

WATCHORNA, Agatha P.

Re: Nepotism; Recall of Approval of
Appointment; Appeal

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RESOLUTION No. 040678

Agatha P. Watchorna, Senior Agriculturist, Department of Agriculture [21/11] Cordillera Administrative Region (DA-CAR), Baguio City, appeals from the decision dated March 12, 2003 of the Civil Service Commission [21/11] Cordillera Administrative Region (CSC-CAR), recalling the approval of her appointment to said position as the same was allegedly issued in violation of the law on nepotism. Said decision partly reads, as follows:

[21/11] Under existing Civil Service Law and Rules, the Selection Board is considered a recommending authority. Thus, the appointment of Agatha Watchorna, wife of then Rank and File Representative Omer Watchorna is nepotic.

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[21/11] WHEREFORE, the approval of the June 29, 1990 Senior Agriculturist appointment of Agatha Watchorna at the Department of Agriculture, Cordillera Administrative Region, Guisad, Baguio City, is hereby recalled. The appointment was issued in violation of Section 59, Book V, Title I, Subtitle of the (sic) Executive Order No. 292, otherwise known as the Administrative Code of 1987. [21/11]

Watchorna moved for the reconsideration of the abovequoted decision but the CSC-CAR treated the same as an appeal pursuant to CSC Memorandum Circular No. 15, s. 2002. Hence, the CSC-CAR referred said motion for reconsideration, which is now treated as an appeal, to the Commission through a memorandum dated June 4, 2003.

In her appeal, Watchorna prays that the aforementioned decision be set aside or be ☐held in abeyance until the case of alleged nepotism against defendant ☐'s husband is resolved with finality. ☐
In support thereof, Watchorna argues, as follows:

☐ *The decision is void. It violates defendant ☐'s (sic) constitutional right of (sic) due process as she was never given the opportunity to be heard.*

☐ *The decision is based on an anonymous complaint against petitioner ☐'s husband by a non-existent, fictitious Jean Picart whose complaint was previously dismissed by the Honorable Commission in its Decision CAR No. 02126 DC dated December 10, 2002, ☐*

☐ *The alleged ☐ nepotic ☐ act being leveled against defendant ☐'s husband has actually no legal basis. It is an erroneous interpretation and application of the law. It is based on CSC Res. 001306, June 01, 2000, which declared that the Promotional (sic) and Selection Board is considered a recommending authority, making the acts of the members of the Board nepotic when it relates to a relative within the third degree of consanguinity. This rule cannot be made retroactive to an act done in 1990. To do so would inflict injustice to innocent people. (underscoring is appellant ☐'s)*

☐ *From all indications, this twin move to demote defendant and remove her husband is the malicious machinations of some disgruntled individuals who have an axe to grind against the couple. For one thing, the alleged ☐ nepotic ☐ act took place some thirteen (13) years ago. This issue is now being dug up by some individuals who resent the fact that Mr. Omer Watchorna has just been promoted to (sic) Administrative Officer V. The Honorable Commission should not allow itself to be used for such malicious purposes specially as the issue is just a rehash of an already dismissed complaint by a fictitious Jean Picart. ☐*

Thereafter, Watchorna submitted a [REDACTED] Manifestation [REDACTED] dated May 12, 2003, imploring that the Answer filed by her husband, Omer G. Watchorna, to the formal charge issued against him by the CSC-CAR for Nepotism be considered an integral part of her appeal, the material portions of which read, as follows:

[REDACTED] Art. 4 of the Civil Code provides that [REDACTED] laws shall have no retroactive effect, unless the contrary is provided. [REDACTED] While Art. 21 of the revised (sic) Penal Code provides that [REDACTED] no felony shall be punishable by any penalty prescribed by law prior to its commission. [REDACTED]

[REDACTED] It is thus clear that laws and, by analogy, administrative or executive regulations, operate prospectively, not retroactively. The only exception is when it is expressly provided otherwise, and when such retroactive application is beneficial to the accused or defendant as the case may be. This is so because of the constitutional right to due process [REDACTED]

[REDACTED] In 1990 the members and the Chairman of the Selection Board had (sic) absolutely no inkling that they constitute a recommending authority. Had they known that, they would have asked Omer Watchorna to inhibit himself, or he would have voluntarily inhibited himself, from participating in the screening process. And they could not possibly have known that they are supposed to be a recommending authority since CSC Res. 001306 came out and took effect only after June 2000.

