

[A.M. No. 98-10-04-SC. August 3, 1999]

**LETTER OF ASSO. JUSTICE ABESAMIS OF THE CA**

**EN BANC**

**Gentlemen:**

*Quoted hereunder, for your information, is a resolution of this Court dated **AUG 3 1999**.*

A.M. No. 98-10-04-SC (*Letter of Associate Justice Bernardo P. Abesamis of the Court of Appeals dated October 5, 1998.*)

Petitioner Associate Justice Bernardo P. Abesamis of the Court of Appeals, wrote a letter dated October 5, 1998 addressed to this Court seeking the correction of his seniority ranking in the Court of Appeals averring that his years of service in the judiciary run uninterrupted starting from his appointment as Regional Trial Court Judge to date as Associate Justice of the Court of Appeals, inclusive of his tenure as Deputy Court Administrator which, according to him, means that he has been in possession of the ‘rank, seniority, precedence, benefits and other privileges’ of Associate Justice of the Court of Appeals from the time he was appointed as Deputy Court Administrator.

It appears that petitioner was appointed as Deputy Court Administrator on January 3, 1994 and Associate Justice of the Court of Appeals on March 11, 1998. If rank and precedence were to be reckoned from the date of his appointment as Deputy Court Administrator, he would have been 18<sup>th</sup> in seniority and a Chairman-in-waiting as of October 6, 1998 upon Appellate Associate Justice Emeterio Cui’s retirement. In marked contrast, he would merely be 40<sup>th</sup> <sup>1</sup> *As of the date of the filing of the Query*.in seniority and still a Junior Associate Justice on said date were rank and seniority to be reckoned from March 11, 1998, the date he was appointed as Associate Justice of the Court of Appeals.

Petitioner contends that for purposes of determining his rank and seniority in the Court of Appeals, his appointment as Deputy Court Administrator in October 1993 or his assumption of office thereat on January 3, 1994 should be considered the date of his appointment to the rank of Associate Justice of the Court of Appeals, pursuant to the provisions of Section 1, P.D. No. 842, which amended Sections 3, 7 and 8 of P. D. No. 828 (Creating the Office of the Court Administrator), which provides that —

*“SEC. 3. Qualifications, appointment and tenure. — The Court Administrator and the Deputy Court Administrators shall have the same qualifications as the Justices of the Court of Appeals. They shall be appointed by the Supreme Court and shall serve until they reach the age of sixty-five (65) years or become incapacitated to discharge the duties of their office, but may be removed or relieved for just cause by a vote of not less than eight (8) justices of the Supreme Court; Provided, that a member of the judiciary appointed to any of the positions, shall not be deemed thereby to have lost the rank, seniority and precedence, benefits and other privileges appertaining to his judicial position, and his services in the judiciary, to all intents and purposes, shall be considered as continuous and uninterrupted.”*

Hence, petitioner argues that the appointment of a Deputy Court Administrator to the position of Associate Justice of the Court of Appeals should be deemed “a mere transfer to an office of equal rank and not a promotion to a higher office.”

As defined a “[t]ransfer means a movement [1] from one position to another of equivalent rank, level, or salary, without a break in the service, <sup>2</sup> *Millares v. Subido, 20 SCRA 954 [1967]*.and [2] from one office to

another within the same business establishment. <sup>3</sup> *Yuco Chemical Industries v. MOLE*, 185 SCRA 727 [1990]. It is distinguished from a promotion in the sense that it involves a lateral change as opposed to a scalar ascent.” <sup>4</sup> *Sentinel Security Agency v. NLRC* G.R. No. 122468; *Philippine American Life Insurance Co. v. NLRC*, G.R. No. 122716, 3 September 1998, citing *Dosch v. NLRC*, 123 SCRA 296 [1983]. Section 4, paragraphs [c] and [d] of CSC Memorandum Circular No. 40, Series of 1998, otherwise known as the Revised Omnibus Rules on Appointments and Other Personnel Actions more explicitly defines “promotion” and “transfer” as follows:

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

xxx      xxx      xxx      xxx

**(c) Promotion** — is the advancement of an employee from one position to another *with an increase in duties and responsibilities* as authorized by law and *usually accompanied by an increase in salary*. Promotion may be from one department or agency to another or from one organizational unit to another within the same department or agency.

