



Republic of the Philippines  
**Supreme Court**  
Manila

**EN BANC**

**ERIC N. ESTRELLADO and  
JOSSIE M. BORJA,**  
Petitioners,

**G.R. No. 184288**

Present:

SERENO, *C.J.*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
\*BRION,  
\*\*PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA, and  
\*\*\*CAGUIOA, *JJ.*:

- versus -

**KARINA CONSTANTINO DAVID,  
THE CIVIL SERVICE  
COMMISSION, HIPOLITO R.  
GABORNI and ROBERTO S. SE,**  
Respondents.

Promulgated:  
February 16, 2016

x-----*99 [Signature]*-----x

**DECISION**

**BERSAMIN, J.:**

The next-in-rank status of a government employee is not a guarantee to one's fitness to the position aspired for, and the applicant must go through the rigors of a screening and selection process as determined and conducted by a department or agency, subject only to the standards and guidelines set by the Civil Service Commission (CSC). This is in keeping with the ideal of promoting through merit rather than entitlement, and thus ensuring that government service is rewarded with the best fit.

\* On leave.  
\*\* No part.  
\*\*\* On official leave.

Under review is the decision promulgated on August 26, 2008,<sup>1</sup> whereby the Court of Appeals (CA) affirmed CSC Resolution No. 06-0252 dated February 10, 2006<sup>2</sup> and CSC Resolution No. 06-0835 dated May 9, 2006,<sup>3</sup> both issued by the CSC, thereby upholding the promotional appointments of respondents Hipolito R. Gaborni and Roberto S. Se.

### Antecedents

The factual and procedural antecedents are narrated in the CA's assailed decision, as follows:

After screening the applicants on January 15, 2004, the LTO-CO-SPB recommended to the LTO the appointment of Hipolito R. Garboni and Roberto S. Se to the vacant positions of TRO II and AO IV within the LTO Law Enforcement Service.

Thereafter, petitioners Eric N. Estrellado, TRO 1, and Jossie M. Borja, Records Officer III, who were also applicants for the aforementioned positions and in their alleged capacities as next-in-rank employees, filed with the CSC-NCR a petition to declare the LTO-CO-SPB selection procedure null and void. They alleged, among others, that Hipolito R. Garboni and Roberto S. Se did not meet the requirements for the positions of TRO II and AO IV.

On April 21, 2004, the CSC-NCR referred the petition to the LTO Grievance Committee, which did 'not find merit in complainants' grievances' and dismissed the petition in a Resolution dated August 12, 2004. Petitioners appealed said Resolution to the LTO Assistant Secretary who, in an Order dated September 27, 2004, dismissed the appeal and directed the LTO Grievance Committee to issue the Certificate of Final Action on Grievance (CFAG), which the latter consequently issued on October 4, 2004.

On October 1, 2004, the LTO Assistant Secretary appointed Hipolito R. Garboni as TRO II and on October 25, 2004, Roberto S. Se, as AO IV.

On October 28, 2004, petitioners re-filed with the CSC-NCR their petition to declare the selection procedure of the LTO-CO-SPB null and void and to recall the approval of the appointments of Hipolito R. Garboni and Roberto S. Se. In a Decision dated December 28, 2004, the CSC-NCR dismissed the petition for lack of merit. Subsequently, petitioners filed a motion for reconsideration, which the CSC-NCR denied in a Decision dated May 5, 2005.

Hence, petitioners filed an appeal before the CSC, but the latter dismissed the same in its Resolution No. 060252 dated February 10, 2006 as follows:

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<sup>1</sup> *Rollo*, pp. 40-52; penned by Associate Justice Fernanda Lampas-Peralta, with the concurrence of Associate Justice Edgardo P. Cruz (retired) and Associate Justice Normandie B. Pizarro.

<sup>2</sup> *CA rollo*, pp. 31-40.

<sup>3</sup> *Id.* at 25-30.

