



Republic of the Philippines
Supreme Court
Manila

EN BANC

**ATTY. MA. ROSARIO
MANALANG-DEMIGILLO,**
Petitioner,

G.R. No. 168613

- versus -

**TRADE AND INVESTMENT
DEVELOPMENT
CORPORATION OF THE
PHILIPPINES (TIDCORP),
and its BOARD OF
DIRECTORS,**
Respondents.

x-----x

**TRADE AND INVESTMENT
DEVELOPMENT
CORPORATION OF THE
PHILIPPINES,**
Petitioner,

G.R. No. 185571

Present:

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

- versus -

**MA. ROSARIO S. MANALANG-
DEMIGILLO,**
Respondent.

Promulgated:

MARCH 05, 2013

Ma. Rosario Demigillo

x-----x

DECISION

BERSAMIN, J.:

A reorganization undertaken pursuant to a specific statutory authority by the Board of Directors of a government-owned and government-controlled corporation is valid.

Antecedents

On February 12, 1998, the Philippine Export and Foreign Loan Guarantee was renamed Trade and Investment Development Corporation of the Philippines (TIDCORP) pursuant to Republic Act No. 8494 entitled *An Act Further Amending Presidential Decree No. 1080, As Amended, by Reorganizing And Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purpose, and for Other Purposes*.

Republic Act No. 8494 reorganized the structure of TIDCORP. The issuance of appointments in accordance with the reorganization ensued. Petitioner Rosario Manalang-Demigillo (Demigillo) was appointed as Senior Vice President (PG 15) with permanent status, and was assigned to the Legal and Corporate Services Department (LCSD) of TIDCORP.

In 2002, TIDCORP President Joel C. Valdes sought an opinion from the Office of the Government Corporate Counsel (OGCC) relative to TIDCORP's authority to undertake a reorganization under the law, whose Section 7 and Section 8 provide as follows:

Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding. x x x

Section 8. All incumbent personnel of the Philippine Export and Foreign Loan Guarantee Corporation shall continue to exercise their duties and functions as personnel of the TIDCORP until reorganization is fully implemented but not to exceed one (1) year from the approval of this Act. The Board of Directors is authorized to provide for separation benefits for those who cannot be accommodated in the new structure. All those who shall retire or are separated from the service on account of the reorganization under the preceding Section shall be entitled to such

incentives, as are authorized by the Corporation, which shall be in addition to all gratuities and benefits to which they may be entitled under existing laws.

In Opinion No. 221 dated September 13, 2002,¹ then Government Corporate Counsel Amado D. Valdez opined as follows:

There is no question on the power of the PhilEXIM (also known as TIDCORP) Board of Directors to undertake a reorganization of the corporation's present organizational set-up. In fact, the authority to provide for the corporation's organizational structure is among the express powers granted to PhilEXIM through its Board.

As to the one-year period to implement a reorganization mentioned in Section 8 of RA 8494, it is our considered opinion that the same provision refers to the initial reorganization to effect transition from the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) to what is now known as the Trade and Investment Corporation of the Philippines (TIDCORP). The one-year period does not, however, operate as a limitation that any subsequent changes in the organizational set-up pursuant to the authority of the Board to determine the corporation's organizational structure under Section 7 of RA 8494, which is designed to make the corporation more attuned to the needs of the people or, in this case, the sector of the Philippine economy that it serves, can only be made during the same one-year period.

On the basis of OGCC Opinion No. 221, the Board of Directors passed Resolution No. 1365, Series of 2002, on October 22, 2002 to approve a so-called *Organizational Refinement/Restructuring Plan* to implement a new organizational structure and staffing pattern, a position classification system, and a new set of qualification standards.

During the implementation of the *Organizational Refinement/Restructuring Plan*, the LCSD was abolished. According to the List of Appointed Employees under the New Organizational Structure of TIDCORP as of November 1, 2002, Demigillo, albeit retaining her position as a Senior Vice President, was assigned to head the Remedial and Credit Management Support Sector (RCMSS). On the same date, President Valdes issued her appointment as head of RCMSS, such appointment being in nature a reappointment under the reorganization plan.

