

[ADMINISTRATIVE ORDER NO. 57, January 30, 2003]

IMPOSING THE PENALTY OF DISMISSAL FROM SERVICE WITH FORFEITURE OF RETIREMENT BENEFITS AND PERPETUAL DISQUALIFICATION FOR REEMPLOYMENT IN THE GOVERNMENT SERVICE ON BURT B. FAVORITO, DIRECTOR, ADMINISTRATIVE MANPOWER AND MANAGEMENT SERVICE; EMILY M. TANQUINTIC, DIRECTOR, COMPTROLLERSHIP AND FINANCIAL MANAGEMENT SERVICE; FLORENDO B. ARIAS, ASST. BUREAU DIRECTOR, BUREAU OF EQUIPMENT; OSCAR D. ABUNDO, DIRECTOR, LEGAL SERVICE; AND, ABRAHAM S. DIVINA, JR., DIRECTOR, BUREAU OF EQUIPMENT, ALL OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH).

Acting upon reliable information on alleged anomalous reimbursements for motor vehicle emergency repairs by certain DPWH officials, Hon. Simeon A. Datumanong, DPWH Secretary, issued on January 9, 2002 Department Order No. 15 creating a committee to investigate the matter. The Internal Audit Service was tasked by such committee to assist in its fact-finding mission.

On June 23, 2002, the Internal Audit Service recommended the institution of administrative complaints at the Presidential Anti-Graft Commission (PAGC) against involved DPWH employees who are presidential appointees in their Audit Report, which is quoted as follows:

"RECOMMENDATIONS

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2. Furnish the Presidential Commission Against Graft and Corruption (PCAGC} copy of the Committee report towards its institution of appropriate administrative complaints against DPWH presidential appointees named in the report."

On June 26, 2002, Secretary Datumanong furnished PAGC a copy of the Audit Report, which was made the basis of PAGC's investigation and the filing of the Formal Charge against employees of the DPWH who are presidential appointees.

Quoted hereunder are the findings of facts and law of the Presidential Anti-Graft Commission (PAGC) as contained in its Resolution dated 19 December 2002, thus-

"The Honorable Secretary of the Department of Public Works and Highways, Simeon A. Datumanong, referred to the Presidential Anti-Graft Commission an Audit Report dated June 23, 2002, reporting that its Internal Audit Service did a review of almost seven thousand [7000] disbursement vouchers for the Fiscal Year 2001, covering 573 vehicles and equipment. The said vehicles and equipment were the subject of

purported emergency repairs and replacement of defective spare parts which cost the government the amount of P139,633,134.26.

The Presidential Anti-Graft Commission has in its custody documents gathered from and submitted by the DPWH pertaining to three motor vehicles, to wit: Mercedes Benz, with plate # NRV 687/HI-2297. Nissan Pick-up, hearing plate # TAG 211/HI-4161 and Mitsubishi Pajero, with plate # PLM 494/HI-355B which were alt part of the above-said Audit Report, The end-users of these vehicles are Engr. Medei F. Chua, Chief, Planning and Design Division, DPWH-NCR. Atty. Irene D. Ofilada, Director. Internal Audit Service and Asst. Regional Director Veniedo O. Reyes, DPWH Region IV-B, respectively.

After a thorough evaluation of the documents submitted, Ihe Commission found a prina facie case against the herein respondents, all presidential appointees who are within the jurisdiction of the Commission (**Executive Order # 12**, April 16, 2001}, Thus. on November 28. 2002, the Investigation Office of the Commission filed a Formal Charge as nominal complainant against the respondents. The following day, an Order was issued by the Commission requiring the submission of a Counter-Affidavit/Verified Answer by the respondents. Likewise, the Preliminary Conference was scheduled on December 12, 2002.

During the Preliminary Conference, the parties agreed to submit the case for resolution after filing their respective position papers and/or memoranda on the 17 of December 2002.

A careful perusal of the formal charge and the documents submitted revealed the following facts.

The respondents, together with other employees of the DPWH who are non-presidential appointees and who are under the respondent's control and supervision, unlawfully and knowingly perpetrated acts in violation of Section 20 of the General Appropriations Act {GAA) of Fiscal Year 2000 (Republic Act No. 8760) by facilitating the alleged anomalous emergency repairs of several DPWH motor vehicles for Calendar Year 2000-2001 from the wrong fund source. The same is an offense constituting 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 and Highways) of the same **General Appropriations Act**, Section 3 (e). (i) of **Republic Act No. 3019**, as amended and sections 4 (a), (c) and 7(a) of **Republic Act No, 6713**.

The respondents likewise committed acts that are violative of and contrary to Item No. 4, 4.1, **DPWH D.O No. 33, series of 1988** and **DPWH Memorandum dated July 31, 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 **RA 3019**, as amended and Sections 4 (a), (c) and 7(a] of **RA 6713**.

Respondent Florendo Arias. Assistant Bureau Director, Bureau of

Equipment, recommended the approval of twenty-four (24) Requisitions for Supplies and/or Equipment (RSE), which were not requested/certified and signed by the end-users of the vehicles. Twenty (20) of these RSEs are for the Mercedes Benz and four (4) RSEs are for the Nissan Pick-up.