**WHEREFORE**, the appeal of Eric N. Estrellado, Transportation Regulation Officer I, and Jossie M. Borja, Records Officer III, Land Transportation Office (LTO), is hereby **DISMISSED**. Accordingly, the Decision dated May 5, 2005 of the Civil Service Commission-National Capital Region (CSC-NCR), Banawe, Quezon City, dismissing their petition to declare null and void the selection procedure conducted by the LTO-Central Office-Selection and Promotion Board (LTO-CO-SPB) and to recall the approval of the appointments of Hipolito R. Gaborni as Transportation Regulation Officer (TRO) II and Roberto S. Se as Administrative Officer (AO) IV, **STANDS**.

Petitioners filed a motion for reconsideration, but the CSC denied the same in its Resolution No. 060835 dated May 9, 2006. Thus:

**WHEREFORE**, the motion for reconsideration of Eric N. Estrellado, Transportation Regulation Officer I, and Jossie M. Borja, Records Officer III, Land Transportation Office (LTO) is hereby **DENIED**. Accordingly, CSC Resolution No. 06-0252 dated February 10, 2006 dismissing their appeal from the Decision dated May 5, 2005 of the Civil Service Commission National Capital Region (CSC-NCR), Banawe, Quezon City, and affirming the approval of the appointments of Hipolito R. Garborni as Transportation Regulation Officer (TRO) II and Roberto S. Se, as Administrative Officer (AO) IV, **STANDS**.

Let a copy of this Resolution be furnished the Civil Service Commission National Capital Region.<sup>4</sup>

Still aggrieved, the petitioners appealed to the CA by petition for review, asserting that the CSC had erred in sustaining the validity of the selection procedure undertaken by the Land Transportation Office's Promotion and Selection Board (LTO-PSB) resulting in the validation of the appointments of Hipolito R. Gaborni and Roberto S. Se as Transportation Regulation Officer II (TROII) and Administrative Officer IV (AOIV), respectively.<sup>5</sup>

In its assailed decision,<sup>6</sup> the CA ruled that petitioners' bare claim of nullity of the selection procedure did not overcome the specific factual findings of the CSC to the effect that Gaborni and Se had undergone screening on January 15, 2004 prior to their appointments, and that Garboni and Se had met the qualifications; that the LTO-PSB had conducted interviews, with the Human Resource Management (HRM) Assistant/Secretariat even presenting a study on the Comparative Assessment of Candidates for Promotion; and that the results showed that

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<sup>4</sup> *Rollo*, pp. 41-43.

<sup>5</sup> *Id.* at 44.

<sup>6</sup> *Supra* note 1.

Gaborni had ranked second for the TRO II position and Se, first for the AO IV position.

The CA opined that the CSC did not violate the rule on the three-salary grade promotion because Se's promotion from Engineer II (SG 16) to AO IV (SG22), or six steps upwards, came under one of the exceptions specified in CSC Resolution No. 03-0106 dated January 24, 2003; that the LTO-PSB, noting the CSC's findings, conducted a deep selection process that showed Se's superior qualifications compared to those of the other applicants for the same position;<sup>7</sup> that a change in the LTO-PSB's composition required mere reporting to the CSC Regional Office, conformably with CSC MC No. 4, Series of 2005, to the effect that no approval of the change was necessary;<sup>8</sup> that the recall of the appointments of Gaborni and Se on the basis of the absence of the Merit Promotion Plan (MPP) would be improper in light of the findings showing that the appointments were sufficient as per the approved MPP of the LTO in 1990;<sup>9</sup> and that the petitioners should not be allowed to raise the lapsed publication for the vacant positions for the first time on appeal considering that such factual matter had not been raised at the administrative level or before the CSC-NCR or the CSC.