[REDACTED] The Board acted in good faith. At the time, i.e. June 1, 1990, the law was vague as to what entities are considered recommending authorities. People at that time could only have been guided by the common sense difference between certification and recommendation as pointed in the latter part of this argument.

[REDACTED] In the case at bar, the Selection Board simply screened all the applicants to determine who among them meet (sic) the required minimum qualification standards of the position of Senior Agriculturist [REDACTED]

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☞ Six of the applicants were included in the certification, including the wife (Agatha Watchorna) of the defendant. The Board did not single out any of the applicants in its certification.

☞ In the set-up of CA-CARFU at that time, it is the Assistant Regional Director for Administration who is the recommending authority while the appointing authority was the Regional Director.

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☞ If the Selection Board is to be considered a recommending authority, then in the case at bar, all the members thereof should be guilty of nepotism on the ground of conspiracy where the act of one is the act of all. Surely all the members of the Board knew that Omer Watchorna and Agatha Watchorna are husband and wife.

☞ Another point has to do with the concept and definition of the words recommend and certify. As provided in the World Book Dictionary, Copyright ☞ 1987, recommend is to speak in favor of; to suggest favorably; as in ☞ The teacher recommended him for the job. ☞ On the other hand, the same Dictionary states that certify is to declare (something) true or correct by an official spoken, written or printed statement, as in ☞ his diploma certifies that you have completed high school. ☞

☞ From the above, the concept of recommend involves the exercise of judgment and discretion, while certify hardly involves discretion and judgment. In the case at bar, what the Selection Board did was to certify, i.e. to declare true and correct, that on the basis of

existing records, six of the applicants, including the wife (Agatha Watchorna) of the respondent, meet the [REDACTED] required minimum qualification standards for the position. [REDACTED] [REDACTED]

The CSC-CAR submitted its comment to the appeal of Watchorna, the pertinent portions of which read, as follows:

[REDACTED] The CSC-CAR [REDACTED]s approval of the appointment of Agatha Watchorna as Senior Agriculturist was recalled in accordance with CSC rules. It is not drastic nor premature. The disciplinary case against her husband is not a prejudicial question. It is a totally different matter and alien to the recall of the appointment.

[REDACTED] There is no violation of the constitutional right of Agatha Watchorna to due process. She is not a party to the matter. The only parties involved are the CSC-CAR and the Regional Director of the DA-CAR who issued the appointment. The initial approval of the appointment was recalled not on the basis of CSC Resolution No. 001306 but on a standing policy against nepotism as above discussed. Hence, the appointment is now disapproved.

[REDACTED] Although, the appointment was initially approved thirteen years ago, prescription does not lie against the government. The CSC is included in the government. Hence, it may take action on the matter despite the passage of time.

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[REDACTED] WHEREFORE, it is prayed that the instant appeal/motion for reconsideration be denied. There is no reversible error committed by the CSC-CAR in its Decision No. CAR-03-067NDC. Agatha Watchorna is not the proper party to file an appeal or motion for reconsideration, hence the appeal should not be given due course. [REDACTED]

As borne out by the records, the facts of the present case may be summarized, as follows:

On April 3, 1989, Agatha P. Watchorna was appointed as Agricultural Development Specialist, DA-DAR, under permanent status. Said appointment was approved by the CSC-CAR as such on August 3, 1989. In her appointment paper, it is clearly stated therein that Watchorna was recommended by Antonio C. Balneg, then the Assistant Regional Director for Administration of the DA-CAR.

On June 29, 1990, Agatha P. Watchorna was issued a promotional appointment as Senior Agriculturist also under permanent status. A keen examination of her appointment does not show any name or signature of her husband, Omer G. Watchorna. In the Comparative Assessment Form, however, which was accomplished by the members of the DA-CAR Selection Board, appears a certification that reads, as follows:

 *This is to certify that the above listed personnel were thoroughly screened by the Selection Board on June 1, 1990 and were qualified for the position of Senior Agriculturist considering that they all meet the required minimum qualification standards of said position.* 

Below the abovequoted certification is the printed name and signature of Omer G. Watchorna as member of the Personnel Selection Board representing the rank and file employees of DA-CAR and the printed names and signatures of the three other members of the DA-CAR Personnel Selection Board. Said Comparative Assessment Form, however, was not approved by the appointing authority  Regional Executive Director Faustino K. Maslan.

