



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE
PHILIPPINES, represented by the
OFFICE OF THE PRESIDENT,
DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS AND
PRESIDENTIAL ANTI-GRAFT
COMMISSION,

Petitioners,

G.R. No. 188909

Present:

SERENO, C. J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

-versus-

FLORENDO B. ARIAS,
ASSISTANT DIRECTOR,
BUREAU OF EQUIPMENT,
DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS,

Respondent.

Promulgated:

SEP 17 2014

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DECISION

PEREZ, J.:

Respondent Florendo B. Arias was the Assistant Bureau Director of the Bureau of Equipment (BOE), Department of Public Works and Highways (DPWH). Respondent, along with other DPWH officials Burt B. Favorito, Director of Administrative Manpower and Management Service; Emily M. Tanquintic, Director of Comptrollership and Financial Management Service; Oscar D. Abundo, Director of Legal Service; Abraham S. Divina, Jr., Director of BOE, and several unnamed presidential and non-presidential appointees of DPWH, were charged with violation of Section 3(e), (i) of

Republic Act No. 3019, as amended,¹ Sections 4(a), (c)² and 7(a)³ of Republic Act No. 6713, and the Memorandum from the President dated 19 November 1999 on the doctrine of command responsibility for corruption in government office.

On 28 November 2002, the Presidential Anti-Graft Commission (PAGC) issued a Formal Charge in PAGC-ADM-0095-02 in connection with the following acts and omissions committed by DPWH officials:

¹ Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

² Section 4. *Norms of Conduct of Public Officials and Employees.* — (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) *Commitment to public interest.* — Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

x x x x

(c) *Justness and sincerity.* — Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

³ Section 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) *Financial and material interest.* — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

1. Herein respondents, together with other employees of the DPWH who are non-presidential appointees and under their control and supervision, unlawfully and knowingly perpetrated acts in violation of Section 20 of the General Appropriations Act (GAA) of FY 2000 (Republic Act No. 8760) by facilitating the alleged anomalous emergency repairs of several DPWH motor vehicles for CY 2000-2001 from the wrong fund source, an offense constituting Illegal Expenditure under Section 53, Chapter 9, Book V and Section 43, Chapter 5, Book VI, both of the Administrative Code of 1987, in relation to Section 9, Special Provision (Department of Public Works & Highways) of the same General Appropriations Act, and Section 3(e), (i) of Republic Act No. 3019, as amended and Sections 4(a), (c) and 7 (a) of Republic Act No. 6713.
2. In an Audit Report dated June 23, 2002, submitted pursuant to DPWH Department Order No. 15, series of 2002, the Internal Audit Service reported that the result of their review of almost 7,000 vouchers for the Fiscal Year 2001, 578 vehicles and equipment have undergone emergency repairs.
3. The same Audit Report narrated that as of June 7, 2002, from a review of almost 7,000 vouchers, a total of 578 vehicles and equipment were subjected to emergency repairs, with a total cost of P139,633,134.26 was paid out of the capital outlay and MOOE funds. A clear violation of Section 20 of the General Appropriations Act for FY 2000, reenacted for FY 2001, which constitute an offense under Section 43, Chapter 5, Book VI of the Administrative Code of 1987, in relation to Section 9, Special Provision (Department of Public Works and Highways) of the same General Appropriations Act and Section 3(e), (i) of Republic Act No. 3019, as amended and Section 4(a), (c) and 7(a) of Republic [A]ct No. 6713.
4. Mr. Florendo B. Arias, Assistant Bureau Director, Bureau of Equipment, then OIC of the same Bureau recommended the approval of the twenty four (24) Requisitions for Supplies and/or Equipment (RSE), not requested/certified and signed by the end-users of the vehicles. Twenty (20) of these RSEs are for a Mercedes Benz, with Plate No. NRV-687/HI-2297 and assigned to the Chief, Planning and Design Division and four (4) RSEs are for a Nissan Pick-up with Plate No. TAG-211/HI-4161 and assigned to Irene D. Ofilada, then Director of Internal Audit Service. These acts are violative of and contrary to Item No. 4, 4.1, DPWH Department Order No. 33, series of 1988 and DPWH Memorandum dated 31 July 1997, Item D, 1.2, 1.4, and 1.6 on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.
5. Despite personal knowledge that the end-users of these vehicles (Mercedes Benz-NRV-687 and Nissan Pick-up-TAG-211) did not request/sign and/or certify the Requisition for Supplies and Equipment (RSEs), Assistant Director Florendo B. Arias, signed the Request of Obligation and Allotment (ROA) for the said vehicles and approved the Report of Waste Material purportedly for the said vehicles when there

were no such waste materials because these vehicles were not subjected to actual repairs. These are in violation of Item No. 4, 4.1 of DPWH Department Order No. 33, series of 1988 and DPWH Memorandum dated 31 July 1997, Item D, 1.2, 1.4 and 1.6, on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.

