**SUPREME COURT**
**EN BANC**

**NAPOLEON V. FERNANDO, ANDRES DIZON, TOMAS F. FALCONITIN AND PATERNO ADAP, MEDIATOR ARBITERS, NATIONAL CAPITAL REGION, DEPARTMENT OF LABOR AND EMPLOYMENT,**

***Petitioners*,**

***-versus-***

**G.R. No. 112309**
**July 28, 1994**

**HON. PATRICIA STO. TOMAS, IN HER CAPACITY AS CHAIRMAN, CIVIL SERVICE COMMISSION; RAMON P. ERENETA, JR. AND THELMA P. GAMINDE, IN THEIR CAPACITIES AS COMMISSIONERS OF THE CIVIL SERVICE COMMISSION; AND HON. MA. NIEVES R. CONFESSOR, IN HER CAPACITY AS SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT,**

***Respondents*.**

**x----------x**

# R E S O L U T I O N

**REGALADO, *J.*:**

The present Petition for *Certiorari* seeks to annul: (a) Resolution No. 93-4480[1] of the Civil Service Commission, dated October 12, 1993, which declared the reassignment of petitioners valid and legal; (b) the Order, dated July 26, 1993,[2] of the Secretary of Labor, Hon. Ma. Nieves R. Confesor, placing petitioners under preventive suspension for ninety (90) days pending investigation of the charge against them for gross insubordination; and (c) the Order, dated October 25, 1993,[3] of the said Secretary of Labor finding petitioners guilty of two counts of gross insubordination and accordingly suspending them for one (1) year.

Petitioners were appointed as Mediator Arbiters in the National Capital Region and, as such, were discharging their duties as hearing officers when respondent Labor Secretary Confesor issued on May 26, 1993 Memorandum Order No. 4[4] reassigning several med-arbiters, including herein petitioners, which reads as follows:

> "In the interest of the service and in order to expedite the resolution of inter-union and intra-union cases, the following assignment of Med-Arbiters is hereby being made effective immediately:
>
> Appeals and Review Unit, OS:
>
> Andres Dizon
> Tomas Falconitin
> Napoleon Fernando
>
> Bureau of Labor Relations:
>
> Paterno Adap
>
> National Capital Region

Brigida Fadrigon
Angeli Tuyay

Region IV:

Anastacio Bactin”

x x x

Med-Arbiters Brigida Fadrigon, Angeli Tuyay and Anastacio Bactin promptly complied with the memorandum order. However, petitioners, in a letter dated June 7, 1993,[5] sought the reconsideration and recall of said memorandum order on the ground that their reassignments were made without their consent, which was accordingly tantamount to removal without just cause.

On June 23, 1993, respondent Secretary of Labor issued another Memorandum[6] declaring and clarifying that Memorandum Order No. 4 contemplates, not a transfer as erroneously alleged, but a mere reassignment wherein the consent of petitioners is not required, and ordering petitioners to report to their new assignments and to turn over all records of cases and other documents in their possession.

Petitioners, however, refused to comply and instead wrote another Letter, dated June 28, 1993,[7] seeking the reconsideration of Memorandum Order No. 4 and the Memorandum of June 23, 1993, on the ground that the same were issued in violation of their rights to security of tenure and due process of law.

Acting on petitioners’ letter, respondent Secretary issued another Memorandum, dated July 7, 1993,[8] denying their request and directing them to show cause why they should not be administratively charged for gross insubordination.

On July 12, 1993, petitioners filed an Appeal[9] with the Merit System and Protection Board (MSPB) of the Civil Service Commission (CSC), and a Supplemental Appeal[10] dated July 19, 1993.

On July 15, 1993, petitioners submitted their explanation in compliance with the Memorandum of July 7, 1993, arguing that they could not accept their reassignment considering that the same is unconstitutional, illegal and without valid cause; that quasi-judicial officers may not be transferred or reassigned except on grounds provided by law; and that the law provides that pending their appeal to the Civil Service Commission, their transfer or reassignment should be held in abeyance.