### Issues

Undaunted, the petitioners maintain that the appointments of Se and Gaborni violated pertinent laws, including Republic Act No. 7041 (*An Act Requiring Regular Publication*). They listed the following errors of the CA, to wit:

#### I

WITH UTMOST DUE RESPECT, THE HONORABLE CA MISAPPRECIATED THE FACT OF COMPARATIVE ASSESSMENT OF CANDIDATES FOR PROMOTION AS PROOF OF SCREENING WHEN IT IS NOT. THUS, IT ERRED AND COMMITTED SERIOUS ERRORS IN JUDGMENT IN HOLDING THAT A SCREENING OF CONTENDING APPLICANTS WAS CONDUCTED, WHEN IN TRUTH AND IN FACT SCREENING PRE-SUPPOSES CONDUCT OF EXAMINATION AND INTERVIEW OF APPLICANTS SERIOUSLY WANTING IN THE PRESENT CASE AS HELD BY THE CSC ITSELF AS A POLICY (sic)

#### II

CA SERIOUSLY ERRED AND COMMITTED GRAVE MISTAKE IN LAW WHEN IT HELD THAT THE APPOINTMENTS OF SE AND GABORNI DID NOT VIOLATE THE RULE ON THE COMPOSITION OF PSB AND THE RULE ON MPP-SRP, WHICH WAS

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<sup>7</sup> Id. at 47-48.

<sup>8</sup> Id. at 49.

<sup>9</sup> Id. at 49-50.

CONTRARY TO THE EVIDENCE EXTANT IN THE RECORDS OF THE CASE;

III.

CA SERIOUSLY ERRED AND COMMITTED GRIEVOUS MISTAKE WHEN IT FAILED TO CONSIDER THAT THE APPOINTMENTS WERE MADE ONE-YEAR AFTER ITS PUBLICATION. CSC AS A POLICY DECLARED THAT AFTER THE LAPSED (sic) OF NINE-MONTH PERIOD, PUBLICATION MADE FOR PURPOSES OF FILLING-UP POSITIONS IN GOVERNMENT IS CONSIDERED LAPSED AND INEFFECTIVE. IT ERRED FURTHER WHEN IT RULED THAT IT CANNOT PASSED (sic) UPON JUDGEMENT ON THIS ISSUE WHERE ACCORDING TO THE CA THIS FACTUAL ISSUE WAS NOT RAISED IN THE PROCEEDINGS BEFORE THE CSC. THE CA MAY ENTERTAIN FACTUAL FINDINGS AS IT MAY REVIEW QUESTIONS OF FACT.<sup>10</sup>

**Ruling of the Court**

The appeal lacks merit.

I

The petitioners aver that the comparative assessment conducted by the LTO-CO-PSB was not the same as screening, insisting that the comparative assessment based on paper qualifications was only for purposes of preliminary ranking; and that the LTO-CO-SPB only made preparations prior to the required examination and interview of the applicants,<sup>11</sup> which was evident in CSC Memorandum Circular (MC) No. 3, Series of 2001.<sup>12</sup>

A reading of CSC MC No. 3, Series of 2001, shows that screening requires no interviews and examinations. It is notable that the words *screening* and *screened* appear therein six times, to wit:

The first level representative shall participate during the screening of candidates for vacancies in the first level; the second level representative shall participate in the screening of candidates for vacancies in the second level. Both rank-and-file representatives shall serve for a period of two (2) years. For continuity of operation, the agency accredited employee association may designate an alternate.

X X X X

8. All candidates for appointment to first and second level position shall be screened by the PSB. Candidates for appointment to third level positions shall be screened by the PSB for third level positions composed

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<sup>10</sup> Id. at 15-16.

<sup>11</sup> Id. at 46-48.

<sup>12</sup> Revised Policies on Merit Promotion Plan dated January 26, 2001 signed by Corazon Alma G. De Leon, Chairman.

of at least three (3) career executive service officials as may be constituted in the agency.