6. Assistant Director Florendo B. Arias having no authority to sign Box C, affixed his signature in box C of the twenty-four (24) Disbursement Vouchers for the said vehicles and despite personal knowledge that there were no repairs done nor replacement of defective parts for the said vehicles were made, approving the payment/reimbursement for emergency repairs/purchase of spare parts/supplies for the use of the said vehicles. This is in violation of Item No. 4, 4.1 of DPWH Department Order No. 33, series of 1988 and DPWH Memorandum dated 31 July 1997, Item D, 1.2, 1.4, 1.6, on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.

7. Notwithstanding personal knowledge that the end-users of the above-mentioned vehicles did not request/sign and/or certify the Requisition for Supplies and Equipment (RSEs), Director Burt B. Favorito approved twenty-four (24) RSEs in violation of Item 4, 4.1 of DPWH Department Order No. 33, series of 1988 and Item D, 1.2, 1.4, 1.6, of DPWH Memorandum dated 31 July 1997 on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.

8. Director Burt B. Favorito, despite personal knowledge of the absence of the request signed and/or certified by the end-user of Mitsubishi Pajero bearing Plate No. PLM-494/HI-3558, assigned to Assistant Regional Director, Region IV-B, DPWH, approved the ten (10) Requisition for Supplies and/or Equipment (RSE), in violation of Item No. 4, 4.1 of DPWH Department Order No. 33, series of 1988 and DPWH Memorandum Order dated 31 July 1997, Item D, 1.2, 1.4, 1.6, on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.

9. Assistant Director Florendo B. Arias, then OIC, Bureau of Equipment, despite personal knowledge that there were no repairs done and/or replacement of spare parts made on the Mitsubishi Pajero, with Plate No. PLM-494, approved the ten (10) Reports of Waste Material in violation of Item No. 4, 4.1 of DPWH Department Order No. 33, series of 1988 and DPWH Memorandum dated 31 July 1997, Item D, 1.2, 1.4, 1.6 on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, in relation to Section 3(e), (i) of R.A. 3019, as amended and Sections 4(a), (c) and 7(a) of RA 6713.

10. Director Burt B. Favorito affixed his signature in box C of the ten (10) Disbursement Vouchers for the Mitsubishi Pajero with Plate No. PLM-494 and despite personal knowledge that there were no repairs done nor replacement of defective parts for the said vehicles were made, approving the payment/reimbursement for emergency repairs/purchase of spare parts/supplies for the use of the said vehicles.

11. Director Burt B. Favorito by his acts of approving the RSEs for the said three (3) motor vehicles and approving the disbursement vouchers/reimbursement for emergency repairs and/or replacement of spare parts, has directed, authorized or cooperated in the wrongdoings, instead of preventing the series of anomalous transactions. A violation of Memorandum from the President, dated November 19, 1999, Invoking the Doctrine of Command Responsibility for Corruption in Government Offices, in relation to Section 3(e), (i) of Republic Act No. 3019 as amended and Sections 4(a), (c) and 7(a) of Republic Act No. 6713.

12. Director Emily M. Tanquintic, Comptrollership and Financial Management Service (CFMS), for countersigning checks in payment for the purported repairs and/or replacement of spare parts, despite the fact that the attached supporting documents are dubiously anomalous. As Director of the CFMS, she failed to exercise prudence in the management and control of government's financial resources, by failing to institute necessary control measures to prevent wastage and losses on the part of the government. As a supervising authority, she failed to perform the duties of her office diligently and to oversee the proper and efficient use of funds for which they were intended. She negligently carries on the business of her office, as to furnish the opportunity for default. A violation of Memorandum from the President, dated November 19, 1999, Invoking the Doctrine of Command Responsibility for Corruption in Government Offices, in relation to Section 3(e), (i) of Republic Act No. 3019 as amended and Sections 4(a), (c) and 7(a) of Republic Act No. 6713.