On July 26, 1993, petitioners were formally charged with gross insubordination and, pending investigation, were placed under preventive suspension for ninety (90) days.

On October 12, 1993, the CSC issued its questioned resolution finding the reassignment of petitioners valid and legal and, consequently, dismissed their appeal for lack of merit.

On October 25, 1993, respondent Secretary issued another Order finding petitioners guilty of two counts of gross insubordination and accordingly suspending them from the service for one (1) year.

Hence, this petition assailing the foregoing resolution and orders.

Petitioners first contend that the CSC has no jurisdiction to review on appeal the aforestated Memorandum Order No. 4 as the same is vested in the MSPB pursuant to Section 13, Book V of Executive Order No. 292 (Administrative Code of 1987). There is no merit in the argument.

Resolution No. 93-2387[11] of the CSC, which took effect on July 1, 1993, declared the abolition of the MSPB in order to streamline the operations of the CSC, so as to achieve a speedier delivery of administrative justice and economical operation without impairing due process and the substantive rights of the parties in administrative cases. Henceforth, decisions in administrative cases involving officials and employees of the civil service appealable to the Commission, including personnel actions, shall be appealed directly to the Commission and not to the MSPB, and those cases which have been appealed or brought directly to the MSPB shall be elevated to the Commission for final resolution. In the present case, petitioner's

appeal was filed only on July 12, 1993 when Resolution No. 93-2387 was already in effect. Perforce, their appeal was considered filed before the CSC.

Petitioners claim that there was malice, bad faith, undue influence and partiality in the issuance of the order for reassignment and its affirmance by the CSC. They aver that there was undue influence exerted by respondent Secretary and that the CSC acted with partially because respondent Secretary and CSC Chairman Sto. Tomas are personal friends, aside from the fact that during the pendency of their appeal with the CSC, the latter issued legal opinions through its Director for Legal Affairs concerning the very issues involved in the appeal even before the same could be officially resolved. Furthermore, petitioner Fernando specifically asserts that the reassignment was actually in retaliation for the independent stance he has taken in Case No. OD-M-9301-028 (APSOTEU vs. EEI) pending before him wherein he ordered the cancellation of the certificate of registration of APSOTEU. These allegations of petitioners should be considered as mere speculations and conjectures, no substantial evidence having been presented in support thereof.

The reassignment of petitioners was made "in the interest of the service and in order to expedite the resolution of inter-union and intra-union cases." That the order was issued for this purpose is even presumed under Civil Service rules where there is no proof of harassment, coercion, intimidation, or other personal reasons thereof.

Additionally, public respondents have in their favor the presumption of regularity in the performance of official duties which petitioners failed to rebut when they did not present evidence to prove partiality, malice and bad faith. Bad faith can never be presumed; it must be proved by clear and convincing evidence. No such evidence exists in the case at bar. The circumstances attending the issuance of Memorandum Order No. 4 do not in any way reveal any malicious intent on the part of respondent Secretary. On the contrary, we consider her actions as a valid exercise of her power and authority as department head to take and enforce personnel actions.

It is likewise argued that the reassignment of petitioners is tantamount to their constructive dismissal because it was affected without their consent. In the case of Bentain vs. Court of Appeals,[12] we categorically held that a reassignment in good faith and in the interest of the government service is permissible and valid even without the employee's prior consent.

The reassignment is also challenged as being illegal because it involves a reduction in rank and status, and it violates the right to security of tenure and to due process of law. Petitioners contend that with the reassignment, their functions were changed from those of a hearing officer to the drafting of decisions appealed to the Secretary. In their view, they were in effect demoted.

A demotion, under Section 11, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292, is defined as the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve reduction in salary. On the other hand, Section 10 of the same rule defines a reassignment as the movement of an employees from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status, or salary and does not require the issuance of an appointment. A demotion, therefore, involves the issuance of an appointment.

