

RADAZA, Arturo O.

Re: CSCRO No. VII Decision Dated November 22, 2001;
Disapproval of Appointment; Appeal

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RESOLUTION NO. 030233

Mayor Arturo O. Radaza, Lapu-lapu City, Province of Cebu, appeals the Decision dated November 22, 2001 of the Civil Service Commission Regional Office (CSCRO) No. VII, affirming the Decision dated October 29, 2001 of the CSC Provincial Field Office disapproving the promotional appointment of Leny A. Caras from Local Treasury Operations Officer (LTOO) I to LTOO III, same agency. The appointment of Caras was disapproved on the ground that her promotion violates the maximum three (3) step salary grade increase mandated in Item No. 15 of CSC Memorandum Circular (MC) No. 3, s. 2001 (Revised Merit Promotion Plan). Records show that the appeal was received by the Commission on January 10, 2002.

The material portions of the decision of the CSCRO No. VII read, as follows:

" . . . In a DECISION dated October 29, 2001, Director Canapi countered that the reason for the disapproval is not the qualification of the appointee but rather . . . anchored on the violation of a specific policy on the Merit Promotion Plan under MC # 3, 2001. The current Plantilla of Personnel of the City of Lapu-Lapu bears that the current position of Ms. Caras has a salary grade of 11 while the vacant position's salary grade is 18, which is seven (7) steps higher than her present position. Moreover, the appointee's present position is neither next-in-rank to the item filled-up nor a lone or entrance position in the staffing pattern.

"In his appeal, Mayor Radaza asserts that the appointee possesses superior qualifications over the next-in-rank employees. Her knowledge on the functions of the position, being the Local Treasury Department Operations Officer I, is vital to the appointed position. He also added that the lateral interpretation of Section 15 of MC No. 3, s. 2001, would be curbing the latitude of discretion vested upon the appointing authority, as has been steadily sustained by the Supreme Court, which would only result into a situation adverse to the best interest of the public service.

"This Office does not find any legal basis to disturb the decision . . . of the Cebu Field Office. The justifications made by Mayor Radaza have no solid support in the records of the case. The Performance Evaluation Reports of Ms. Caras dated July to December, 1998 and January to June, 2001, disclose her Adjectival Ratings are Very Satisfactory with Equivalent Numerical Ratings of 8.0 for said two semesters. With

these ratings, we cannot conclude that Ms. Caras was the only applicant deliberated to the position of Local Treasury Operations Officer III. Therefore, it cannot be said that she has superior qualifications and competence compared to the other next-in-rank-employees bearing in mind that the other next-in-rank employees were not even given the chance to join said deliberation.

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" . . . it is also worth noting that in the staffing pattern of said City, there are currently six (6) next-in-rank employees who are holding the position of Local Treasury Operations Officer II, who can be considered for deliberation to the position of Local Treasury Operations Officer III, but were denied that privilege.

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"Finally, it is essential to emphasize that as a central personnel agency of the government, one of the functions of the Civil Service Commission is to safeguard the rights and protect the morale of employees. In performing that function, it ensures that its laws are fully implemented and strictly followed.

***"WHEREFORE,** foregoing premises considered, the decision of the Cebu Field Office is affirmed and the instant appeal of Mayor Arturo O. Radaza from the disapproved appointment of Ms. Leny Caras is dismissed for lack of merit."*

The appeal of Mayor Radaza reads, in part, as follows:

"This is an appeal from the decision of the CSC Regional Office VII . . . in disapproving the promotional appointment of Mrs. Leny A. Caras . . . to Local Treasury Operation Officer III . . . on the sole ground that it allegedly violates Item No. 15 of M.C. 3, series of 2001.

" . . . the Regional Director . . . failed to appreciate the following points to wit:

"1. That Mrs. Leny Caras has completed all the academic requirements of her Masteral Degree in Public Administration . . . there is no doubt that she is superior over the other qualified employees.

"2. That . . . Caras was strongly recommended by the Head of the Treasury Department . . . considering that she is very knowledgeable in the field . . .

"3. That during the assignment of . . . Caras to the Licensing Division, she was able to discover anomalous transactions made by the co-employee involving a considerable amount that redounded to the benefit of the City Government.

"4. That . . . Caras had been assigned to the said division of the Office of the City Treasurer for more than 7 years . . .