13. Director Oscar D. Abundo, Legal Service, being the co-signatory in the checks in payment for the purported emergency repairs or replacement of spare parts, despite the fact that the attached supporting documents are dubiously anomalous. He carelessly conducts or carries on the business of his office as to furnish the opportunity for default. Such failure resulted to irregularity or illegal acts within his area of jurisdiction. A violation of Memorandum from the President, dated November 19, 1999, Invoking the Doctrine of Command Responsibility for Corruption in Government Offices, in relation to Section 3(e), (i) of Republic Act No. 3019, as amended, and Sections 4(a), (c) and 7(a) of Republic Act No. 6713.

14. Director Abraham S. Divina, Jr., Bureau of Equipment, as responsible supervising authority, failed to institute necessary management monitoring and control systems in the preparation and maintenance of equipment ledgers for each vehicle. Such ledgers could have contained individual equipment profiles which record repairs, as well as purchases of spare parts and movement of the vehicles. Such failure resulted to irregularity or illegal acts within his area of jurisdiction. A violation of Memorandum

from the President, dated November 19, 1999, Invoking the Doctrine of Command Responsibility for Corruption in Government Offices, in relation to Section 3(e), (i) of Republic Act No. 3019 as amended and Sections 4(a), (c) and 7(a) of Republic Act No. 6713 and Section 46(a), (1), (3), (4) and (9) of Book V, Administrative Code of 1987.

15. DPWH authorized payment and has actually paid the total amount of ₱832,140.00 for the purported repairs and/or replacement of spare parts for the three (3) motor vehicles, covering thirty four (34) transactions/disbursement vouchers, as follows:

- a. NISSAN PICK-UP-TAG-211/HI-4161 = P98,560.00 – 4 transactions
- b. MITSUBISHI PAJERO-PLM-494/HI-3558 = P249,020.00 – 10 transactions
- c. MERCEDES BENZ-NRV-687/HI-2297 = P484,560.00 – 20 transactions

Total = P832,140.00

16. All respondent-presidential appointees are within the jurisdiction of the Presidential Anti-Graft Commission pursuant to Section 4 of Executive Order No. 12, dated April 16, 2001.

17. Herein respondents have openly committed serious misconduct prejudicial to the best interest of the service.⁴

Anent the charges against respondent, he was indicted for the following acts: 1) recommending the approval of twenty-four (24) Requisitions for Supplies and/or Equipment (RSEs) made on a Mercedes Benz and a Nissan Pick-up which were not requested/certified and signed by the end-users of the vehicles; 2) signing the Request of Obligation and Allotment (ROA) and approving the Report of Waste Material for said vehicles when there were no such waste materials because the vehicles were not subjected to actual repairs; 3) affixing his signature in Box C of the twenty-four (24) Disbursement Vouchers; and 4) approving 10 Reports of Waste Material despite personal knowledge that there were no repairs done and/or replacement of spare parts made on a Mitsubishi Pajero with Plate No. PLM-494.

In an Order dated 29 November 2002, PAGC ordered respondent and other DPWH officials charged to submit their Counter-Affidavits.

Respondent denied the charges that capital outlay funds were wrongfully used for emergency repairs of DPWH-owned vehicles because according to the Department of Budget and Management, emergency repairs

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Records, pp. 52-58.

of service/motor vehicles may be charged against the 3.5% Engineering and Overhead of the projects of DPWH. With respect to the approval of repair of the subject vehicles, respondent argued that he merely relied on the representations of his subordinates that said vehicles were in need of emergency repairs. Respondent further explained that all RSEs were prepared by the Chief of the Motor Pool Section, Central Equipments and Spare Parts Division (CESPD) under the BOE and submitted by the Chief of CESPD; that all RSEs were supported by Motor Vehicle Pre-Repair Inspection Reports and Job Orders, all of which were assigned to CESPD; that when a service/motor vehicle of the DPWH Central Office is turned over to the CESPD due for repair and for issuance to various field offices, custody thereover is transferred to and/or assumed by the Equipment Custody and Control Section or by the Motor Pool Section. In this situation, the end-user appears to be the head of either department.

Respondent defended his approval of the waste material reports in that he was exercising his ministerial duty. Moreover, his signing of the RSEs and the pertinent ROAs relative to the twenty-four (24) repair transactions was based on Department Order No. 42, Series of 1998 which vested him with authority to recommend for approval of requisitions, purchase orders and contract for the acquisition of supplies and materials, office equipment, spare parts and services in amount not exceeding ₱25,000.00 per RSE, including signing of corresponding ROAs.