**(d) Transfer** — is the movement from one position to another which is of *equivalent rank, level, or salary* without break in the service involving the issuance of an appointment.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: Provided, however, that any movement from the non-career service to the career service shall not be considered a transfer. xxx”

Stated differently -

“A transfer is a ‘*movement* from one position to another which is of equivalent rank, level and salary, without break in service.’ Promotion is the ‘*advancement* from one position to another with an *increase in duties and responsibilities* as authorized by law, and *is usually accompanied by an increase in salary*’ xxx.” <sup>5</sup> *Divinagracia, Jr. v. Sto. Tomas*, 244 SCRA 595 [1995], citing *Sta. Maria v. Lopez*, 31 SCRA 637 [1970]; *Robles G. S. The Civil Service Employee And The Law*, First Ed. [1968], p. 137.

“The term ‘promotion’ is defined as an *advancement* or *exalting* in rank or honor; and as [an] *advancement to a higher position, grade class or rank*; preferment in honor or dignity.” <sup>6</sup> *36 Words and Phrases*, p. 365, citing *People ex rel. Campbell v. Partridge*, 85 N.Y.S. 853, 854, 89 App. Div. 497.

Seniority means the status secured by the length of service. <sup>7</sup> *Robles G.S., supra*, p. 138. The determination of seniority is based, among others, on the following criteria, to wit:

- a.] *The length of service in the particular work involved* should be considered first;
- b.] When competitors are equal in this respect, then the length of service in the department or agency must be concerned;
- c.] When competitors are still equal under the latter circumstances, length of service in the other departments or agencies will be considered;
- d.] In determining seniority among competitors who have equal length of service in the Government, *any work experience not relevant to the position to be filled must be excluded in the computation*;
- e.] Seniority must be limited to continuous period of service; provisional or temporary

service will not be included in the computation of seniority;

f.] Break in service not exceeding one year due to reduction in force will not affect the continuity of such service.”<sup>8</sup> *Robles, supra*, pp. 138-139; (Emphasis and italics supplied).

Petitioner’s insistence that his years of service as a Deputy Court Administrator should be tacked to his previous years of service as a member of the bench in determining his seniority ranking in the Court of Appeals can not be sustained for the following reasons:

First, the appointing authorities of the two positions are different. Section 3 of B.P. Blg. 129, as amended, otherwise known as the Judiciary Reorganization Act of 1980 states in no uncertain terms that —

“SEC. 3. *Organization.* — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and fifty Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.” (As amended by EO No. 33, 28 July 1986).

On the other hand, Section 1 of P.D. No. 842 which amended Sections 3, 7 and 8 of P.D. No. 828, creating the Office of the Court Administrator in the Supreme Court, provides that:

“SEC. 3. *Qualifications, appointment and tenure.* - *The Court Administrator and the Deputy Court Administrators shall have the same qualifications as the Justices of the Court of Appeals. They shall be appointed by the Supreme Court and shall serve until they reach the age of sixty-five (65) years or become incapacitated to discharge the duties of their office, but may be removed or relieved for just cause by a vote of not less than eight (8) Justices of the Supreme Court; Provided, that a member of the Judiciary appointed to any of the positions, shall not be deemed thereby to have lost the rank, seniority and precedence, benefits and other privileges appertaining to his judicial position, and his services in the judiciary, to all intents and purposes, shall be considered as continuous and uninterrupted.*”

The ascendance or preeminence of an Appellate Court Justice’s position over that of a Deputy Court Administrator can at once be seen on the basis of the foregoing statutory provisions alone much more so considering that Justices of the Court of Appeals aside from being Presidential Appointees have the same length of tenure like members of this Court as explicitly provided for in Section 11, Article VIII of the Constitution:

“SEC. 11. The members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberation of the issues in the case and voted thereon.”

In stark contrast, the Court Administrator and Deputy Court Administrators although concededly mandated to have the same qualifications as Appellate Court Justices have a shorter tenure of office of sixty-five (65) years and are appointees of this Court.

Second, the two positions have varying latitudes of discretion with regard to their duties and functions. A Deputy Court Administrator is tasked with the following:

“Duties or functions:

Under direction, assists the Court Administrator in executing and implementing the policies, orders, rules and regulations regarding administrative supervision over all courts; subject to the overall supervision of the Court Administrator, exercises active and direct administrative supervision over the trial courts pertaining to his judicial districts including the personnel thereof; studies and recommends to the Court Administrator all requirements and problems concerning the administration of courts; attends to the service and physical needs of the courts as well as to the financial, budgeting and accounting requirements of the same; conducts field inspection and audit of lower courts pertaining to his judicial districts with the view to: a.] examining the administrative business methods and systems employed in the lower courts and making suggestions on necessary improvements; b.] collecting and compiling statistical data and other information on the judicial work of courts; c.] examining the status of dockets, securing information as to the court’s needs of assistance and making suggestions or taking appropriations necessary for the maintenance and operation of the judicial branch ; and e.] investigating complaints with respect to the operation of the courts and making such recommendations as may be appropriate; and acts on such other matters that the Court Administrator may direct.”