On December 13, 2002, President Valdes issued a memorandum informing all officers and employees of TIDCORP that the Board of Directors had approved on December 11, 2002 the appointments issued pursuant to the newly approved positions under the *Organizational Refinement/Restructuring Plan*.

¹ *Rollo* (G.R. No. 168613), p. 280.

In her letter dated December 23, 2002 that she sent to TIDCORP Chairman Jose Isidro Camacho, however, Demigillo challenged before the Board of Directors the validity of Resolution No. 1365 and of her assignment to the RCMSS. She averred that she had been thereby illegally removed from her position of Senior Vice President in the LCSO to which she had been previously assigned during the reorganization of July 1998. She insisted that contrary to OGCC Opinion No. 221 dated September 13, 2002 the Board of Directors had not been authorized to undertake the reorganization and corporate restructuring.

On January 31, 2003, pending determination of her challenge by the Board of Directors, Demigillo appealed to the Civil Service Commission (CSC), raising the same issues.

TIDCORP assailed the propriety of Demigillo's appeal to the CSC, alleging that her elevation of the case to the CSC without the Board of Directors having yet decided her challenge had been improper and a clear case of forum-shopping.

Later on, however, TIDCORP furnished to the CSC a copy of Board Decision No. 03-002 dismissing Demigillo's appeal for its lack of merit, thereby rendering the question about the propriety of Demigillo's appeal moot and academic. Board Decision No. 03-002 pertinently reads as follows:

Atty. Demigillo failed to show to the Board that she was prejudiced in the implementation of the TIDCORP organizational refinements/restructuring. She was reappointed to the same position she was holding before the reorganization. She was not demoted in terms of salary, rank and status. There was a (sic) substantial compliance with the requirements of RA 6656, particularly on transparency. More importantly, the said organizational refinements done and adoption of a new compensation structure were made in accordance with what is mandated under the Charter of the Corporation.

WHEREFORE, foregoing premises considered, the Board decided as it hereby decides to **DISMISS** the appeal of Atty. Ma Rosario Demigillo for lack of merit.²

In the meanwhile, by letter dated April 14, 2003, President Valdes informed Demigillo of her *poor performance* rating for the period from January 1, 2002 to December 31, 2002, to wit:

After a thorough evaluation/assessment of your job performance for the rating period January 1 to December 21, 2002, it appears that your over-all performance is 'Poor'.

² Id. at 113-114 (as quoted in Civil Service Commission Resolution No. 041092).

Records show that you consistently behaved as an obstructionist in the implementation of the Corporate Business Plan. You failed to demonstrate cooperation, respect and concern towards authority and other members of the company. You also failed to abide by Civil Service and company policies, rules and regulation. You miserably failed to adapt and respond to changes. You were very resentful to new approaches as shown by your vehement objection to new improved policies and programs. Instead of helping raise the morale of subordinate at high levels (sic) and promote career and professional growth of subordinates, you tried to block such efforts towards this end.

In view of the foregoing and your failure to prove that you have effectively and efficiently performed the duties, functions and responsibility (sic) of your position, I am constrained to give you a rating of “Poor” for your 2002 performance.³

On April 28, 2003, Demigillo formally communicated to Atty. Florencio P. Gabriel Jr., Executive Vice President of the Operations Group, appealing the “poor rating” given her by President Valdes.

In a memorandum dated May 6, 2003, Atty. Gabriel informed Demigillo that he could not act on her appeal because of her “*failure to state facts and arguments constituting the grounds for the appeal and submit any evidence to support the same.*”⁴

On May 6, 2003, President Valdes issued a memorandum to Demigillo stating that he found no justification to change the *poor* rating given to her for the year 2002.

On August 12, 2003, Demigillo received a memorandum from President Valdes stating that her performance rating for the period from January 1, 2003 to June 2003 “needs improvement,” attaching the pertinent Performance Evaluation Report Form that she was instructed to return “within 24 hours from receipt.”⁵

Not in conformity with the performance rating, Demigillo scribbled on the right corner of the memorandum the following comments: “*I do not agree and accept. I am questioning the same. This is pure harassment.*”

She then appealed the *poor performance* rating on August 14, 2003, calling the rating a part of Valdes’ “*unremitting harassment and oppression on her.*”⁶

³ Id. at 114.