Before he signed the disbursement vouchers, respondent saw to it that all supporting documents were properly attached, such as the job orders, pre-repair inspection reports, RSE as approved by Director Burt Favorito, post-repair inspection reports, cash invoice, certificate of emergency repairs, certificates of acceptance, reports of waste materials and price monitoring slip, to prove that emergency repairs had in fact been made on the subject motor vehicles and were paid for, and that corresponding vouchers' approval was in order. Respondent also meticulously examined the initials on each voucher.

Respondent essentially relied on good faith and presumption of regularity in the performance of official duties of his subordinates.

In a Resolution dated 19 December 2002, PAGC found respondent and the other DPWH officials guilty and recommended their dismissal from the service with forfeiture of retirement benefits and perpetual disqualification for reemployment in the government office.⁵

⁵ *Rollo*, p. 94.

PAGC ruled that in accordance with Item Nos. 4 and 4.1 of DPWH Department Order No. 33, Series of 1988 on the Revised Guidelines for the Procurement of Supplies, Materials, Spare Parts, Equipments, including Non-Personal Services dated 28 April 1988, and Items D, 1.2, 1.4, 1.6 of DPWH Memorandum dated 31 July 1997 on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, there is a need for a certification/request by the end-user of a service vehicle before any action may be done on the request for repair.

PAGC pointed out that the end-users of the subject vehicles executed sworn statements denying personal knowledge over the repair of their vehicles. Thus:

The end-user of the Mercedes Benz, Engr. Chua executed a sworn statement that “personally I have no actual knowledge on how much was the cost of the repair and whether or not parts replaced were necessary, if parts were actually installed and if actual repairs were undertaken. x x x. Atty. Ofilada, the end-user of the Nissan Pick-up, in her affidavit declared, inter alia, “that during the period covered by the Memorandum Receipt, the vehicle was never turned-over to the BOE for repairs, and for issuance of field offices. x x x. Lastly, the end-user of Mitsubishi Pajero, Assistant Regional Director Reyes, executed an affidavit that “I state that I have no personal knowledge on the said documented transactions since I have no participation whatsoever, direct or indirect, in any of the attendant processes of documentation regarding the repairs of the vehicle.” He continued, “that I learned the details of the supposed ten (10) repair transactions only upon being furnished photocopies of the accounting records and documents by the office of Atty. Sulaik and to which I state lack of knowledge thereof.” He even emphasized “that all the accounting documents and records supporting the supposed repair transactions show that my signature or initial does not appear anywhere therein.”⁶

PAGC refuted the assertion of respondent that the recommendation for approval of the RSEs is purely a ministerial act by stating that DPWH Department Order No. 33 and DPWH Memorandum dated 31 July 1997 require certification by the end-user for emergency purchase/repair of equipment, spare parts or repair of an equipment. Respondent and other DPWH officials are required by law to exercise their judgment to ascertain if, on the face of the document itself, the same is complete. The glaring absence of the names and signatures of the end-users should have cautioned respondent from blindly approving the RSEs.

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Id. at 87.

According to PAGC, the processing of transactions, beginning from the preparation of the RSEs, to the recommendation, to its approval; Certification of Emergency Purchase/Repairs; Certificate of Acceptance; Report of Waste Materials; Request for Obligation of Allotment; preparation and approval of disbursement vouchers up to the signing/countersigning of checks in payment for the purported repairs/replacement of defective spare parts were tainted with manifest partiality, evident bad faith and/or gross inexcusable negligence. Moreover, PAGC found that respondent, among others, have shown their interest for personal gain as manifested by their acts of recommending, approving, including the signing/countersigning of checks for the manifestly anomalous transactions covering the purported repairs and/or replacements of defective spare parts of the subject service vehicles.

On 30 January 2003, the Office of the President through Administrative Order No. 57, concurred with the findings and recommendation of the PAGC. Only respondent appealed the unfavorable Order to the Court of Appeals by way of a petition for review.

The Court of Appeals granted the petition and dismissed the administrative charges filed against respondent.

After examination and evaluation of the pertinent documents, the appellate court found no sufficient basis to hold respondent administratively liable. The appellate court observed that the aforesaid documents appear to be regular on their faces as the requisite signatures of the proper officials, particularly the three members of the Special Inspectorate Team who were tasked to conduct pre-repair and post-repair inspection of the subject vehicles appear thereon, and it was only after inspection of these documents did respondent recommend the approval of the emergency repair of the three (3) service vehicles and the payment thereof.