In the case at bar, it is clear and undisputed that no new appointments were issued to herein petitioners. Hence, it is incorrect for them to claim that they were demoted. Moreover, petitioners failed to sufficiently establish that there was a reduction in their salary. They would want to suggest that there was a diminution in rank in the sense that their present assignment as drafters of decisions on appeal to the Secretary are subject to review by higher authority, whereas in their former assignment as hearing officers, they themselves render judgment. Petitioners seem to forget that the decisions of hearing officers are also subject to review by the National Labor Relations Commission. Thus unmasked, their argument has definitely no leg to stand on.

Petitioner were appointed as Mediator Arbiters in the National Capital Region. They were not, however, appointed to a specific station or particular unit of the Department of Labor in the National Capital Region (DOLE-NCR). Consequently, they can always be reassigned from one organizational unit to another of the same agency where, in the opinion of respondent Secretary, their services may be used more effectively. As such they can neither claim a vested right to the station to which they were assigned nor to security of tenure thereat. As correctly observed by the Solicitor General, petitioners' reassignment is not a transfer for they were not removed from their position as med-arbiters. They were not given new appointments to new positions. It indubitably follows. therefore, that Memorandum Order No. 4 ordering their reassignment in the interest of the service is legally in order.

Whatever alleged procedural infirmity may have rendered defective the issuance of Memorandum Order No. 4 has been cured when petitioners filed two motions for reconsideration seeking to recall the same. The two motions were duly considered, discussed and resolved by respondent Secretary. Petitioners were thereby afforded full opportunity to present their arguments against the issuance of said order.

Finally, we do not deem it appropriate to rule on the merits of the order issued on July 26, 1993 by respondent Secretary preventively suspending petitioners for ninety (90) days, as well as her subsequent order dated October 25, 1993 finding petitioners guilty of insubordination and imposing on them the penalty of suspension of one (1) year. Evidently, herein petitioners, in asking us to resolve the issues thereon in their present recourse, have overlooked or deliberately ignored the fact that the same are clearly dismissible for non-exhaustion of administrative remedies.

On the first aspect, petitioners allowed the 90-day period of preventive suspension to lapse without appealing from the Order of July 26, 1993. In fact, the investigation which necessitated such suspension has long since been concluded and thereafter resulted in the condemnatory Order of October 25, 1993. Hence, they are now clearly estopped from invoking the *certiorari* jurisdiction of this Court in a belated attempt to seek redress from the first Order.

Secondly, as stated earlier, the Order dated October 25, 1993 imposing a punitive suspension of one year on herein petitioners cannot be the proper subject of a petition for *certiorari* for their failure to exhaust administrative remedies. Presidential Decree No. 807 and Executive Order No. 292 explicitly provide that administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days are appealable to the Civil Service Commission.[13] Not having fully exhausted the remedy available to them, petitioners cannot resort to their present judicial action which is both premature at this juncture and proscribed by Rule 65 of the Rules of Court. Neither do we find any of the exceptions to the doctrine of exhaustion of administrative remedies which could be applicable to the instant case, nor have petitioners essayed any submission on that score.

**WHEREFORE**, no jurisdiction error or any grave abused of discretion having been shown to have flawed or tainted the impugned resolution of respondent Chairman of the Civil Service Commission or the challenged orders of respondent Secretary of Labor, the present Petition for *Certiorari* is hereby **DISMISSED**.

**SO ORDERED.**

**Narvasa, *C.J.*, Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan and Mendoza, *JJ.*, concur.**

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[1] Annex A, Petition; Rollo, 47.
[2] Annex S, id.; ibid.; 173.
[3] Annex B, id., ibid.; 49.
[4] Annex I, id., ibid.; 98.
[5] Annex J, id.; ibid., 99.
[6] Annex L, id.; ibid., 112.
[7] Annex M, id.; ibid., 115.
[8] Annex O, id.; ibid., 161.
[9] Annex N, id.; ibid., 125.
[10] Annex N-1, id.; ibid., 152.

[11] This was issued pursuant to Section 17, Book V, Administrative Code of 1987, which provides that "as an independent Constitutional body, the Commission may effect changes in the organization as the need arises."
[12] G.R. No. 89452, June 5, 1992, 209 SCRA 644.
[13] Section 37, Presidential Decree No. 807 and Section 47, Executive Order No. 292.