⁴ Id. at 115.

⁵ Id.

⁶ Id. at 116.

On August 19, 2003, Demigillo reported for work upon the expiration of the 90-day preventive suspension imposed by the Board of Directors in a separate administrative case for grave misconduct, conduct prejudicial to the best interest of the service, insubordination and gross discourtesy. In her memorandum of that date, she informed Atty. Gabriel Jr. of her readiness to resume her duties and responsibilities, but requested to be allowed to reproduce documents in connection with the appeal of her performance rating. She further requested that the relevant grievance process should commence.

It appears that the Board of Directors rendered Decision No. 03-003 dated August 15, 2003 unanimously dropping Demigillo from the rolls.⁷ Demigillo received the copy of Decision No. 03-003 on August 25, 2003.

Decision of the CSC

On October 14, 2004, the CSC ruled through Resolution No. 041092⁸ that the 2002 *Organizational Refinements or Restructuring Plan* of TIDCORP had been valid for being authorized by Republic Act No. 6656; that Section 7 of Republic Act No. 8498 granted a continuing power to TIDCORP's Board of Directors to prescribe the agency's organizational structure, staffing pattern and compensation packages; and that such grant continued until declared invalid by a court of competent jurisdiction or revoked by Congress.

The CSC held, however, that TIDCORP's implementation of its reorganization did not comply with Section 6 of Republic Act No. 6656;⁹ that although there was no diminution in Demigillo's rank, salary and status, there was nonetheless a demotion in her functions and authority, considering that the 2002 reorganization reduced her authority and functions from being the highest ranking legal officer in charge of all the legal and corporate affairs of TIDCORP to being the head of the RCMSS reporting to the Executive Vice President and having only two departments under her supervision; and that the functions of Demigillo's office were in fact transferred to the Operations Group.

The CSC further held that the dropping from the rolls of Demigillo did not comply with the mandatory requirement under Section 2, particularly 2.2 Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions Memorandum Circular No. 40, Series of 1998.

⁷ Id.

⁸ Id. at 108-133.

⁹ *An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization* (Approved June 10, 1998).

Subsequently, TIDCORP reinstated Demigillo to the position of Senior Vice President in RCMSS, a position she accepted without prejudice to her right to appeal the decision of the CSC.

Ruling of the CA

Both Demigillo and TIDCORP appealed the decision of the CSC to the Court of Appeals (CA). Demigillo's appeal was docketed as CA-G.R. SP No. 87285. On the other hand, TIDCORP's appeal was docketed as CA-G.R. SP No. 87295.

In CA-G.R. SP No. 87285, Demigillo partially assailed the CSC's decision, claiming that the CSC erred: (1) in holding that Section 7 of Republic Act No. 8494 granted the Board of Directors of TIDCORP a continuing power to reorganize; (2) in holding that the 2002 TIDCORP reorganization had been authorized by law; and (3) in not holding that the 2002 TIDCORP reorganization was void *ab initio* because it was not authorized by law and because the reorganization did not comply with Republic Act No. 6656.¹⁰

In CA-G.R. SP No. 87295, TIDCORP contended that the CSC erred: (1) in ruling that Demigillo had been demoted as a result of the 2002 TIDCORP reorganization; and (2) in ruling that TIDCORP had failed to observe the provisions of Section 2, particularly 2.2 Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) on dropping from the rolls, to the prejudice of Demigillo's right to due process.¹¹

On June 27, 2005, the CA's Fourth Division promulgated its decision in CA-G.R. SP No. 87285,¹² which, albeit affirming the ruling of the CSC, rendered a legal basis different from that given by the CSC, to wit:

In numerous cases citing Section 20 and Section 31, Book III of Executive Order No. 292, otherwise known as the Administrative Code of 1987, the Supreme Court ruled in the affirmative that the President of the Philippines has the continuing authority to reorganize the administrative structure of the Office of the President.

