

## **THIRD DIVISION**

**[ G.R. No. 180966, June 13, 2012 ]**

**COL. JESUS G. CABARRUS, JR., PAF (RES.), PETITIONER, VS.  
HON. SECRETARY OF NATIONAL DEFENSE, THE CHIEF OF STAFF,  
AND THE COMMANDING GENERAL, RESERVE COMMAND, AFP,  
RESPONDENTS.**

### **D E C I S I O N**

**ABAD, J.:**

This case is about a reserve officer called to active duty in the Armed Forces of the Philippines Reserve Command when he was already 60 years of age but refused to be relieved at 65 believing that he was still physically and mentally fit for duty.

#### **The Facts and the Case**

One of the major support commands of the Armed Forces of the Philippines (AFP) is its Reserve Command, created for the purpose of Reserve Force management, procurement, and organization. It develops, organizes, trains, equips, and administers AFP reservists into capable, responsive, and mobilizable reserve force. These reservists augment the regular force whenever needed.<sup>[1]</sup>

In 2000 the AFP called into active service petitioner Jesus G. Cabarrus, Jr., a reserve officer with the rank of colonel in the Philippine Air Force, and installed him as Group Commander of the Public Affairs Service of the AFP Reserve Command. He was then 60 years old.

In February 2005 the overall Commanding Officer of the AFP Reserve Command, Col. Cabarrus's superior, wrote the Judge Advocate General Office (JAGO), requesting its legal opinion on whether Col. Cabarrus could continue to serve as Group Commander after his 65th birthday. The JAGO replied in the negative, citing Section 13(3) of Republic Act (R.A.) 7077.<sup>[2]</sup>

On March 1, 2005 Col. Cabarrus reached the age of 65 but apparently remained at his post for a while. Eight months later or on November 8, 2005 the Group Commander of the Technical Service Reserve of the AFP Reserve Command issued a circular announcing the retirement of reservists in the AFP Reserve Command who had reached the age of 65. Thus, his superior in the latter Command considered Col. Cabarrus retired and relieved him of his post beginning on December 11, 2005.

Believing that his superiors singled him out for removal, Col. Cabarrus wrote separate letters to his Commanding Officer, to the AFP Chief of Staff, and to the Secretary of National Defense protesting the same. But they did not reply to him. Thus, he filed a petition for declaratory relief with the Quezon City Regional Trial Court (RTC) for the proper construction of Section 13(3) of R.A. 7077 regarding the

retirement of reservists who had been called to active service. On November 27, 2007 the RTC rendered a decision, dismissing his petition for lack of merit, hence, the present action.

### **The Issue Presented**

The case presents a legal issue that needs to be settled for the benefit of the AFP:

Whether or not Col. Cabarrus, a reservist called to serve in one of the support commands of the AFP may be regarded as retired under Section 13(3) of R.A. 7077 after he reached the age of 65.

### **The Ruling of the Court**

The citizen soldiers of the AFP, called reservists, are of three categories. In the first category are able-bodied reservists between the ages of 18 and 35; in the second category are able-bodied reservists between the ages of 36 and 51; and in the third category are able-bodied reservists who are above the age of 51.<sup>[3]</sup> No doubt, Col. Cabarrus belonged to the third category when he was called into active service in 2000 since he was then already 60 years of age. As Group Commander of the Public Affairs Service of the AFP Reserve Command, he worked in a unit of the regular armed forces that looked after the affairs of its reserve force.

What is in issue in this case is the age when third category reservists who are called into the active service can be relieved from such service. Col. Cabarrus claims that he has the right to remain in the active service beyond the age of 65 as long as he remains mentally and physically fit. But the AFP, invoking Section 13(3) of R.A. 7077, claims that third category reservists like him when called to active duty are automatically relieved from the service at the age of 65.

The pertinent portions of Section 13 provide:

**Section 13. *Classification of Reserve Force Units.*** – Based on the categorization provided in Section 12 above, the Reserve Force units shall further be classified into the Ready Reserve, the Standby Reserve and the Retired Reserve based in their operational readiness for immediate deployment/utilization.

(1) *Ready Reserve.* - The Ready Reserve shall be composed of citizen soldiers belonging mostly to the First Category Reserve and others as provided in this Act who shall be organized, trained and maintained as mobilizable ready reserve subject to call at any time to augment the regular armed force of the AFP not only in times of war or national emergency but also to meet local emergencies arising from calamities, disasters and threats to peace, order, security and stability in any locality, including the need to provide assistance in relief and rescue work and other civil assistance activities.

Any reservist or citizen soldiers belonging to the Second Category Reserve and/or the Third Category Reserve, particularly the commissioned and non-commissioned officers, who will volunteer to