

CARANDANG, Melchor Arthur H.

CLEMENTE, Paul Elmer M.

DE JESUS, Jr., Jose Tereso U.

Re: Change of Status of Appointment

From Temporary to Permanent

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RESOLUTION No. 030919

Ombudsman Simeon V. Marcelo, in a letter dated January 2, 2003, requested the change of status from temporary to permanent of the appointments of Melchor Arthur H. Carandang, Paul Elmer M. Clemente, and Jose Tereso U. De Jesus, Jr., all Graft Investigation Officer III of the Office of the Ombudsman, Agham Road, Quezon City, effective December 18, 2002. Ombudsman Marcelo anchored his request on the decision of the Supreme Court in the case of Khem Inok vs. Civil Service Commission.

Ombudsman Marcelo represented as follows:

[21/11] This has reference to the appointments of Attys. MELCHOR ARTHUR H. CARANDANG, PAUL ELMER M. CLEMENTE and JOSE TERESO U. DE JESUS, JR. to the position of Graft Investigation Officer III issued by then Ombudsman Aniano A. Disierto on July 31, 2002. These appointments were issued on a Temporary status as the appointees do not possess third level eligibility.

[21/11] In the Decision of the Court of Appeals dated January 28, 2001 on CA G.R. SP No. 49699 as affirmed by the Supreme Court with finality on July 2, 2002 in G.R. No. 148782 entitled [21/11] Khem N. Inok vs. Civil Service Commission [21/11], it is stated in said Decision that the letter and intent of the law is to circumscribe the Career Executive Service (CES) to

CES positions in the Executive Branch of Government, and that the Judiciary, the Constitutional Commissions, the Office of the Ombudsman and the Commission on Human Rights are not covered by the CES governed by the Career Executive Service Board. Said Decision thereby effectively granted the petition of Mr. Inok for security of tenure as Director III of the Commission on Audit despite the absence of a CES eligibility.

In view of the foregoing, we are resubmitting herewith the subject appointments with corresponding annotations changing the status of said appointments from Temporary to Permanent. 21

Records show that Carandang, Clemente, and De Jesus, Jr. were appointed as Graft Investigation Officer III under temporary status by then Ombudsman Aniano A. Desierto on July 31, 2002. The Commission approved these appointments with a condition that the appointees do not have security of tenure unless they obtain CES or CSE eligibility. Subsequently, the same appointments are now being proposed as permanent by way of Change of Status from temporary to permanent effective December 18, 2002, pursuant to the decision of the Court of Appeals in the case of **Inok vs. Civil Service Commission, CA G.R. SP No. 49699 promulgated on January 18, 2001**, the pertinent portions of which read, as follows:

21 *The ultimate issue to be resolved in the instant case falls on the determination of the validity of the notation by the CSC-NCR on the promotional appointment of the petitioner as Director III by the COA, which notation expressly states that he does not have security of tenure until he obtains CES or CSEE (sic) eligibility.*

21 *Ineluctably, the judiciary, the Constitutional Commissions, the Office of the Ombudsman, and the Commission on Human Rights are not covered by the CES governed by the CESB (page 14, 21 Are the Judiciary, the Constitutional Commissions, the Office of the Ombudsman, and the Commission on Human Rights Beyond the Coverage of the Career Executive Service Governed by the Career Executive Service Board? 21), by Justice Jaime M. Lantin, The Lawyers Review, Volume XIV, No. 12*

(December 31, 2000). The power of these constitutional offices to appoint their own officers and employees is mainly intended to safeguard their independence, which is the same power of appointment of all officials and employees of the judiciary granted to the Supreme Court (Article VIII, Section 5(6) of the 1987 Constitution). As commented by a noted constitutionalist:

☐ The authority of the Supreme Court to appoint its own officials and employees is another measure intended to safeguard the independence of the judiciary. However, the Court's appointing authority must be exercised in accordance with the Civil Service Law.xxx'

☐ Irrefragably, inherent in the power to appoint is the power to administratively supervise the officials and employees in the constitutional offices ☐ in the same manner that the express power to appoint carries with it the implied power to remove the personnel appointed in said offices xxx. Besides, Section 27 of Presidential Decree (P.D.) No. 1445, otherwise known as the Government Auditing Code of the Philippines, provides:

☐ SECTION 27. Appointing power. ☐ The Commission Proper shall appoint, subject to Civil Service Law, the officials and employees of the Commission whenever they are stationed or assigned.