¹⁰ *Rollo* (G.R. No. 168613), p. 88.

¹¹ *Rollo*, (G.R. No. 185571), pp. 50-51.

¹² *Rollo* (G.R. No. 168613), pp. 10-24; penned by Associate Justice Perlita J. Tria Tirona (retired), with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Jose Reyes, Jr. concurring.

Hence, being the alter ego of the President of the Philippines, the Board of Directors of the private respondent-appellee is authorized by law to have a continuous power to reorganize its agency.¹³

Anent Demigillo's contention that the 2002 reorganization effected was invalid, the CA ruled:

x x x. In this jurisdiction, reorganizations have been regarded as valid provided they are pursued in good faith. Reorganization is carried out in good faith if it is for the purpose of economy or to make bureaucracy more efficient.

In the case at bench, it is our considered opinion that except for her allegations, the petitioner-appellant (Demigillo) failed to present sufficient evidence that the reorganization effected in 2002 did not bear the earmarks of economy and efficiency. Good faith is always presumed.¹⁴

The CA held that Demigillo could not be reinstated to her previous position of Senior Vice President of the LCSD in view of the legality of the 2002 reorganization being upheld.¹⁵

With respect to CA-G.R. SP No. 87295, the CA's Special Former Thirteenth Division promulgated a decision on November 28, 2008,¹⁶ denying TIDCORP's appeal, and holding that Demigillo had been demoted and invalidly dropped from the rolls by TIDCORP, explaining:

We do not need to stretch Our imagination that respondent Demigillo, one of the highest ranking officers of the corporation, was indeed demoted when she was designated to be the head of merely one sector. She may have retained her title as SVP, but she was deprived of the authority she previously enjoyed and stripped of the duties and responsibilities assigned to her under the Legal and Corporate Services. In utter disregard of respondent Demigillo's right to security of tenure, petitioner TIDCORP demoted her in the guise of "reorganization."

x x x x

Next, petitioner TIDCORP asserts that respondent Demigillo was legally dropped from the rolls. *This is a delirious supposition which does not deserve merit at all.*

x x x x

¹³ Id. at 21-22.

¹⁴ Id. at 22.

¹⁵ Id. at 23.

¹⁶ *Rollo* (G.R. No. 185571), pp. 12-21; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Noel G. Tijam and Associate Justice Ramon R. Garcia.

Petitioner TIDCORP did not bother to adduce proof that it complied with the rudiments of due process before dropping Demigillo from the rolls. She was not given the chance to present evidence refuting the contentious ratings as her employer refused to discuss how it arrived at such assessment. Her unceremonious dismissal was made even more apparent as she was never advised of the possibility that she may be separated from service if her rating would not improve for the next evaluation period.¹⁷

Issues

Demigillo filed before this Court a petition for review on *certiorari* assailing the CA decision in CA-G.R. SP No. 87285 (G.R. No. 168613), asserting that the CA gravely erred: (1) in holding that the Board of Directors of TIDCORP was an *alter ego* of the President who had the continuing authority to reorganize TIDCORP; and (2) in holding that the reorganization of TIDCORP effected in 2002 was valid considering her alleged failure to present evidence sufficiently showing that the reorganization did not bear the earmarks of economy and efficiency.¹⁸ Corollarily, she sought her reinstatement to a position comparable to her former position as Senior Vice President in the LCSD.¹⁹

Likewise, TIDCORP appealed through a petition for review on *certiorari*, praying for the reversal of the decision promulgated in CA-G.R. SP No. 87295 (G.R. No. 185571), contending that the CA erred: (1) in ruling that Demigillo had been demoted as a result of the TIDCORP 2002 reorganization; and (2) in ruling that Demigillo had not been legally dropped from the rolls.²⁰

On March 8, 2011, the Court *En Banc* consolidated G.R. No. 168613 and G.R. No. 185571.²¹

Ruling of the Court

We deny the petition for review of Demigillo (G.R. No. 168613) for its lack of merit, but grant the petition for review of TIDCORP (G.R. No. 185571).

¹⁷ Id. at 17-20.

¹⁸ *Rollo* (G.R. No. 168613), p. 35.