The same respondent, despite personal knowledge that the end-users of the aforesaid vehicles did not request/sign and/or certify the RSEs, still signed the Request of Obligation and Allotment (ROA), He likewise approved the Report of Waste Material purportedly for the said vehicles even if there were no such waste materials because the vehicles were not subjected to actual repairs. Respondent Arias, without authority, also affixed his signature in box C of the twenty four Disbursement Vouchers for the same vehicles.

Respondent Burl B. Favorite, also, notwithstanding personal knowledge that the end users of the two vehicles mentioned did not request/sign and/or certify the 24 RSEs. still approved them. In addition, he approved the ten (10) RSEs for the Mitsubishi Pajero even without the request/signature of the end-user. He even affixed his signature in box C of the ten (10) Disbursement Vouchers. Respondent Arias then approved the ten (10) Reports of Waste Material on the said Pajero, despite knowledge that there were no repairs done.

On her part, respondent Emily M. Tanquintic, Director of Comptrollership and Financial Management Service (CFMS), countersigned checks in payment for the purported repairs and/or replacement of spare parts, despite the fact that the attached supporting documents are dubiously anomalous. The following were the Land Bank of the Philippines checks she signed purportedly for the repairs of said Mercedes Benz and the Nissan Pick-up:

<u>Check#</u>	<u>Date Issued</u>	<u>Amount</u>
1475563	October 9,2001	P24,550
1475665	October 10, 2001	24,410
1475669	October 10, 2001	24,960
288100-DD	December 19. 2001	24,700
28B162-DD	December 20, 2001	24,550
288170-DD	December 20, 2001	25,000
2 38305 -DD	December 21, 2001	24,900
288561-DD	December 21, 2001	2 4,700
288562-D D	December 21, 2001	22,300

The fourth respondent, Oscar D. Abundo. Director of Legal Service, was 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 incomplete. The following were the Land Bank of the Philippines checks referred to:

<u>Check#</u>	<u>Date Issued</u>	<u>Amount</u>
1586879	November 9, 2001	P25,.000
1586916	November 9, 2001	23,780

Respondent Abraham S. Divina, Jr., Director of Bureau of Equipment, failed to institute necessary management monitoring and control systems

in the preparation and maintenance of equipment ledgers for each vehicle. The said ledgers could have contained individual equipment profiles of record repairs, records of purchases of spare parts and movement of the vehicles. His failure resulted to irregularity or illegal acts within his area of jurisdiction.

The DPWH authorized payment and has actually paid the total amount of P832,140 for the purported repairs and/or replacement of spare parts for the three (3) motor vehicles, covering thirty four (34) transactions/disbursement vouchers, to wit:

- a. Nissan Pick-up = P98,560 (4 transactions)
- b. Mitsubishi = 249,020 (10 transactions)
Pajero
- c. Mercedes Benz = 484,560 (20 transactions)

In their memoranda, the respondents answered the issue on the use of the "wrong fund source" by quoting in toto the letter made by Assistant Secretary Evelyn V. Guerrero dated November 5, 2002 addressed to Atty. Gabriel Q. Enriquez, Chairman of the DPWH Hearing Committee, to wit:

"Dear Atty. Enriquez:

This refers to your letter dated October 17, 2002 requesting for legal opinion from the DBM if the emergency repairs of service/motor vehicles may be charged against the 3.5% Engineering and Administrative Overhead of the projects of the DPWH. Your letter alleges that this practice is in violation of Special Provision No. 9 of the DPWH in the FY 2000 GAA, raenacted In FY 2001.

It is our view that repairs of service/motor vehicles, whether regular or emergency, maybe charged against the 3.5% Engineering and Overhead of projects of the DPWH as provided In Special Provision No. 9 of the DPWH In the FY 2000 GAA. As to whether the aforesaid repairs is {sic} considered emergency or not, it is submitted that the DPWH is in a better position to determine the same being the implementing agency concerned.

In this connection, it may be informed that the DPWH can charge 3.5% Engineering and Administrative Overhead to alt project funds where the DPWH is the implementing Agency.

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EVELYN V. GUERRERO

Assistant Secretary"

On the charge that the respondents acted unlawfully in approving the transactions enumerated despite the absence of the required request and signature of the end-user, they answered that the act of affixing their signatures in the transactions is purely a ministerial act. Further, they

alleged that there good faith in the performance of their public function.

The sole issue now is whether or not the respondents may be held liable administratively for affixing their signatures/approving the aforesaid transactions despite the absence of the Requisition for Supplies and Equipment (RSE) prepared and signed by the end-users of the three (3) service vehicles.

The respondents are liable.

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. Item No. 4, 4-1 of DPWH Department Order No. 33, Series of 1988, on Revised Guidelines for the Procurement of Supplies, Materials, Spare Parts, Equipment, Including Non-Personal Services, dated April 28, 1983, provides:

'4. Emergency Purchase

'4.1 is 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, "(emphasis supplied)

addition. 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.

"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, 1932. 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*