"5. The CSC – Regional Office VII erred in deciding that there are six (6) next in rank employees due to the fact that under the current staffing pattern of the Office of the City Treasurer, there are only two (2) employees who can be considered next in rank . . . but these employees are not available for the said position . . .

" . . . I do believe that Item No. 15 of Memorandum Circular No. 3 series of 2001 shall not be construed with conclusivity (sic) in order to pave the way for the application of a very long time settled jurisprudence enunciated . . . by the Supreme Court that the appointing authority shall be given a wide latitude of discretion in appointing employees provided that the employee to be appointed possesses the minimum qualifications required by the position. This requirement is not only meet (sic) by the appointee . . . but rather she possesses superior qualifications . . .

"In view of the foregoing premises and considering the circumstances presented, the undersigned respectfully requests your good office to reverse the decision of the Civil Service Commission Region VII (sic) from the disapproval to that approval."

CSCRO No. VII commented on the appeal, as follows:

" . . . the contentions that Ms. Leny Caras is superior over the other qualified employees because she has completed the academic requirements of her Masteral degree in Public Administration; that she was strongly recommended by the Head of Treasury Department since she is knowledgeable in the field to which she is appointed; that she was able to discover anomalous transactions . . . she has been assigned in the Office of the City Treasurer for more than seven (7) years, are not convincingly sufficient to outweigh the fact . . . that her appointment . . . violated . . . Memorandum Circular No. 3, series of 2001, more particularly Section 15 thereof.

"We also find the assertions of the appellant that this Regional Office erred in saying that there are six (6) next in rank employees in the City of Lapu-lapu . . . who can be considered . . . not meritorious . . . The holders of said position in . . . four Divisions of the Office of the City Treasurer are qualified next-in-rank employees who should be automatically considered in the deliberation . . . pursuant to Item 10 of MC NO. 3, s. 2001 . . .

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"Further, we gathered from the . . . Excerpts of the Minutes of the Personnel Selection Board (PSB)

Meeting . . . that . . . Caras was the only applicant deliberated to the position . . . which clearly shows that the position was solely intended for her. Therefore, it cannot be said that she has superior qualifications and competence compared to the other next-in-rank employees bearing in mind that the other next-in-rank employees were not even given the chance to join the deliberation.

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"Finally, we would like to reiterate . . . that while the Supreme Court held that the appointing authority has a wide latitude . . . in appointing an employee . . . such discretionary power shall not be exercised arbitrarily and whimsically . . . "

Records show that on October 6, 2001, Mayor Radaza promoted Caras from the position of LTOO I to LTOO III with Salary Grades 11 and 18, respectively. On October 22, 2001, the CSC Field Office disapproved the said appointment on the ground that it violated Item No. 15 of CSC MC No. 3, s. 2001. In a letter dated October 26, 2001, the Mayor, through the City Treasurer, moved for the reconsideration of the said disapproval. However, the said motion was denied in a Decision dated October 29, 2001.

On November 5, 2001, Mayor Radaza appealed the decision of the CSC Field Office to CSCRO No. VII. Subsequently, on November 22, 2001, the said Regional Office dismissed the said appeal. In affirming the findings of CSC Field Office, the Regional Office declared that Caras' appointment violated the Merit Selection Plan, which was submitted by the City of Lapu-lapu for CSC approval. The approved Merit Selection Plan limits the promotion of employees to a maximum of three (3) salary grades. Additionally, it ruled that the position of LTOO I is not the next-in-rank position to LTOO III which would have, otherwise, exempted such appointment from the coverage of the Plan. The Regional Office also observed that the Personnel Selection Board (PSB) did not evaluate the qualifications of all qualified employees occupying next-in-rank positions. In fact, only the application of Caras was evaluated by the PSB.

On January 10, 2002, the Commission received the undated appeal of Mayor Radaza. Subsequently, in an order dated February 14, 2002, CSCRO No. VII was requested to comment on the appeal. In a letter dated March 13, 2002 (received by the Commission Proper on March 27, 2002), the said Regional Office submitted its comment.

Hence, the present appeal.

The sole issue to be resolved is whether the disapproval of the promotional appointment of Caras from LTOO I to LTOO III is in order.