¹⁹ Id. at 47.

²⁰ *Rollo* (G.R. No. 185571), pp. 31-32.

²¹ *Rollo* (G.R. No. 168613), p. 544.

G.R. No. 168613

In its comment in G.R. No. 168613,²² TIDCORP argues for the application of the doctrine of qualified political agency, contending that the acts of the Board of Directors of TIDCORP, an attached agency of the Department of Finance whose head, the Secretary of Finance, was an *alter ego* of the President, were also the acts of the President.

TIDCORP's argument is unfounded.

The doctrine of qualified political agency, also known as the *alter ego* doctrine, was introduced in the landmark case of *Villena v. The Secretary of Interior*.²³ In said case, the Department of Justice, upon the request of the Secretary of Interior, investigated Makati Mayor Jose D. Villena and found him guilty of bribery, extortion, and abuse of authority. The Secretary of Interior then recommended to the President the suspension from office of Mayor Villena. Upon approval by the President of the recommendation, the Secretary of Interior suspended Mayor Villena. Unyielding, Mayor Villena challenged his suspension, asserting that the Secretary of Interior had no authority to suspend him from office because there was no specific law granting such power to the Secretary of Interior; and that it was the President alone who was empowered to suspend local government officials. The Court disagreed with Mayor Villena and upheld his suspension, holding that the doctrine of qualified political agency warranted the suspension by the Secretary of Interior. Justice Laurel, writing for the Court, opined:

After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (*Runkle vs. United States* [1887], 122 U. S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U. S. vs. Eliason* [1839], 16 Pet., 291; 10 Law. ed., 968; *Jones vs. U. S.* [1890], 137 U. S., 202; 34 Law. ed.,

²² Id. at 463.

²³ 67 Phil. 451, 463-464 (1939).

691; 11 Sup. Ct., Rep., 80; *Wolsey vs. Chapman* [1880], 101 U. S., 755; 25 Law. ed., 915; *Wilcox vs. Jackson* [1836], 13 Pet., 498; 10 Law. ed., 264.)

Fear is expressed by more than one member of this court that the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of Government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority." (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S. 52 at 133; 71 Law. Ed., 160). x x x.

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the *alter egos* of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under

Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494,²⁴ the five *ex officio* members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the *ex officio* members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the *alter egos* of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.²⁵

Nonetheless, we uphold the 2002 reorganization and declare it valid for being done in accordance with the exclusive and final authority expressly granted under Republic Act No. 8494, further amending Presidential Decree No. 1080, the law creating TIDCORP itself, to wit:

²⁴ Section 10. *Board of Directors, Composition.* – The powers and functions of the Corporation shall be exercised by a Board of Directors, hereinafter referred to as the “Board” which shall be composed of nine (9) members, as follows:

a) The Secretary of Finance, who shall be the Chairman of the Board. Whenever the Secretary of Finance is unable to attend a meeting of the Board, he shall designate an Undersecretary to attend as his alternate, who shall act as Chairman;

b) The President of the Corporation, who shall be the Vice-Chairman of the Board, shall assist the Chairman and act in his stead in case of absence or incapacity;

c) The Secretary of Trade and Industry. Whenever the Secretary of Trade and Industry is unable to attend a meeting of the Board, he shall designate an Undersecretary to attend as his alternate;

d) The Governor of the *Bangko Sentral ng Pilipinas*. Whenever the Governor of the *Bangko Sentral ng Pilipinas* is unable to attend a meeting of the Board, he shall designate a Deputy-Governor as his alternate;

e) The Director-General of the National Economic and Development Authority. Whenever the Director-General is unable to attend a meeting of the Board, he shall designate a Deputy-General of the Authority to attend as his alternate;

f) The Chairman of the Philippine Overseas Construction Board. Whenever the POCB Chairman is unable to attend a meeting of the Board, he shall designate the POCB Vice-Chairman to attend as his alternate; and

g) Three (3) representatives from the private sector, at least one of which shall come from the export community, who shall be elected by the *ex officio* members of the Board and who shall hold office for a term of not more than two (2) consecutive years: *Provided*, That the representative from the private sector should be of known probity in the sector he represents.