Appointment to the following positions shall no longer be screened by the PSB:

- a. Substitute appointment due to their short duration and emergency nature. However, should the position be filled by regular appointment, candidates for the position should be screened and passed upon by the PSB; (underlining supplied)

The foregoing provision in CSC MC No. 3, Series of 2001, should be read in conjunction with the relevant provisions in Executive Order 292 (*Revised Administrative Code of 1987*)<sup>13</sup> on the CSC, to wit:

#### CHAPTER 5 – Personnel Policies and Standards

##### **SEC. 21. Recruitment and Selection of Employees. –**

X X X X

(4) For purposes of this Section, each department or agency shall evolve its own screening process, which may include tests of fitness, in accordance with standards and guidelines set by the Commission. Promotion boards shall be formed to formulate criteria for evaluation, conduct tests or interviews, and make systematic assessment of training experience.

X X X X

**SEC. 32. Merit Promotion Plans. —** Each department or agency shall establish merit promotion plans which shall be administered in accordance with the provisions of the Civil Service law and the rules, regulations and standards to be promulgated by the Commission. Such plans shall include provisions for a definite screening process, which may include tests of fitness, in accordance with standards and guidelines set by the Commission. Promotion Boards may be organized subject to criteria drawn by the Commission. (Underscoring supplied)

It is definite from the foregoing that the screening process is that which each department or agency formulates and administers in accordance with the law, rules, regulations, and standards set by the CSC. If neither the law nor the implementing rules and regulations define in specific terms or criteria the particulars of the screening process, then each agency or department is empowered to formulate its own screening processes subject to the standards and guidelines set by the CSC. The CA thus correctly concluded that the appointing authority exercised the right of choice, freely exercising its best judgment, in determining the best-qualified applicants from those who had the necessary qualifications and eligibilities.

<sup>13</sup> Book V, Title I – Constitutional Commission, Subtitle A – Civil Service Commission, *The Administrative Code of 1987*.

Yet, the petitioners, to bolster their argument that the screening process involved interview and examination, cite CSC Resolution No. 04-0835,<sup>14</sup> and contend that the CSC declared therein the need for the interview and written examination as a matter of policy instruction.<sup>15</sup> We cannot sustain the contention. A perusal shows that CSC Resolution No. 04-0835 pertained to the violation of the three-salary grade rule, not to the screening done during the selection process. Moreover, the disapproval of the appointments involved herein was solely due to the exclusion from the selection process of the petitioners despite their being the next in rank. In other words, the petitioners' reliance on CSC Resolution No. 04-0835 was misplaced because it did not in any way support their claim that screening necessarily included interview and examination. Indeed, screening should be viewed as the procedure by which the Personnel Selection Boards (PSBs) undertake to determine the merit and qualification of the applicants to be appointed to the positions applied for.

We reiterate that the appointments in question followed the mandate of the law. As observed by the CSC-NCR in resolving the petitioners' Petition to Declare Selection Procedure Null and Void, the LTO's PSB conducted the necessary screening of the applicants. The CSC-NCR thus concluded from the review of the appointments that: "There is no doubt that Mr. Gaborni and Engr. Se meet the qualification standards for appointment to the respective positions."<sup>16</sup> Furthermore, in resolving the petitioners' Motion for Reconsideration, the CSC-NCR opined:

This Office notes from the Deliberations of the LTO Selection and Promotion Board in its meeting dated January 15, 2004 that Gaborni "*has excellent qualifications being a Bachelor of Laws graduate, (and that he is given) the maximum score on Outstanding Accomplishment and Potential because of his performance as an effective and efficient Hearing Officer.*" With respect to Se, the LTO Selection and Promotion Board gives as its reason, that he was "*given a rating of 5% on Outstanding Accomplishment in recognition of his performance, which resulted in the success in the Cabinet Meeting.*"<sup>17</sup>

On its part, the CSC declared that the appointments had resulted from a deep selection process that considered the appointees' superior qualities on educational achievements, highly specialised trainings, relevant work experience, and consistent high performance rating/ranking.<sup>18</sup>

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<sup>14</sup> CA *rollo*, pp. 108-113, (Re: Quijano, Dennis S. and Borbon, Rosita P., Appeal, Disapproved Appointment, dated July 22, 2004).