☐ Parenthetically, the power to administratively supervise is designed to strengthen the independence of the constitutional offices. A respected authority on political law underscored the multifarious factors that are integral to the independence of the constitutional offices, scilicet:

☐ There are several factors that preserve the independence of the three Commissions:

(3) *Their appointment must be in a permanent capacity.*

(4) *The Commissions enjoy their own fiscal autonomy (page 367, Martin, Philippine Political Law, 1988).*

The independence of these constitutional offices serves to exempt their respective officials and employees from (sic) the coverage of the CES under the administrative authority of the CESB. To be sure, they are embraced by the civil service system. However, the administrative functions belong to the constitutional offices, instead of the CESB in the same manner that the Supreme Court administers the judiciary's civil service.

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The notation made by the respondent Commission is, in effect, a disapproval of the appointment made by the COA. x x x

Irrefragably, the CSC cannot substitute its judgment for that of the appointing authority (Gaspar vs. Court of Appeals, 190 SCRA 774). Any act which tends to undermine and infringe on the independence of a constitutional body is tantamount to grave abuse of discretion.

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WHEREFORE, the petition is hereby GRANTED and Resolution No. 982573, dated October 1, 1998, rendered by the Civil Service Commission relative to the

petitioner's appeal vis a vis the latter's appointment as Director III of the Commission on Audit REVERSED and SET ASIDE. No pronouncement as to costs.

As borne out by the records, the aforesaid Court of Appeals decision became final and executory in view of the Supreme Court's Resolution dated July 2, 2002, to wit:

The Court Resolved to DENY WITH FINALITY the Motion dated 16 May 2002 filed by petitioner Civil Service Commission (CSC), for reconsideration of the resolution of 10 April 2002 dismissing the instant petition for failure of said petitioner to file reply to the comment of respondent there being no compelling reason to reverse the questioned resolution.

The sole issue that needs to be resolved is whether the appointments of Carandang, et. al., under temporary status may be properly changed to permanent despite non-compliance with the eligibility requirement for the position of Graft Investigation Officer III.

Relevant to the matter are **Section 4 and 6, Rule III and Rule VI**, respectively, of the **Omnibus Rules on Appointments and Other Personnel Action**, which state:

SEC. 4. Nature of Appointment. The nature of appointment shall be as follows:

i. Change of status:

1. Temporary to permanent the appointment issued to a temporary employee when he acquires the appropriate eligibility or becomes fully qualified for the position to which he is appointed.

X X X

SEC. 6. *In cases where the appointee fully qualifies for the position to which he is temporarily appointed, the appointing authority shall no longer issue an appointment for change of status from temporary to permanent. Upon the appointee's presentation of the required document/s, such change may be effected as a footnote on the temporary appointment previously issued, copy furnished the Commission.*

It is explicitly provided therein that the change of status from temporary to permanent can be effected only once the appointee becomes fully qualified to the position to which he is appointed.

Records reveal that Carandang and Clemente were conferred with the Career Service Executive Eligibility pursuant to **CSC Resolution No. 03-0665 dated June 6, 2003**; thus making them fully qualified to the subject position. Hence, the change of status on the appointment may be effected as a footnote on their temporary appointments effective June 6, 2003, the day they were conferred with CSE Eligibility.

On the other hand, De Jesus is not yet fully qualified to the position of Graft Investigation Officer III as he is still deficient of the eligibility requirement. Thus, there is no basis to effect the change of status on his temporary appointment.