²⁵ *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 68-69; *NPC Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation (NPC)*, G.R. No. 156208, September 26, 2006, 503 SCRA 138, 149.

Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote, transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.

In this connection, too, we reiterate that we cannot disturb but must respect the ruling of the CSC that deals with specific cases coming within its area of technical knowledge and expertise,²⁶ absent a clear showing of grave abuse of discretion on its part. That clear showing was not made herein. Such deference proceeds from our recognition of the important role of the CSC as the central personnel agency of the Government having the familiarity with and expertise on the matters relating to the career service.

Worthy to stress, lastly, is that the reorganization was not arbitrary and whimsical. It had been formulated following lengthy consultations and close coordination with the affected offices within TIDCORP in order for them to come up with various functional statements relating to the new organizational setup. In fact, the Board of Directors decided on the need to reorganize in 2002 to achieve several worthy objectives, as follows:

(1) To make the organization more viable in terms of economy, efficiency, effectiveness and make it more responsive to the needs of its clientèles by eliminating or minimizing any overlaps and duplication of powers and functions;

(2) To come up with an organizational structure which is geared towards the strengthening of the Corporation's overall financial and business operations through resource allocation shift; and

(3) To rationalize corporate operations to maximize resources and achieve optimum sustainable corporate performance vis-a-vis revised corporate policies, objectives and directions by focusing the Corporation's efforts and resources to its vital and core functions.²⁷

The result of the lengthy consultations and close coordination was the comprehensive reorganization plan that included a new organizational structure, position classification and staffing pattern, qualification standards, rules and regulations to implement the reorganization, separation incentive packages and timetable of implementation. Undoubtedly, TIDCORP effected the reorganization within legal bounds and in response to the perceived need to make the agency more attuned to the changing times.

²⁶ *Mendizabel v. Apao*, G.R. No. 143185, February 20, 2006, 482 SCRA 587, 609-610; *Basuel v. Fact-Finding and Intelligence Bureau (FFIB)*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 127.

²⁷ *Rollo* (G.R. No. 168613), p. 441.

Having found the 2002 reorganization to be valid and made pursuant to Republic Act No. 8494, we declare that there are no legal and practical bases for reinstating Demigillo to her former position as Senior Vice President in the LCSD. To be sure, the reorganization plan abolished the LCSD, and put in place a set-up completely different from the previous one, including a new staffing pattern in which Demigillo would be heading the RCMSS, still as a Senior Vice President of TIDCORP. With that abolition, reinstating her as Senior Vice President in the LCSD became legally and physically impossible.

Demigillo's contention that she was specifically appointed to the position of Senior Vice President in the LCSD was bereft of factual basis. The records indicate that her permanent appointment pertained only to the position of Senior Vice President.²⁸ Her appointment did not indicate at all that she was to hold that specific post in the LCSD. Hence, her re-assignment to the RCMSS was by no means a diminution in rank and status considering that she maintained the same rank of Senior Vice President with an accompanying increase in pay grade.

The assignment to the RCMSS did not also violate Demigillo's security of tenure as protected by Republic Act No. 6656. We have already upheld reassignments in the Civil Service resulting from valid reorganizations.²⁹ Nor could she claim that her reassignment was invalid because it caused the reduction in her rank, status or salary. On the contrary, she was reappointed as Senior Vice President, a position that was even upgraded like all the other similar positions to Pay Grade 16, Step 4, Level II.³⁰ In every sense, the position to which she was reappointed under the 2002 reorganization was comparable with, if not similar to her previous position.

That the RCMSS was a unit smaller than the LCSD did not necessarily result in or cause a demotion for Demigillo. Her new position was but the consequence of the valid reorganization, the authority to implement which was vested in the Board of Directors by Republic Act No. 8494. Indeed, we do not consider to be a violation of the civil servant's right to security of tenure the exercise by the agency where she works of the essential prerogative to change the work assignment or to transfer the civil servant to an assignment where she would be most useful and effective. More succinctly put, that prerogative inheres with the employer,³¹ whether public or private.