On the other hand, the Court of Appeals exercises its powers, functions and duties through seventeen (17) divisions, each composed of three (3) members.<sup>9</sup> **Sec. 4, B.P. Blg. 129.** Its jurisdiction is delineated thus by Section 9 of B. P. Blg. 129 *viz*:

“SEC. 9. *Jurisdiction.* — The Court of Appeals shall exercise:

[1] Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

[2] Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and

[3] Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act and of subparagraph [1] of the third paragraph and subparagraph [4] of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to receive evidence and perform any and all acts necessary to resolve factual issues raised in [a] cases falling within its original jurisdiction, such as actions for annulment of judgments of regional trial courts, as provided in paragraph [20] hereof; and in [b] cases falling within its appellate jurisdiction wherein a motion for new trial based only on the ground of newly discovered evidence is granted by it (Amended by EO No. 33, July 28, 1986).

These provisions shall not apply to decisions and interlocutory orders issued under the Labor Code of the Philippines and by the Central Board of Assessment Appeals.”

Pertinently, Rule 2, Sections 2 and 3 of the Revised Internal Rules of the Court of Appeals, as

amended, provides as follows:

“SEC. 2. *Matters cognizable by the Court En Banc.* — the Court shall sit *en banc* to:

a. promulgate rules or orders relative to the organization or reorganization of the Divisions of the Court and assignment of the Justices, distribution of cases, and other matters concerning the operation and management of the Court and/or its Divisions.

b. Recommend to the Supreme Court the appointment of the Clerk of Court, assistant Clerk of Court, Division Clerks of Court and Court Reporter.

c. Act on administrative matters, such as regrouping, merger, or abolition of existing offices, units or services; create new ones, or transfer the functions of one office, unit or service to another as the exigencies of the service may require.

d. Receive foreign and local dignitaries, important guests and visitors, honor a colleague or retiring member of the Court, hold necrological services for its members who died in office, and honor a retired member who died after retirement.

e. Adopt uniform administrative measures, procedures, and policies for the protection and preservation of the integrity of the judicial processes, the speedy disposition of cases and the promotion of efficiency of the personnel.

f. Discuss and thresh out divergent views on any particular question of law so as to reach a consensus thereon or to minimize if not completely avoid conflict of decisions of the different Divisions of the Court on the interpretation and application of any question or provision of law.

g. Take up other administrative matters which the Presiding Justice or any member may suggest for consideration and inclusion in its agenda.”

“SEC. 3. *Jurisdiction and Manner of Exercise of Adjudicatory Powers of the Court by Divisions.* - In the exercise and discharge of the adjudicatory powers, functions and duties of the court, the Divisions concerned may hold sessions in chambers with or without the parties and/or counsel.

Unless otherwise provided by law or the Rules of Court, the Court shall have:

a. Exclusive jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and other ancillary writs or processes whether or not in aid of its appellate jurisdiction;

b. Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts;

c. Exclusive appellate jurisdiction over all other final judgments, decisions, resolutions, orders or awards of Regional Trial courts and quasi-judicial agencies, boards or commissions not falling within the exclusive jurisdiction of the Supreme Court or other tribunals;

d. Authority to receive evidence and perform any and all acts necessary for the resolution of factual issues raised in cases falling within its original jurisdiction;

e. Authority to receive newly discovered evidence relied upon by movant in cases within its appellate jurisdiction wherein new trial on the ground of newly discovered evidence

has been granted by the Court;

f. Subject to the provisions of the Internal Rules, the power to:

[1] Decide cases or resolve incidents therein deliberated upon by its members;

[2] Cite and punish for contempt any person guilty of any contumacious act against the Court, its Division or individual member in connection with a case cognizable by the Division;

[3] Decide whether or not to give due course to original petitions for review;

[4] Subject to constitutional and statutory requirements, adopt its own rules in the conduct of hearings, preparation of agenda, determination of cases and incidents and rendition of decisions or resolutions.

g. The Justice to whom the case is assigned shall study and submit a report thereof to his Division for consultation and speedy disposition.”

It need not be overemphasized that the latter position encompasses a broader and deeper discretionary spectrum than the former which is primarily recommendatory and, thus, bears with it an *increase in duties and responsibilities*.

