

[ADMINISTRATIVE ORDER NO. 393, April 27, 1998]

DISMISSING FROM THE SERVICE MACORRO MACUMBAL AND ROBERTO DE VERA, REGIONAL EXECUTIVE DIRECTOR AND REGIONAL TECHNICAL DIRECTOR, RESPECTIVELY, OF DENR REGION IX, ZAMBOANGA CITY, FOR GRAVE MISCONDUCT, DISHONESTY, GROSS NEGLECT OF DUTY, INEFFICIENCY, INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE

Before this Office are administrative complaints filed against respondents Macorro Macumbal and Roberto de Vera, Regional Executive Director and Regional Technical Director, respectively, of DENR Region IX, Zamboanga City for alleged grave misconduct, dishonesty, gross neglect of duty, inefficiency, incompetence in the performance of official duties and conduct prejudicial to the best interest of the service.

In view of the gravity of the charges leveled against them, respondents were formally charged and placed under preventive suspension for ninety (90) days while the charges against them were investigated and heard.

It should be noted that respondents are presidential appointees.

Respondent Macumbal was charged for approving the Integrated Annual Operation Plan (IAOP) of Siari Timber Co., Inc. (Siari), on April 29, 1995 even before the members of the Regional Review Committee could affix their signatures on May 11, 1995, which appeared as wanton disregard of the basic requirements before a licensee could resume operations in second growth forests prescribed under existing forestry rules and regulations, particularly DENR Administrative Order (DAO) No. 24, Series of 1991. Macumbal was also charged with gross misrepresentation by claiming that the temporary allowable cut of 9,560 cu. m. granted to Siari was based on a 10% timber inventory previously conducted in the area despite knowledge that the composite forest inventory team created under DENR Special Order No. 564 dated May 22, 1995 has yet to complete its field work.

Both respondents, Macumbal and De Vera, were further charged for failing, as accountable officers, under DAO No. 12, Series of 1992, to exercise adequate supervision of the logging operations of Siari, thereby abetting the gross violations committed by said company, such as: (1) cutting of almaciga which is a prohibited species; (2) cutting timber before approval of IAOP; (3) cutting undersized trees; (4) farming-out its license to Vicmar and Findlay-Miller; (5) failure to employ a registered forester on full time basis; and (6) violations of existing forestry laws and regulations.

For his defense, respondent Macumbal in his Answer, which facts were reiterated in his direct testimony, alleged that he had been in the government service for the last thirty one (31) years as Forester, Assistant District Forester, Regional Director and lastly Regional Executive Director of Region IX up to the time of his suspension. Respondent also claims to hold a Bachelor of Science in Forestry and Masteral Degree in Forestry from the University of the Philippines at Los Baños.

Respondent Macumbal stated in his Answer that sometime in February 1995, the Office of the DENR Secretary through Atty. Cedrick Ruiz informed him that then Secretary Angel C. Alcala gave him authority to grant Temporary Allowable Cut (TAC) of not more than Ten Thousand (10,000) cubic meters of timber to Siari. Allegedly, the same respondent countered with the fact that there was no such company in the region. Furthermore, he allegedly told Ruiz that he could not implement any action unless ordered by Secretary Alcala in black and white.

Macumbal, too, claimed that after an alleged conversation over the phone and apprehensive over the repercussion of allowing a nine (9) year idle TLA to resume operations, especially at a time nearing elections, respondent looked for the files of Siari and discovered a Memorandum dated November 21, 1994 of then Secretary Angel Alcala informing the OIC-RED of DENR, Region IX, Zamboanga City, to the effect, that TLA No. 185 of Siari was deemed VALID and SUBSISTING. He subsequently received the March 1, 1995 memorandum of Secretary Alcala giving him an authority to grant Temporary Allowable Cut (TAC) to Siari of not more than 10,000 cubic meters, pending the conduct of a 10% inventory over residual forest Block I inside the TLA area of the Company, subject to certain conditions. To respondent Macumbal, his understanding of Condition No. 3 was that it referred to the Regular Annual Operations Plan required of TLA holders to cover yearly operations and not a plan for the Temporary Allowable Cut (TAC). It could not refer to any other plan because a subsequent reading of the other conditions, like Condition No. 1, specifically authorized a TAC to be good only for six (6) months and Condition No. 2 requires that the TAC should form part of the sustained annual allowable cut (AAC) based on the result of the ten percent (10%) inventory. Besides, the IAOP under Condition No. 3 has yet to be prepared, since the Inventory Team created by the Office of the Secretary had not yet completed its inventory.

Anent the charge of approving the IAOP of Siari on April 29, 1995 and even before the members of the Regional Review Committee could finally affix their signatures on the Approval Sheet of the IAOP on May 11, 1995, respondent Macumbal advanced the position that what he approved was not the Integrated Annual Operations Plan or IAOP of the company but a Temporary Integrated Operations Plan or TIOP. To bolster his defense, he likewise claimed that the TIOP was different from the IAOP, wherein the former refers to the grant of temporary allowable cut or TAC.

Respondent Macumbal stood firm that there was an honest mistake in the designation of the date of the approval of the plan. And that after the Regional Review Committee had deliberated on the TIOP of Siari, the same was presented to him for approval. RTD Roberto de Vera, who was the Chairman of the Regional Review Committee, in a communication dated April 28, 1995, informed him of this fact and wrote: "Should you concur, attached is the approval letter of the aforesaid plan for your signature." Respondent Macumbal, after reviewing the approved letter, discovered that it did not contain the Approval Sheet and the computation of the allowable cut. Hence, he returned the folder containing the plan. On May 11, 1995,

it was presented to him again and after having found that his instruction was complied with, he signed the Approval Sheet and the letter earlier presented to him with the original date (April 27, 1995) left unchanged. The Approval Sheet would show that he signed the same on May 11, 1995.