Pointedly, in the same Comparative Assessment Form appears the names of five (5) other candidates vying for promotion to the position of Senior Agriculturist, aside from the name of Agatha P. Watchorna.

The June 29, 1990 appointment of Agatha P. Watchorna as Senior Agriculturist under permanent status was approved by the CSC-CAR on August 28, 1990.

In a letter dated September 11, 2002 addressed to Chairman Karina Constantino-David of this Commission, a certain [REDACTED] JEANNE PICART & CO., [REDACTED] purportedly employees of the DA-CAR, requested the Commission to take a look at certain alleged anomalies committed by Omer G. Watchorna, husband of Agatha P. Watchorna. Among the anomalies allegedly committed by Agatha P. Watchorna [REDACTED]'s husband, as stated in said letter was:

[REDACTED] 2. When he became the personnel officer of DA-CAR, he made his wife (a dietician/midwife) an agriculturist. He is the signatory of his wife [REDACTED]'s appointment, which is a violation of CSC rules and regulations as nepotism. For delikadeza (sic) reason, he should have inhibited himself on the selection and appointment of his wife. [REDACTED]

Said letter was referred to the CSC-CAR for appropriate action/investigation. Subsequent investigation revealed, however, that the said [REDACTED] JEANNE PICART [REDACTED] is a fictitious person. This was confirmed by Dr. Pedro Jerry D. Baliang, Assistant Regional Director for Administration, DA-CAR, in his letter dated October 23, 2002 which partly reads, as follows:

[REDACTED] In this connection, we would like to state that the aforementioned complainant is not an employee of this Office as per records. That she is nowhere to be found at her given address furthermore (sic), she is not known here at the Regional Office compound as per our inquiry. It is our view that the said letter is an anonymous letter designed to put Mr. Watchorna in a bad light being an applicant to the Administrative Officer V position that was indorsed by this Office to the Department of Agriculture, Central Office. [REDACTED]

Nonetheless, the CSC-CAR, in its decision dated March 12, 2003, formally charged Omer G. Watchorna with nepotism. Corollarily, in a separate decision also dated March 12, 2003, which was quoted above, the CSC-CAR recalled the previous approval of the appointment dated June 29, 1990 of Agatha P. Watchorna as Senior Agriculturist on the ground that it was issued in violation of the law on nepotism.

On May 29, 2003, the CSC-CAR received a letter dated May 28, 2003 from DA-CAR Regional Executive Director Faustino K. Maslan which read, as follows:

☞ This has reference to the decision of that office to recall the promotion of Mrs. Agatha G. (sic) Watchorna thirteen years after it was attested by then Acting Chief Personnel Specialist, Ms. Adela M. Esteban. The respondent requested our office to help reconsider such decision.

☞ The promotion took place way back on June 29, 1990 and attested by the CSC-Cordillera Administrative Region on August 28, 1990 when our regional office was barely two years old. The chairman of the promotion and selection board was former Assitant Director Teodoro Baguilat and one of the members representing the second level was Mr. Omer G. Watchorna who was then Chief of General Services.

☞ During that time, there was no prohibition for members of the promotion and selection screening board to participate in signing certifications of qualified applicants for appointment or promotion. This was evidenced by the attestation of Mrs. Agatha G. (sic) watchorna ☞s (sic) promotion as Senior Agriculturist despite public knowledge and records showing the she is the wife of Mr. Omer Watchorna who was one of the signatories representing the rank and file.

☞ In the spirit of fairness, her promotion should not be affected by the complaint

against her husband which was written by a fictitious complainant. The same name of Jean Picart wrote a poison letter against five personnel of the Cordillera Highland Agriculture Resource Management Project in 1998. We investigated her supposed address in Makati City and found it non-existent. Of course her complaint was dismissed by the Department of Agriculture Central Office and the Ombudsman for lack of merit.

☞ It is fervently prayed for in the mighty name of Jesus Christ who is the epitome of justice and fairness that the decision recalling the promotion of Mrs. Agatha P. Watchorna, on the basis of a regulation in year 2000 with no retroactive provision, be reconsidered. ☞

The crucial issue to be resolved is whether the appointment dated June 29, 1990 of Agatha P. Watchorna as Senior Agriculturist is indeed nepotistic thereby justifying the recall of its previous approval.