Third, as adverted to earlier, in determining seniority, any work experience *not relevant* to the position to be filled should be excluded in the computation. Needless to state, the two positions have contrasting natures, one is administrative and the other judicial and the relevance of their respective work experiences should not be made to bear on the determination of seniority among the ranks of their respective personnel.

Prior to petitioner’s stint as a Deputy Court Administrator, he indeed was a Member of the Judiciary. However, he was then a *Judge of the Regional Trial Court and not an Associate Justice of the Court of Appeals*. It can not be denied, given such a factual backdrop, that petitioner’s reappointment or return to the Judiciary - excluding his term as a Deputy Court Administrator which is irrelevant for purposes of determining seniority in the Appellate Court - is a promotion not a transfer.

Finally, if the Court sustains petitioner’s claim that his appointment to the Court of Appeals is a mere transfer, it would be tantamount to opening a judicial Pandora’s Box for then the Court may not only be swamped with myriad requests for re-ranking from dissatisfied magistrates of higher collegiate tribunals and lower Courts but will also have to contend with the particularly unpleasant task of having to dislodge some of the present division Chairmen of the Court of Appeals just to accommodate him. <sup>10</sup> *The Seniority lineup of the Court of Appeals as of June ii., 1999 is as follows:*

1. Jesus M. Elbinias — Presiding Justice
2. Artemon D. Luna — Associate Justice
3. Jamal D. Rasul — Associate Justice
4. Salome A. Montoya — Associate Justice
5. Cancio C. Garcia — Associate Justice

6. Quirino D. Abad Santos, Jr. — Associate Justice
7. Fermin A. Martin, Jr. — Associate Justice
- g. Angelina S. Gutierrez — Associate Justice
9. Ma. Alicia Austria-Martinez — Associate Justice
10. Corona Ibay-Somera — Associate Justice
11. Buenaventura J. Guerrero — Associate Justice
12. Ramon U. Mabutas, Jr. — Associate Justice
13. Eubulo G. Verzola — Associate Justice
14. Ramon A. Barcelona — Associate Justice
15. Hector L. Hofilena — Associate Justice
16. Godardo A. Jacinto — Associate Justice
17. Eugenio S. Labitoria — Associate Justice
18. Delilah Vidallon-Magtolis — Associate Justice
19. Conchita Carpio-Morales — Associate Justice
20. Ruben T. Reyes — Associate Justice
21. Conrado M. Vasquez, Jr. — Associate Justice
22. Bernardo Ll. Salas — Associate Justice
23. Romeo S. Callejo, Sr. — Associate Justice
24. Bennie A. Adefuin-Dela Cruz — Associate justice
25. Romeo A. Brawner — Associate Justice
26. Salvador J. Valdez, Jr. — Associate justice
27. Oswaldo D. Agcaoili — Associate Justice
28. Portia Alino-Hormachuelos — Associate Justice
29. Hilarion L. Aquino — Associate Justice
30. Artemio G. Tuquero — Associate Justice
31. Demetrio G. Demetria — Associate Justice
32. Omar U. Amin — Associate Justice
33. Roberto A. Barrios — Associate Justice
34. Marina L. Buzon — Associate justice
35. Rodrigo V. Cosico — Associate Justice

**36. Bernardo P. Abesamis — Associate Justice**

- 37. Eloy R. Bello — Associate Justice
- 38. Teodoro P. Regino — Associate Justice
- 39. Candido V. Rivera — Associate Justice
- 40. Mariano M. Umali — Associate Justice
- 41. Presbitero J. Velasco, Jr. — Associate Justice
- 42. Martin S. Villarama, Jr. — Associate Justice
- 43. Renato C. Dacudao — Associate Justice
- 44. Andres B. Reyes, Jr. — Associate Justice
- 45. Remedios Salazar-Fernando — Associate Justice
- 46. Wenceslao L. Aguir, Jr. — Associate Justice
- 47. Elvi John S. Asuncion — Associate Justice
- 48. Mercedes Gozo-Dadole — Associate Justice
- 49. Jose L. Sabio, Jr. — Associate Justice
- 50. Eriberto U. Rosario, Jr. — Associate Justice
- 51. Edgardo P. Cruz — Associate Justice

It need not be overemphasized that it would be unsettling, demoralizing and disruptive of the present system. This can not be countenanced.

**ACCORDINGLY**, the Court DENIES the petition seeking the correction of the petitioner's seniority ranking in the Court of Appeals.

Very truly yours,

**LUZVIMINDA D. PUNO**

Clerk of Court

**(Sgd.) MA. LUISA D.  
VILLARAMA**

Asst. Clerk of Court