²⁸ Id. at 189.

²⁹ See *Pantranco North Express, Inc. v. NLRC*, G.R. No. 106516, September 21, 1999, 314 SCRA 740, 750; *Ignacio v. Civil Service Commission*, G.R. No. 163573, July 27, 2005, 464 SCRA 220, 230-231.

³⁰ *Rollo* (G.R. No. 168613), p. 315.

³¹ See, *Benguet Electric Cooperative v. Fianza*, G.R.No. 158606, March 9, 2004, 425 SCRA 41.

G.R. No. 185571

As earlier stated, TIDCORP's petition for review in G.R. No. 185571 is meritorious.

Anent the first issue in G.R. No. 185571, we have already explained that Demigillo was not demoted because she did not suffer any diminution in her rank, status and salary under the reorganization. Her reassignment to the RCMSS, a smaller unit compared to the LCSD, maintained for her the same rank of Senior Vice-President with a corresponding increase in pay grade. The reassignment resulted from the valid reorganization.

With respect to the second issue, Demigillo was validly dropped from the rolls by TIDCORP as the consequence of the application of the rules governing her employment. Section 2 (2.2), Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions (Memorandum Circular No. 40, Series of 1998) provides:

x x x x

2.2 Unsatisfactory or Poor Performance

a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation.

b. An official or employee, who for one evaluation period is rated poor in performance, may be dropped from the rolls after due notice. Notice shall mean that the officer or employee is informed in writing of the status of his performance not later than the 4th month of that rating period with sufficient warning that failure to improve his performance within the remaining period of the semester shall warrant his separation from the service. Such notice shall also contain sufficient information which shall enable the employee to prepare an explanation.

Under Section (b), *supra*, an official or employee may be dropped from the rolls provided the following requisites are present, namely: (1) the official or employee was rated *poor* in performance for one evaluation period; (2) the official or employee was notified in writing of the status of her performance not later than the 4th month of the rating period with sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant her separation from the service; and (3) such notice contained adequate information that would enable her to prepare an explanation.

All of the requisites were duly established herein.

As to the first requisite, there is no dispute that President Valdes gave Demigillo a *poor performance* rating for the annual rating period from January 1, 2002 to December 31, 2002.

The second requisite speaks of a sixth-month or per semester rating period. Although Demigillo's *poor* rating was made on an annual basis, that was allowed by the implementing rules of Executive Order No. 292.³² Regarding the need to give her the written notice of her performance status not later than the 4th month of the rating period, or at the half of the semester, the requirement did not apply here because her rating was made on an annual basis. By analogy, however, the written notice for an annual rating period could be sent on the 6th month or in the middle of the year. Nevertheless, this was not expressly provided for in the Civil Service rules. In any case, it is emphasized that the purpose of the written notice being sent to the affected officer or employee not later than the 4th month of the rating period has been to give her the sufficient time to improve her performance and thereby avert her separation from the service. That purpose is the very essence of due process.

In Demigillo's case, therefore, what was crucial was whether she had been allowed to enhance her performance within a sufficient time from her receipt of the written notice of the *poor performance* rating up to her receipt of the written notice of her dropping from the rolls. The records show that she was, indeed, given enough time for her to show improvement. She received on April 21, 2003 a letter from President Valdes that indicated her *poor performance* rating for the period of January 1, 2002 to December 31, 2002.³³ The Board of Directors issued on August 15, 2003 the decision dropping her from rolls.³⁴ She received a copy of the decision on August 25, 2003.³⁵ Thereby, she was given almost four months to improve her performance before she was finally dropped from the rolls.

The second requisite further mentions that the written notice must contain sufficient warning that failure to improve her performance within the remaining period of the semester shall warrant separation from the service. Although the letter informing Demigillo of her *poor performance* rating did not expressly state such a warning to her, it stated her gross failures in the performance of her duties.³⁶ The Performance Evaluation Report Form

³² Section 3 (d) Rule IX Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws: "Performance evaluation shall be done every six months ending on June 30 and December 31 of every year. However, if the organizational needs require a shorter or longer period, the minimum appraisal period shall be at least 90 days or three months. No appraisal period shall be longer than one year."