The appellate court noted that respondent had to rely to a reasonable extent on his subordinates and on good faith of those who prepared and submitted the questionable documents. The appellate court ruled that the unlawful action of his subordinates cannot be ascribed to respondent in the absence of evidence of the latter's foreknowledge of the falsities of the emergency repairs on the three (3) vehicles.

Respondent's acquittal from the administrative charges prompted petitioner Republic of the Philippines, represented by the Office of the President, DPWH and PAGC, to file the instant petition for review on *certiorari* grounded on the lone issue of whether or not respondent is guilty

of dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service.

Petitioner disagrees with respondent's claim that his recommendation for approval of the twenty-four (24) RSEs and disbursement vouchers were regular and ministerial. Petitioner contends that respondent, as recommending authority, should have reviewed and evaluated the documents prior to recommending its approval. Petitioner expounds that the emergency purchases and repairs must first be requested by the end-user of the vehicle sought to be repaired because it is the end-user who will certify on the immediate need for the repairs of the vehicle to justify the emergency purchases and exempt such requisition from public bidding. Echoing the ruling of the PAGC, as affirmed by the Office of the President, petitioner maintains that respondent made the recommendation to approve the emergency repairs in the absence of a certification from the end-user pursuant to Department Order No. 33, series of 1998 and the Memorandum dated 31 July 1997. Petitioner avers that the annotation on the RSEs "turned over to the CESP-BOE due for repair and/or issuance to various field offices" should have alerted respondent on the irregularity of the purported emergency purchases and repairs. In light of the glaring irregularities in the supporting documents, respondent's defense of reliance on the favorable recommendations and signatures of his subordinates cannot be sustained. Petitioner submits that the defense of good faith is likewise unavailing because respondents relied on documents which showed palpable defects when he signed them.

We grant the petition.

The quantum of evidence necessary to find an individual administratively liable in administrative cases is substantial evidence. Section 5, Rule 133 of the Rules of Court provides:

Sec. 5. Substantial evidence. – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or

evidence commonly accepted by reasonably prudent men in the conduct of their affairs.⁷

In the instant case, it is petitioner's submission that respondent cannot be exonerated from administrative liability for mere reliance on his subordinates in view of the glaring irregularities on the documents.

On the contrary, respondent, whose argument was sustained by the Court of Appeals, insists that the signatures appearing on the documents appear to be regular.

At the onset, this Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.⁸

The instant case falls under the exceptions because the findings of fact of the Office of the President are contrary to that of the Court of Appeals warranting review by this Court.

Petitioner invoked Item Nos. 4 and 4.1 of DPWH Department Order No. 33, Series of 1988 on the Revised Guidelines for the Procurement of

⁷ *Office of the Ombudsman (Visayas) v. Zaldarriaga*, G.R. No. 175349, 22 June 2010, 621 SCRA 373, 380.

⁸ *Isabelita vda. de Dayao v. Heirs of Gavino Robles*, 612 Phil. 137, 144-145 (2009).

Supplies, Materials, Spare Parts, Equipments, including Non-Personal Services dated 28 April 1988 and Items D, 1.2, 1.4 and 1.6 of DPWH Memorandum dated 31 July 1997 on Additional Guidelines Re: Purchase of Spare Parts and Repairs of DPWH Central Office Service Vehicles, both pertaining to emergency purchases, to wit:

4. Emergency Purchase

- 4.1 Emergency purchase shall be allowed only where the need for the supplies, materials, furnitures, equipment, spare parts or repair of an equipment exceptionally urgent or absolutely indispensable to prevent immediate danger to, or loss of life and/or property, or avoid detriment to the public service as certified by the end-user and approved by the higher authorities.

D. FUNDING REQUIREMENTS

1. Documentation – No claim for payment for the emergency minor/major repair of service vehicles of this Department shall be processed by the Accounting Division, CFMS without strictly following provisions of COA Circular No. 92-389 dated November 3, 1992. The following documentary requirements shall be complied with prior to finding and/or processing of payment, to wit:
 - 1.2 Certification of Emergency Purchase/Repair which shall be signed by the end-user, duly approved by the Head of Office concerned (with the rank higher than Division Chief);
 - 1.4 The Requisition for Supplies or Equipment (RSE) which shall be signed by the end-user, recommended for approval and duly approved by the official concerned, in accordance with the existing delegation of authorities;
 - 1.6 Certificate of Acceptance which shall be signed by the end user of said vehicle. All documents under accounting and auditing rules and regulations, shall be signed by the official and/or supplier concerned over their respective printed names.