<sup>15</sup> *Rollo*, pp. 17-18.

<sup>16</sup> CA *rollo*, p. 105.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

## II

The petitioners submit that the LTO-PSB composition and the MPP-SRP did not bear the approval of the CSC as required by CSC MC No. 3, Series of 2001, *viz.*:

SUBJECT: Revised Policies on Merit Promotion Plan

Pursuant to CSC Resolution No. 010114 dated January 10, 2001, the Commission hereby adopts the following revised policies on Merit Promotion Plan. These policies developed and refined in consultation with the different sectors of the government are as follows:

X X X X

21. All government agencies shall submit their Merit Promotion Plan to the Civil Service Commission which shall take effect immediately upon approval. All subsequent amendments shall take effect immediately upon approval by the Civil Service Commission.

The petitioners argue that CSC MC No. 3, Series of 2001, effectively amended the 1990 and 2000 MPP of the LTO as apparent under its Section 21, *supra*; hence, the LTO had no authority to appoint Gaborni and Se because it did not submit the MPP-SRP, supposedly the basis for the appointments, to the CSC for approval; and that the absence of the provision allowing the use of the 1990-2000 MPP-SRP in lieu of the 2003 required submission for the CSC's approval rendered the challenged appointments invalid.

The arguments lack merit.

To begin with, the 1990 and 2000 MPP/SRP of the LTO remained effective. This effectiveness was pronounced by the CSC-NCR:

In the absence of a newly approved Merit Promotion Plan and System of Ranking Positions, the Board made use of the MPP and SRP approved by then CSC Chair Patricia A. Sto. Tomas on August 1, 1990 and August 23, 2000, respectively. It can be said that existing MPP and SRP were still effective at the time of deliberation. A review of said MPP shows that the selection was conducted in accordance with the policies set therein.<sup>19</sup>

The CSC-NCR properly applied the 1990 and 2000 MPP-SRP of the LTO despite the subsequent issuance of CSC MC No. 3, Series of 2001. The petitioners cannot successfully assail the application of the previous MPP-SRP on the ground that there was no exception established therein. The last

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<sup>19</sup> CA *rollo*, p. 95.

sentence of Section 21, *supra* – *All subsequent amendments shall take effect immediately upon approval by the Civil Service Commission* - reveals the contrary. The phrase *All subsequent amendments* obviously referred to the new MPPs submitted by the departments and agencies to the CSC for its approval. What is plainly envisioned is the situation in which the departments and agencies of the Government that had not submitted and secured the approval of their new MPPs could still apply their existing MPPs in the interim. To adopt the petitioners' arguments would give rise to a situation in which no appointments could be made in the meantime, thereby creating a vacuum in the government offices that would likely cause a hiatus in the delivery of services to the public.

Accordingly, the CSC-NCR correctly held that CSC MC No. 3, Series of 2001, did not and could not amend the MPP/SRP of the LTO. The provision, reasonably interpreted, should mean that *amendments* pertained to the submitted MPPs. Hence, the CA's following declaration was warranted:

In this case, records show that on August 1, 1990, then CSC Chairman Patricia A. Sto. Tomas approved the MPP of the LTO. Hence, when the LTO-CO-PSB screened the applicants for the positions of Transportation Regulation Officer II and Administrative Officer IV, the MPP dated August 1, 1990 was used. Therefore, although the LTO had not submitted a new MPP pursuant to CSC Memorandum Circular No. 3, s. 2001, it cannot be said that the LTO has no MPP, as in fact, the 1990 approved MPP was used as basis for the screening and consideration of the qualifications of the contenders for the positions. Hence, lack of MPP cannot be the basis for the recall of the approval of the appointments of Se and Gaborni. Nevertheless, the LTO is enjoined to come up with its new MPP and have it approved by the Commission.<sup>20</sup>

The petitioners also submit that the similar lack of approval by the CSC of the LTO's PSB composition invalidated the questioned appointments; that the CA erred in applying Memorandum Circular No. 4, Series of 2005, which only required reporting of the changes in the PSB's composition contrary to CSC MC No. 3, Series of 2001, which required approval; that considering that CSC MC No. 3, Series of 2001, was prevailing at the time of the appointments, and that there was no such approval, the LTO-PSB could not recommend Gaborni and Se; and that because laws should have prospective application, the reduced requirement of reporting in 2005 did not cure the CSC's lack of approval of the PSB's composition in 2001.

The petitioners' submission cannot be upheld. We join the observation of the Office of the Solicitor General (OSG)<sup>21</sup> that the CSC's approval was not required because CSC MC No. 3, Series of 2001, did not demand such

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<sup>20</sup> *Rollo*, p. 50.

<sup>21</sup> *CA rollo*, pp. 46-47.

approval. CSC MC No. 3, Series of 2001, only provided in item 6(a), (b), (c) and (d) for the PSB's composition without mentioning any requirement for prior approval. Hence, the approval was necessary only for the MPP, as already discussed. Thus, the CSC Central Office, in its Resolution No. 060252,<sup>22</sup> confirmed the required LTO-CO-SPB's composition in accordance with the mandates of item 6 of CSC MC No. 3, Series of 2001. At any rate, the changes in the PSB composition only needed to be reported to the CSC Regional Office or Field Office concerned in accordance with a recent amendment to CSC MC No. 3, Series of 2001.<sup>23</sup> It is immaterial, therefore, whether CSC MC No. No. 4, Series of 2005, was misapplied herein, or whether CSC MC No. 4, Series of 2005, should be prospectively applied. The PSB's recommendation in favor of Gaborni and Se's appointments needed no approval from the CSC, for only the compliance with the required composition as dictated by CSC MC No. 3, Series of 2001, was necessary.

### III

The petitioners state that the questioned appointments of Gaborni and Se were illegal or void *ab initio* because they were made in violation of the last paragraph of item 4 of CSC MC No. 3, Series of 2001, which provides:

The publication of a particular vacant position shall be valid until filled up but not to extend beyond six (6) months reckoned from the date of the vacant position was published.<sup>24</sup>

They assert that the publication lapsed in view of Section 2 and Section 3 of Republic Act No. 7041<sup>25</sup> considering that the published positions remained vacant for nine months from the publication (that is, from January 15, 2004 until October 15, 2004).

We note that the CA rejected this assignment of error for being belatedly raised,<sup>26</sup> observing:

Anent petitioners' claim that the publication of the vacant positions was made on January 15, 2004, but the vacancies were filled only on October 15, 2004 or more than nine (9) months from said publication, this is a factual matter which petitioners did not raise at any stage of the proceedings before the CSC-NCR or CSC. It is axiomatic that facts or issues not raised at the administrative level cannot be review for the first time by the court. The reason for this is clear:

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<sup>22</sup> Id. at 31-40.

<sup>23</sup> *Rollo*, p. 49.

<sup>24</sup> *CA rollo*, p. 46.

<sup>25</sup> An Act Requiring Regular Publication of Existing Vacant Position in Government Offices, Appropriating Funds Therefore, and for Other Purposes.

<sup>26</sup> *Supra* note 1, p. 50, the CA citing *Benguet Corporation v. Central Board of Assessment Appeals*, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 584.

To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review but determine and decide for the first time a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

The petitioners disagree, positing that they had raised the issue but both the CSC-NCR and the CSC did not deal with and rule on the same. Curiously, however, they are assuming a flexible posture because they alternatively argue that even if they did not seasonably raise the issue, the lapse of the publication still negated the intrinsic validity of the appointments.

We uphold the observation by the CA that the lapse of the publication, being raised for the first time on appeal, could not be properly dealt with and resolved in this appeal. It clearly appears that the lapse of the publication was not among the issues resolved by the CSC-NCR and the CSC in all their resolutions, and was not also discussed or tackled in the administrative levels. The only issues that the petitioners consistently raised below related only to the three-salary grade limitation rule, the PSB's composition, and the lack of the MPP/SRP on the part of LTO. For the Court to now consider the effect of the lapse of the publication for the first time in this appeal would violate the basic principle of *appellate* adjudication, that only the issues raised and dealt with by the lower courts or tribunals or offices, as to which the parties and said lower courts or tribunals or offices were given the fullest opportunity and time to ventilate their respective sides, should be considered and decided. Moreover, the matter involves a question of fact, which the Court, not being a trier of facts, cannot concern itself in this appeal. Indeed, to deal at all at this stage with anything that the lower courts or tribunals or offices did not consider and pass upon, and reverse or modify them thereon would essentially be unfair. Lastly, deciding such new issue would necessarily deprive the parties of the fullest ventilation of their cases in respect of each other in the lower courts or in the administrative levels.

#### IV

Although the three-salary grade limitation is not now raised as an issue by the petitioners, it is not amiss to discuss the limitation to explain why the Court sustains the CA's holding that the CSC did not transgress the

limitation in relation to Se's promotion from Engineer II (SG 16) to Administrative Officer IV (SG22), which was six steps upwards.

The limitation was unquestionably subject to exceptions. The promotion of Se was made under the fifth exception stated in CSC Resolution No. 03-0106 dated January 24, 2003, to wit:

Any or all of the following would constitute as a meritorious case, excepted from the 3-salary grade limitation on promotion and transfer:

1. The position occupied by the person is next-in-rank to the vacant position, as identified in 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 staffing pattern;
3. The position belongs to the dearth category, such as Medical officers/Specialist positions and Attorney positions;
4. The positions 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
6. The vacant position belongs to the closed career system.

In connection with the foregoing, the CSC Regional Director concerned will be the one who will approve and grant any exception in accordance with the above guidelines. (underlining supplied)

After the LTO-CO-SPB considered Se's appointment to fall under the fifth exception, the petitioners challenged the promotion, but the CSC-NCR affirmed the promotion by opining that "the aforementioned rule should not be interpreted in its strict sense and the circumstances on the appointment of Se would fit in the term very 'meritorious cases'."<sup>27</sup> In respect of Borja, the CSC-NCR declared that: "It cannot be denied that (Se) has completed the academic requirements in Master's in Business Administration (MBA), which was rated 13% as against 10% for Ms. Borja not to mention that he

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<sup>27</sup> CA rollo, p. 96

was rated a maximum of 5% under Outstanding Accomplishment while there was none for Ms. Borja.”<sup>28</sup>

In denying the petitioners’ motion for reconsideration, the CSC-NCR took note of the LTO-SPB’s deliberations of January 15, 2004, and ruled as follows:

**x x x With respect to Se, the LTO Selection and Promotion Board gives as its reason, that he was “given a rating of 5% on Outstanding Accomplishment in recognition of his performance, which resulted in the success in the Cabinet Meeting.” Thus, LTO has given basis for the promotion of appointees Gaborni and Se, which reasons fall under those circumstances that the Commission considers as ‘meritorious cases.’<sup>29</sup> (bold underscoring for emphasis)**

On review, the CSC, affirming the promotional appointment of Se, elaborated on the application of the limitation and its exceptions, ultimately denying the motion for reconsideration of the petitioners, to wit:

The Commission has emphasized in a string of cases **that the three (3) salary grade limitation on promotion should not be the sole basis for the disapproval of an appointment but should be taken as an indicator of possible abuse of discretion in the appointment process.** In such cases, the Commission will make a thorough and deeper evaluation relative to the manner and merit of the issuance of the appointment vis-à-vis the reasons or justifications advanced by the appointing authority. If the issuance of the appointment falls under any of the meritorious cases or based on meritorious consideration, then the appointment should be approved.