But before proceeding with the main issue, the Commission finds it necessary to resolve the ancillary issues that cropped up in the present case which are:

1. Whether Agatha P. Watchorna was denied of her right to due process when the previous approval of her appointment dated June 29, 1990 as Senior Agriculturist was recalled by the CSC-CAR without any formal hearing; and
2. Whether Agatha P. Watchorna has the legal personality to file the present appeal.

Even on the assumption that the previous approval of the appointment of Agatha P. Watchorna as Senior Agriculturist was recalled without any prior hearing, she cannot validly invoke denial of due process. Be it noted that the present case is non-disciplinary. Agatha P. Watchorna was never charged with an administrative infraction nor imposed any disciplinary sanction. What the CSC-CAR did was simply to recall its previous approval of the appointment of Agatha P. Watchorna after finding, albeit

erroneously, that the issuance of her appointment as Senior Agriculturist was in contravention of the law on nepotism. In the similar case of **Debulgado vs. CSC, 237 SCRA 184**, the Supreme Court ruled that:

When petitioner took her oath of office and commenced the discharge of the duties of a General Services Officer, she acquired a vested right to that position and cannot, according to petitioners, be removed from that position without due process of law.

This argument misconceives the nature of the action taken by the respondent Commission. That action was not the imposition of an administrative disciplinary measure upon petitioner. There were no administrative charges in respect of which petitioner would have been entitled to notice and hearing. The Commission, in approving or disapproving an appointment, only examines the conformity of the appointment with the applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualification.

The allegation of the CSC-CAR that Agatha P. Watchorna has no personality to file the present appeal is not well-taken. **Section 2, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions** categorically provides that a request for reconsideration or appeal from the disapproval of an appointment *may* be made by the appointing authority. Be it noted that the rule used the word *may* which means that a request for reconsideration or appeal from a disapproved appointment is not vested exclusively on the appointing authority. In fact, in several instances, the Commission gave due course to appeals filed by the appointees themselves (**see CSC Resolution Nos. 99-1996 dated September 6, 1999; 99-2208 dated September 27, 1999**).

Besides, the DA-CAR Regional Executive Director Faustino K. Maslan, who is the appointing authority, subsequently supported and joined Agatha P. Watchorna in her appeal before the Commission. Hence, the Commission finds no impediment to giving the present appeal due course.

Now, we proceed to the main issue.

Section 59, Subtitle A, Title I, Book V of the Administrative Code of 1987 defines nepotism. Under said definition, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following:

- a. appointing authority;
- b. recommending authority;
- c. chief of the bureau or office; and
- d. person exercising immediate supervision over the appointee.

As will be noted, there are four situations covered. To constitute a violation of the law on nepotism, it suffices that an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of the appointing authority, recommending authority, chief of the bureau or office, or person exercising immediate supervision over the appointee.

The foregoing provision must be read and correlated with **Section 9 of the Omnibus Rules Implementing Subtitle A, Title I, Book V of the Administrative Code of 1987** which provides that:

 *SEC. 9. To ensure objectivity in promotion, a Selection/Promotion Board shall be established in every department or agency which shall be responsible for the adoption of a formal screening procedure and formulation of criteria for the evaluation of candidates for promotions.*

 *Reasonable and valid standards and methods of evaluating the competence and qualifications of all employees competing for a particular position shall be established and applied fairly and consistently. The criteria established for evaluation of qualification of candidates for promotion must suit the job requirements of the position.*

 *The Selection/Promotion Board shall then evaluate the qualifications of an*

employee being considered for promotion in accordance with the department or agency Merit Promotion Plan.

☞ The Selection/Promotion Board shall likewise determine en banc the list of employees recommended for promotion from which the appointing authority may choose the employee to be promoted. In preparing the list, the Board shall see to it that the qualifications of employees recommended for promotion are comparatively at par and that they are the best qualified from among the candidates.