As to the charge of gross dishonesty for allegedly making a false claim that a 10% timber inventory was previously conducted, respondent Macumbal alleged that it was premised on the fact that the TIOP which was presented by the Regional Review Committee contained a Stand and Stock Table. That this document, among others, bore the signatures of the Timber Management Officer of CENRO Dipolog, the Chief, Timber Management Section, Regional Office and a Registered Forester. Hence, he found no reason to doubt the authenticity of these documents and the signatures of the DENR officials adverted to above.

Respondent Macumbal likewise claimed that he personally asked the RTD for Forestry if there was an actual inventory conducted and was allegedly informed that there was indeed an inventory; that RTD de Vera likewise informed him that there was a tally sheet as shown by a series of indorsements. Moreover, Timber Management Officer Romeo C. Tala, on April 18, 1995 cited that the plan was prepared following DAO 24, Series of 1991, and DENR Memorandum Order No. 8, dated July 4, 1991. In addition, respondent Macumbal contended that Provincial Environment and Natural Resources Officer Hilarion Ramos in his 3rd indorsement dated April 21, 1995 certified that he checked, reviewed and found the same to be in conformity with Department Administrative Order No. 12, series of 1992.

Respondent Macumbal further emphasized that the prepared plan, which was approved by him, was different and distinct from the IAOP. Furthermore, Condition Nos. 1 and 2 contained in the March 1, 1995 Memorandum of former Secretary Angel C. Alcala clearly showed that the TAC was for six (6) months only and that this will form part of the sustained AAC to be computed based on the result of the ten (10) percent inventory. He also claimed that the inventory, which he mentioned to have been conducted previously as evidenced by the cited documents and which became the basis for the Stand and Stock Table, was only made for the purpose of the Temporary Integrated Operation Plan (TIOP) and the grant of the TAC to Siari and not the inventory required for the grant of a regular IAOP.

Allegedly prescinding from the foregoing circumstances, respondent Macumbal informed then Secretary Angel Alcala that a 10% inventory was conducted previously over the area.

As to the charge of gross neglect of duty resulting from his failure to exercise adequate supervision over the logging operations of Siari, he answered that he could not personally supervise the day-to-day logging activities of every timber licensee in his jurisdiction. He claimed that this was the function of his subordinate officials like the RTD for Forestry, the PENRO and CENRO, who were assigned in the field and more directly involved in the operations of the licensees under the jurisdiction of the DENR. He further claimed that he did not receive any adverse reports on the activities of Siari from the CENRO, PENRO or the RTD. Reports from certain groups based in Dipolog City that Siari was conducting illegal activities were relayed to him by USec. Virgilio Marcelo by telephone and he alleged to have acted immediately. Macumbal also said that he ordered the relief of CENRO Edgardo Callanta and required PENRO Hilarion Ramos to explain within seventy-two (72) hours why the latter should not be relieved and/or charged for being remiss in the

performance of his official duties. On June 16, 1995, he stopped the logging operations of Siari until their Operation Plan is reviewed and approved by the Central Office with the designated area of operations delineated on the ground. Respondent likewise stated that in compliance with the Memorandum of Secretary Victor O. Ramos dated July 25, 1995 revoking the authorization of TAC and ordering the stoppage of all preparatory activities and logging operations of Siari, he directed the CENRO of Dipolog City on August 2, 1995 to implement the Order of the Secretary.

On the charge that respondent RTD de Vera failed to exercise adequate supervision of the logging operations of Siari resulting in gross violations committed by said company, such as: "cutting of *almaciga* which is a prohibited species; cutting timber before the approval of the IAOP; cutting undersized trees; farming-out its license to Vicmar and Findlay-Miller; failure to employ a registered forester on full time basis, etc., all in violation of existing forestry laws, rules and regulations which omission constitutes gross neglect of duty and/or inefficiency and incompetence in the performance of official duty and/or conduct grossly prejudicial to the best interest of the service", respondent de Vera alleged in his answer, which he reiterated in his testimony, that it was caused by the approval by the Regional Review Committee of the DENR, Region IX, Zamboanga City of the IAOP for 1995 of Siari on May 6 and 11, 1995. To respondent de Vera, the same caused the irregular resumption of logging operations of said company, without taking into account the essential conditions prescribed under existing forestry laws and regulations, particularly DAO 24 and DMO 8, both Series of 1991, and DAO 12, Series of 1992, before a licensee could resume operations.

Respondent de Vera further stressed that, from the start, he was against the resumption of Siari's logging operations without the latter having first obtained its IAOP and having the same approved by the DENR-Central Officer on the basis of the following reasons, to wit:

- a) There was no ten percent (10%) inventory made on Block I, by duly authorized representatives, per rules and regulations as basis to prepare the Integrated Annual Operations Plan; and
- b) He received reliable information that Siari intended to farm-out its timber license which he knew was a gross violation of the existing DENR laws, rules and regulations.

Respondent de Vera further testified that he did not sign the Approval Sheet which was passed around the members of the Regional Review Committee on May 6 and 11, 1995; that he insisted that the final copy of the said IAOP be sent to the DENR Secretary for further review and approval, considering that, as shown by the records, Siari was not engaged in continuing logging operations, and thereby should be treated as a new one, in accordance with past practices.

Respondent de Vera nonetheless clearly admitted that something was then wrong somewhere. And that, if there is anybody to be blamed, it should be Siari as there appeared a reasonable ground to believe that the company should be liable including the DENR field officers who failed to stop the alleged logging operations in the area without an IAOP finally approved by the DENR Secretary.

Respondent de Vera further alleged that before the subject IAOP was submitted to the Regional Office for deliberation, he confronted one Rodrigo Kwan, the General