**In this case, the Commission is convinced that Se’s appointment falls under the fifth (5<sup>th</sup>) exception of CSC Resolution No. 03-0106. As culled from the records, the agency’s Personnel Selection Board (PSB) conducted a deep selection process of the qualifications of the applicants, showing that Se had superior qualifications than the other applicants.<sup>30</sup> (bold underscoring for emphasis)**

Based on the CSC’s instructive reasoning, the fifth exception definitely applied to Se. It is noteworthy that Borja did not dispute the findings on Se’s more meritorious qualifications, focusing only on the three-salary grade limitation rule and on her being the next-in-rank. As to the next-in-rank contention of Borja, it even appears that neither Borja nor Se was the next-in-rank in the context of the approved Occupational Grouping and

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<sup>28</sup> Id.

<sup>29</sup> Id. at 105

<sup>30</sup> *Rollo*, p. 48.

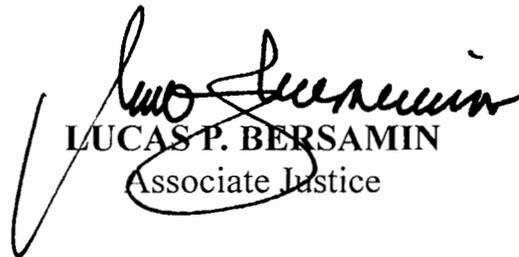
Ranking of Positions.<sup>31</sup> Hence, Se's superior qualifications, as compared to those of Borja, were the basis for his appointment.

In this connection, the CSC fittingly stressed that "the three-salary grade limitation should not be the sole basis for the disapproval of an appointment but should be taken as an indicator of possible abuse of discretion in the appointment process." A relevant inquiry into the qualifications of Borja and Se has convinced us to hold that Se's appointment should be upheld because he was better qualified than Borja despite the fact that he was not the next in rank or that his promotion would require moving him to six-salary grades higher.

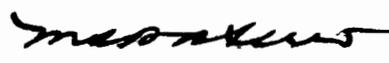
In fine, the CA validated Se's selection by observing that the LTO had conducted a deep selection process.<sup>32</sup> The petitioners did not refute the conduct of the deep selection process, claiming only that the comparative assessment was not the screening contemplated by CSC MC No. 3, Series of 2001. This presupposes that the LTO established the bases for choosing Se instead of Borja. The CSC approved the exception in favor of Se. Under the circumstances, the allegation of abuse of discretion, least of all grave, as attendant in the appointment of Se remained unsubstantiated.

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 26, 2008; and **ORDERS** the petitioners to pay the costs of suit.

**SO ORDERED.**

  
LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**

  
MARIA LOURDES P. A. SERENO  
Chief Justice

  
ANTONIO T. CARPIO  
Associate Justice

  
PRESBITERO J. VELASCO, JR.  
Associate Justice

<sup>31</sup> CA *rollo*, p. 93.

<sup>32</sup> *Rollo*, at.48.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

(On Leave)  
**ARTURO D. BRION**  
Associate Justice

*No Part:*  
*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
Associate Justice

*Jose Catral Mendoza*  
**JOSE CATRAL MENDOZA**  
Associate Justice

*Bienvenido L. Reyes*  
**BIENVENIDO L. REYES**  
Associate Justice

*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*Marvic M.V.F. Leonen*  
**MARVIC M.V.F. LEONEN**  
Associate Justice

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
Associate Justice

(On Official Leave)  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

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.

*Maria Lourdes P. A. Sereno*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

C