seconded to the NCC and his claimed appointment as NCC Director General was merely temporary in nature because he failed to meet the required qualifications for said position, no malice or bad faith can be attributed to public respondents for effecting respondent Sabido's appointment as NCC Director General vice petitioner. Hence, petitioner's claim for damages against public respondents is devoid of basis.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED** for lack of merit.

SO ORDERED.

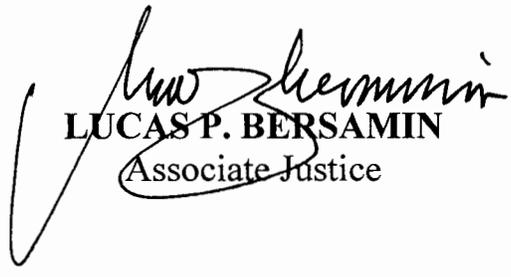

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



ESTELA M. PERLAS-BERNABE
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.



MARIA LOURDES P. A. SERENO
Chief Justice