³³ *Rollo* (G.R. No. 185571), p. 155.

³⁴ *Id.* at 141-149.

³⁵ *Id.* at 157.

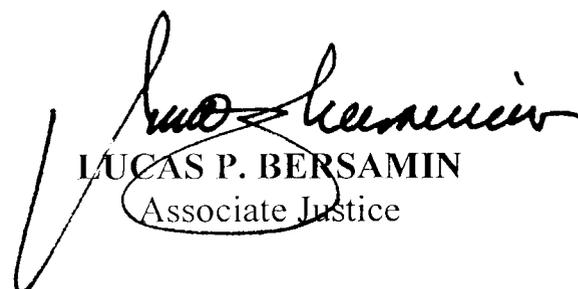
³⁶ *Id.* at 155.

corresponding to her, which was attached to the memorandum given to her, reflected her *poor performance*.³⁶ She was notified in writing of the denial of her appeal of the *poor* rating.³⁷ It cannot be denied that the letter of *poor* rating, the Performance Evaluation Report Form, and the denial of her appeal all signified to her that she could be removed from the service unless she would improve her performance. Thereby, she was given ample warning to improve, or else be separated from the service. In that regard, she was certainly not a witless person who could have missed the significance of such events. She was not only a lawyer.³⁸ She was also a mid-level ranking government official who had been in the government corporate sector for almost 20 years.³⁹ Her familiarity with the dire consequences of a failure to improve a *poor* rating under Civil Service rules was justifiably assumed.

Anent the third requisite, the letter of President Valdes plainly stated the reasons for her *poor* rating. Her Performance Evaluation Report Form, which was attached to the letter, enumerated several criteria used in measuring her management skills and the corresponding rating per criterion. The letter even suggested that in order for her to enhance her performance she should undergo extensive training on business management, a comprehensive lecture program on Civil Service rules and regulations, and a training on effective public relations. The letter indicated that the contents of the Performance Evaluation Report had been discussed with her. Moreover, Demigillo formally appealed the *poor performance* rating, except that TIDCORP denied her appeal.⁴⁰ All these circumstances show that she was given more than enough information about the bases for her *poor performance* rating, enabling her to appeal properly.

WHEREFORE, we **DENY** the petition for review on *certiorari* in G.R. No. 168613; **AFFIRM** the decision promulgated on June 27, 2005 by the Court of Appeals in its CA-G.R. No. 87285; **GRANT** the petition for review on *certiorari* in G.R. No. 185571; **SET ASIDE** the decision promulgated on November 28, 2008 by the Court of Appeals in its CA-G.R. No. 87295; and **ORDER** Atty. MA. ROSARIO MANALANG-DEMIGILLO to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

³⁶ *Rollo* (G.R. No. 168613), pp. 256-259.

³⁷ *Rollo* (G.R. No. 185571) p. 156.

³⁸ *Id.* at 340.

³⁹ *Id.*

⁴⁰ *Id.* at 155-156.

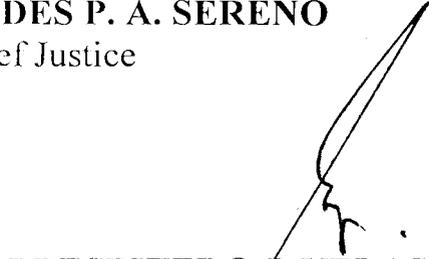
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



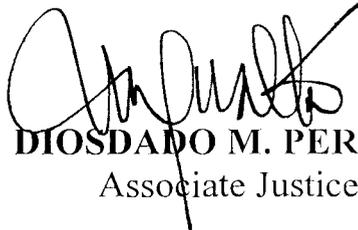
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



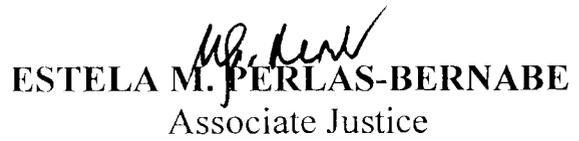
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
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
Chief Justice