

IN RE NUOKUS

In the Matter of MAX NUOKUS

Civil Action No. 17-74

Trial Division of the High Court

Truk District

July 22, 1974

Petition by government for judicial review of Personnel Board Decision. The Trial Division of the High Court, Burnett, Chief Justice, held that review would be denied where challenge was essentially to the exercise of judgment legally and prudently administered.

1. Administrative Law—Judicial Review—Standards

Although High Court may review the determinations and orders of nonjudicial public boards and officials, at the instance of the government as well as private citizens, judicial relief calls for the exercise of an extraordinary remedy in the face of equally extraordinary circumstances and an order or determination will not be set aside unless an abuse of discretion by way of arbitrary, capricious or fraudulent action is pleaded and proved and it is shown that the one seeking review is aggrieved thereby.

2. Administrative Law—Judicial Review—Discretionary Matters

Government was not entitled to review of Trust Territory Personnel Board decision where it was essentially challenging the exercise of judgment legally and prudently administered.

3. Administrative Law—Judicial Review—Discretionary Matters

An administrative agency created and authorized to exercise its judgment and discretion to protect the public interest in its area of concern is to remain free from the intrusion of judicial action unless the public interest cannot otherwise be protected and upheld.

BURNETT, *Chief Justice*

The government seeks judicial relief from an adverse decision of the Trust Territory Personnel Board. Pleading was originally characterized as an "appeal" from said decision.

An Order issued June 14 setting hearing on the matter and particularly requesting counsel's advice as to whether the government has a right to such appeal and whether the court has jurisdiction to entertain such an action.

Subsequent to said Order, petitioner requested leave to amend its pleadings to pray for "judicial review" of the Personnel Board's decision.

[1] As support for its contention that absence of statutory provision does not absolutely foreclose the availability of judicial review, petitioner accurately quotes *Klassen v. Regier*, 403 P.2d 106:

However, courts are always open to hear meritorious complaints against illegal or oppressive acts of nonjudicial public boards and officials, either at the instance of the state or of a private citizen especially aggrieved thereby.

Such a notion is analogous to the "grand reservoir of equitable power to do justice in a particular case" available to the court upon motion under TTRCP Rule 18(e). *Delemel v. Tulop*, 3 T.T.R. 469 (1968).

Yet, judicial relief in such instances calls for the exercise of an extraordinary remedy in the face of equally extraordinary circumstances.

As the court in *Klassen*, supra, stated in the same paragraph from which petitioner quoted:

Regardless of the legal remedy followed, where fact-finding powers have been conferred on public boards and officials, their determinations and orders will not be set aside unless an abuse of discretion is *pleaded* and *proved* that is, unless it is both alleged and proved that the officials acted arbitrarily, capriciously or fraudulently.

[2] Neither petitioner's pleadings and affidavit, nor anything in the case file suggest the existence of circumstances which would warrant judicial action not statutorily provided for in matters of this sort. Rather, petitioner is essentially challenging the exercise of judgment legally and prudently administered.

[3] The Personnel Board is an administrative agency created and authorized to exercise its judgment and discretion to protect the public interest in its area of concern.

Such an agency is to remain free from the intrusion of judicial action unless the public interest cannot otherwise be protected and upheld.

In the absence of statutory mandate, or circumstances which require the contrary, the government is not entitled to appeal from or judicial review of final determinations by the Personnel Board. Nor can I find in this action, however it may be denominated, allegations sufficient to invoke the jurisdiction of the court.

It is, therefore, ordered, that this action be, and it hereby is, dismissed.