Relevant to the instant appeal is **Item 10 of the Revised Merit Promotion Plan (Civil Service Commission Memorandum Circular No. 03, s. 2001)**, which provides that *"for vacancies in the first and second levels, all qualified next-in-rank employees shall be automatically considered candidates for promotion to the next higher position."* The said provision is reproduced *en toto* in the City of Lapu-lapu Merit Selection Plan. In the present case, the PSB of the City of

Lapu-lapu failed to consider the next-in-rank employees for the position. Excerpts of the Minutes of the Lapu-lapu City PSB Meeting dated October 5, 2001 revealed that only Caras was considered for the position of LTOO III despite the fact that there are five (5) employees holding the position of LTOO II.

The relevant portions of the said deliberation read, as follows:

"The next application that was deliberated upon was the promotion of Mrs. Leny Caras from the position of LTOO I to LTOO III of the Office of the City Treasurer, to which after scrutiny of the credentials of the applicant and after considering that there was no other applicant to the position applied for and after being satisfied with the answers of the applicant to the questions propounded . . . moved to recommend Mrs. Caras to the City Mayor for possible appointment as LTOO III . . . "

Moreover, it must be mentioned that the promotion of Caras from LTOO I (Salary 11) to LTOO III (Salary Grade 18) which is more than three (3) salary grades higher than her previous position or a total of seven (7) salary grades higher also violated Item 15 of the Revised Policies on Merit Promotion Plan.

The said provision specifically provides:

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

Neither would the promotion of Caras fall under the exceptions mentioned in the provision under consideration since the position she previously held, LTOO I, is not next-in-rank to the position to which she was appointed to. *Qualified Next-In-Rank* refers to the employee who is appointed under a permanent status to a position previously determined to be next-in-rank to the vacancy and who meets the requirements for appointment thereto. As culled from the Organizational Chart of the Office of the City Treasurer dated October 31, 2001, there are five (5) employees holding the position of LTOO II, which is the next-in-rank position to the LTOO III. Moreover, there are two (2) other items for the position of LTOO I with incumbents who were not considered and evaluated for the promotional selection. For these reasons, the said position cannot be considered as the lone or entrance position indicated in the agency's staffing pattern.

The claim of Mayor Radaza that the disapproval of the appointment of Caras is an encroachment of his discretionary power to appoint is not meritorious. True, appointing authorities, such as Mayor Radaza, are afforded wide latitude of discretion on whom to appoint from among those who possess the minimum qualifications required for the position. However, such authority is not absolute but subject to existing civil service law and rules. Possession by the appointee of the minimum qualifications is not the only criterion in determining whether the appointment issued to him by the appointing authority is valid. The appointing authority also has to comply with other existing civil service law and rules including policies

on Merit Promotion/Selection Plan. Since the appointment issued by Mayor Radaza in favor of Caras was made in violation of the Merit and Selection Plan of the City of Lapu-lapu, the same is not valid.

Lastly, the claim of Mayor Radaza that Caras should be appointed to the position of LTOO III since she was instrumental in the discovery of anomalous transactions made by a co-employee in the Licensing Division of Lapu-lapu City cannot be considered. In a Memorandum dated August 15, 2002, the Commission ordered CSCRO No. VII to conduct an investigation on the matter. Subsequently, on September 30, 2002, the said Regional Office submitted its report, as follows:

"2. According to Ms. Elena T. Pacaldo, City Treasurer of Lapu-lapu City, it was not really Leny Caras who discovered the anomalous transaction, but Ms. Pacaldo herself with the help of Leny Caras. An investigation on the matter was conducted pursuant to the order of Ernest H. Weigle, Jr., former Mayor of the City of Lapu-lapu which resulted in the finding of guilt of Mr. Alfredo Abing, former Local Treasury Operations Officer III, for Dishonesty. However, based on the documents presented and our interview of Mrs. Pacaldo, we are not convinced that Leny Caras was a part of the discovery of said anomalous transaction as there is no proof of the same."

WHEREFORE, the appeal of Lapu-lapu City Mayor Arturo O. Radaza is hereby **DISMISSED**. Accordingly, the decision of the Civil Service Commission Regional Office No. VII dated November 22, 2001 affirming the disapproval of the appointment of Leny A. Caras as Local Treasury Operations Officer III stands.

Quezon City, FEB 21 2003

(Original Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Original Signed)
KARINA CONSTANTINO-DAVID
Chairman

(O.B.)
J. WALDEMAR V. VALMORES

Commissioner

Attested by:

(Original Signed)
ARIEL G. RONQUILLO
Director III

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