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☞ The Selection/Promotion Board shall maintain records of deliberations which shall be available for inspection by the Commission or its duly authorized representatives. ☞

It must also be noted that the functions of the Personnel Selection Board are delineated in the Revised Policies on Merit Promotion Plan, to wit:

- 1. Make a systematic assessment of the competence and qualifications of candidates for appointment to the corresponding level of positions. Evaluate and deliberate en banc the qualifications of those listed in the selection line-up.*
- 2. Submit the list of candidates recommended for appointment from which the appointing authority shall choose the applicant to be appointed.*
- 3. Specify the top five ranking candidates whose over-all point scores are comparatively at par based on the comparative assessment.*

Significantly, a careful study of the aforesaid rules shows that the Personnel Selection Board (PSB) cannot be considered as a recommending body or authority as contemplated in the earlier mentioned **Section 59, Subtitle A, Title I, Book V of the Administrative Code of 1987**. Be it stressed that the main function of the PSB is merely to screen, evaluate, and assess the competence and qualifications of candidates for appointment to a vacant position. Thereafter, the PSB will submit a list of the qualified applicants or candidates screened for appointment from which the appointing authority is to choose who to appoint. Strictly speaking, therefore, the PSB is merely tasked to assist the appointing authority in the selection process. Nothing more. The PSB is not tasked with the function and duty of recommending to the appointing authority who to appoint. In the case of **Sinon vs. CSC, 215 SCRA 410**, the Supreme Court distinguished the term *assist* from *recommend*, as follows:

To assist means to lend an aid to, or to contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged.

In contrast, to recommend is to present one's advice or choice as having one's approval or to represent or urge as advisable or expedient. It involves the idea that another has the final decision.

Moreover, the word *assist* is defined as, *to contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged* (**Black's Law Dictionary, 1979 5th Edition, p., 111**); *to give support or aid especially in some undertaking or effort, to take one's place with, and an act or circumstance that helps to bring about a decisive result* (**Webster's Third New International Dictionary, 1976, p. 132**).

Thus, the PSB of the DA-CAR, of which Omer G. Watchorna, the husband of Agatha P. Watchorna, was a member representing the rank and file employees of the CA-CAR, cannot be considered as a recommending body or authority. Accordingly, although he signed the Comparative Assessment Form in his capacity as member of the PSB prior to the issuance of the promotional appointment of his wife, he

cannot be held liable for nepotism. For the same reason, the issuance of the promotional appointment of Agatha P. Watchorna cannot be considered nepotistic or in violation of the law on nepotism.

Furthermore, it is relevant to state that even on the assumption that Omer G. Watchorna was one of those who recommended his wife for appointment as Senior Agriculturist, still Agatha P. Watchorna's appointment cannot be considered nepotistic and that her husband cannot be guilty of nepotism. This is so because at the time Watchorna was issued her June 29, 1990 appointment, it was the prevailing policy of the Commission then that the law on nepotism applies only to original appointments and not to promotional appointments. This is evident from the ruling of the Commission in **CSC Resolution No. 97-0103 dated January 9, 1997**, to wit:

Under the rule then prevailing, only original appointments made in favor of persons related within the prohibited degree of the recommending or appointing authority or the head of the office or persons exercising immediate supervision over them are prohibited by the nepotism rules. Promotional appointments were then excluded. Thus, in CSC Resolution No. 93-3320 dated August 24, 1993, the Commission ordered the withdrawal of the formal charge of Nepotism filed against Mayor Rogelio R. Debulgado based on this ground. In said case, the Commission made the following observation:

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It may be necessary to mention that the assurance by CSRO No. 6 was based on an old policy of the Commission that promotional appointments are not covered by Nepotism

In fine, the Commission finds the issuance of the promotional appointment of Agatha P. Watchorna as Senior Agriculturist on June 29, 1990 under permanent status to be in order. Hence, the CSC-CAR is

advised to withdraw the formal charge for Nepotism it issued against Omer G. Watchorna.

WHEREFORE, the appeal of Agatha P. Watchorna is hereby **GRANTED**. Accordingly, the appealed decision dated March 12, 2003 of the Civil Service Commission  Cordillera Administrative Region recalling the approval of the appointment dated June 29, 1990 of Watchorna is **REVERSED** and **SET ASIDE**. The previous approval of the June 29, 1990 appointment of Agatha P. Watchorna as Senior Agriculturist under permanent status is **AFFIRMED**.

Quezon City, June 17, 2004

(Sgd.) J. WALDEMAR V. VALMORES
Commissioner

(Sgd.) KARINA CONSTANTINO-DAVID
Chairman

VACANT
Commissioner

Attested by:

(Sgd.) REBECCA A. FERNANDEZ
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