The pronouncement of the Court of Appeals in the Inok case cannot be made the basis for changing the employment status of De Jesus. Let it be stressed that nowhere in the aforesaid decision states that the Office of the Ombudsman or the other constitutional agencies mentioned therein are exempt or are not covered by Civil Service Law and Rules. On the contrary, the same decision declares that these bodies are covered by the civil service system. Basic is the rule that all appointments in the government service, particularly the career service, must be in accordance with the qualification requirements as laid down under existing civil service rules and regulations. Such policy is in line with the Commission's mandate to professionalize the civil service. The requirements spelled out in the Qualification Standards (QS) Manual are designed to determine the fitness of the appointee in a certain position. These

requirements are indispensable in order to satisfy the Constitutional mandate that appointment in the civil service shall be made according to merit and fitness.

While it is true that constitutional agencies such as the Office of the Ombudsman has the authority to appoint its officials and employees in accordance with law, such authority does not necessarily imply that their appointment will not be subject to Civil Service Law and Rules; otherwise, these independent bodies will arrogate upon themselves a power that properly belongs to the Civil Service Commission. Had the intention of the framers of the Constitution been to isolate and grant full independence to Constitutional Commissions in the manner of appointments, it would have been so provided. But that is not the case. The Philippine Constitution provides: ^{21/}*The Constitutional Commissions shall appoint their officials and employees in accordance with law*^{21/} (**Article IX-A, Section 4**) (Underscoring ours). Specifically, **Section 6, Article XI of the Constitution** states that ^{21/}*The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman according to the Civil Service Law*^{21/} (*Emphasis supplied*). And since all matters pertaining to appointments are within the realm of expertise of the CSC, all laws, rules and regulations it issues on appointments must be complied with.

The Constitution speaks of only ^{21/}one^{21/} civil service, to encompass the first, second, and third levels. It is subject to the same set of laws, rules and regulations in the manner of observing and ensuring that the merit and fitness principle, unless otherwise exempted therefrom by the Constitution or law, is the guiding factor in issuing appointments. Hence, until and unless there is a law or rule exempting one category of public officials from the test in determining merit and fitness, all levels in the government are deemed subject to it. Simply put, the third level eligibility requirement for third level officials in all agencies is mandatory.

Further, let it be clarified that the ruling enunciated in the Inok case was with regard to the authority of the Career Executive Service Board to prescribe and to administer the Career Executive Service Eligibility and it did not specifically nor particularly take away the functions of the Civil Service Commission. This is evident from the aforequoted decision in the Inok case, *to wit*:

It is settled that the independence of these constitutional offices serves to exempt their respective officials and employees from the coverage of the CES under the administrative authority of the CESB. To be sure, they are embraced by the civil service system. However, the administrative functions belong to the constitutional offices, instead of the CESB-in the same manner that the Supreme Court administers the judiciary's civil service.

Pursuant to the QS Manual, a Graft Investigation Officer III position is a career service position requiring a Career Service Eligibility or Career Service Executive Eligibility. Considering that De Jesus has not met the eligibility requirement, the change of status of his appointment from temporary to permanent cannot be effected. As held in **Achacoso vs. Macaraig, 195 SCRA 235**:

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.

WHEREFORE, the request of Ombudsman Simeon V. Marcelo for the change of status from temporary to permanent of the appointments of Melchor Arthur H. Carandang and Paul Elmer M. Clemente as Graft Investigation Officer III of the Office of the OMBUDSMAN is **GRANTED**. Accordingly, the temporary appointments of Carandang and Clemente to the position of Graft Investigation Officer III are changed to permanent effective June 6, 2003. However, the same request, in so far as Jose Tereso U. De Jesus, Jr. is concerned, is **DENIED**.

Quezon City, August 28, 2003

(SGD.)

J. WALDEMAR V. VALMORES

Commissioner

(SGD.)
KARINA CONSTANTINO-DAVID
Chairman

(On Leave)
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(SGD.)
REBECCA A. FERNANDEZ
Director IV
Commission Secretariat and Liaison Office