Petitioner highlights the importance of the certification and signature of the end-user on the documents relating to emergency purchases, because, the end-user would be the first to detect if there are actual defects on the vehicles and who will certify on the immediate need for the repairs of the vehicle to justify the emergency purchases, and exempt such requisition from public bidding. Moreover, the job order signed by the end-user is the initiating document and primary basis for determining accountability.

While respondent is not expected to scrutinize each and every transaction covered by the RSEs and other documents, he should have at least verified the contents of these documents and seen to it that each requisition complied with existing safeguards on emergency purchases and/or repairs.

Petitioner correctly pointed out that the annotation on the RSEs “turned over to the CESP-D-BOE due for repair and/or issuance to various field offices” should have alerted respondent on the irregularity of the purported emergency purchases and repairs. Indeed, the fact that the vehicles were turned over to Central Equipments Spare Parts Division for repair without certification from the end-users only meant that repairs were not urgently needed.

Complete reliance on signatures is a ministerial function but respondent, as Assistant Director of BOE under DPWH, does not exercise purely ministerial duties. His duties entail review and evaluation of documents presented before him for recommending approval. He cannot simply recommend approval of documents without determining compliance with existing law, rules and regulations of the Department. As Assistant Director of BOE, his obligation is not limited to merely affixing his signature in the emergency purchases documents. While he does not need to personally and physically inspect each and every vehicle subjected to emergency repair and/or purchases, he must ensure that the subject vehicles in fact necessitate repairs through the signature and certification of the end-users.

The Court of Appeals anchored its ruling on the case of *Arias v. Sandiganbayan*,⁹ where the Court acquitted Arias, who was an Auditor of Rizal Engineering District in Pasig and passed upon and approved in audit the acquisition as well as payment of lands needed for the *Mangahan Floodway Project*. According to the Court, all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter negotiations. However, the Court went on to state that “there should be other grounds than mere signature or approval appearing on the voucher to sustain a conspiracy charge and conviction” or dismissal in this case.

There exists a ground other than the signatures appearing on the emergency purchase/repair documents that should have prodded respondent to conduct a more than cursory examination of the documents. The absence

⁹ 259 Phil. 794 (1989).

of a certification and signature of the end-user which would justify the emergency repair and/or purchase is glaring.

PAGC, as affirmed by the Office of the President found respondent guilty of dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service.

Dishonesty is defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or registration. Dishonesty was understood to imply a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity.¹⁰ Respondent's act of recommending approval despite lack of certification from end-users does not constitute dishonesty. It is actually a form of gross neglect of duty and grave misconduct.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.¹¹

Misconduct is an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.¹²

The failure of respondent to exercise his functions diligently when he recommended for approval documents for emergency repair and purchase in the absence of the signature and certification by the end-user, in complete disregard of existing DPWH rules, constitute gross neglect of duty and grave misconduct which undoubtedly resulted in loss of public funds thereby causing undue injury to the government.

¹⁰ *Concerned Citizen v. Gabral, Jr.*, 514 Phil. 209, 219 (2005); *Sevilla v. Gocon*, 467 Phil. 512, 521 (2004) citing *Aquino v. The General Manager of the GSIS*, 130 Phil. 488, 492 (1968).

¹¹ *Civil Service Commission v. Rabang*, 572 Phil. 316, 322-323 (2008).

¹² *Golangco v. Atty. Fung*, 535 Phil. 331, 341 (2006).

In sum, this Court finds substantial evidence to hold respondent administratively liable.

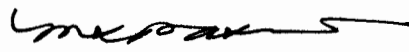
Pursuant to Sections 22 and 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, grave misconduct and gross negligence in the performance of duty are classified as grave offenses punishable by dismissal.

WHEREFORE, the petition is **GRANTED**. The Decision dated 23 December 2008 and the 9 July 2009 Resolution of the Court of Appeals in CA-G.R. SP. No. 75379 dismissing the administrative charges against Florendo B. Arias are **REVERSED and SET ASIDE**. Administrative Order No. 57 issued by the Office of the President imposing the penalty of dismissal from service with forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service on Florendo B. Arias is hereby **REINSTATED**.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Berlas-Bernabe
ESTELA M. BERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice