

EN BANC

[A.M. No. 2011-04-SC, July 05, 2011]

RE: GROSS VIOLATION OF CIVIL SERVICE LAW ON THE PROHIBITION AGAINST DUAL EMPLOYMENT AND DOUBLE COMPENSATION IN THE GOVERNMENT SERVICE COMMITTED BY MR. EDUARDO V. ESCALA, SC CHIEF JUDICIAL STAFF OFFICER, SECURITY DIVISION, OFFICE OF ADMINISTRATIVE SERVICES.

R E S O L U T I O N

PER CURIAM:

Before us is an administrative case which arose from the investigation conducted by the Office of Administrative Services (OAS) in connection with a complaint against Mr. Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, OAS for alleged gross violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service.

I. Antecedents

Respondent was appointed by the Court as SC Chief Judicial Staff Officer, Security Division, OAS on July 14, 2008. His application papers show he has experience and training as a police officer, having been employed as Chief Inspector of the Philippine National Police (PNP) Aviation Security Group at the time of his appointment in the Supreme Court.

Immediately upon his appointment on July 14, 2008, respondent was allowed to assume office and perform his duties, for reasons of exigency in the service although he has yet to comply with the submission of all the documentary requirements for his appointment.

During the course of his employment, an anonymous letter ^[1] reached the OAS reporting the respondent's gross violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service. The letter alleged that respondent accepted employment, and thus received salaries and other benefits, from the Court **and also** from the PNP of which he remained an active member.

The OAS' inquiries on this allegation confirmed that prior to his employment at the Court, respondent was an active member of the PNP assigned with the Aviation Security Group - 2nd Police Center for Aviation Security at the Manila Domestic Airport in Pasay City, with a permanent status and rank of Police Chief Inspector. Taking the chance to explore his opportunities and skills outside of the police service, he applied for the position of SC Chief Judicial Staff Officer, Security Division, OAS. While employed in the Court and receiving his regular compensation, he continued to be a bonafide member of the PNP assigned with the Aviation

Security Group with the same status and rank of Police Chief Inspector until the date when he optionally retired on September 30, 2009.

The OAS was also informed that the Internal Affairs Office (IAO) of the PNP is likewise carrying out a separate probe and investigation on respondent for the same alleged gross violation of the Civil Service Law.

Considering the seriousness of the matter, respondent was preventively suspended by the Court pending the results of the IAO's investigations and the separate administrative investigation of the OAS. [2]

In the OAS Memorandum dated May 6, 2011, [3] respondent was directed to explain why he should not be administratively charged with gross dishonesty and conduct prejudicial to the best interest of the service for violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service.

In his letter-comment dated May 26, 2011, [4] respondent submitted to the findings of the OAS but *"humbly implore your magnanimity not to charge him with gross dishonesty and conduct prejudicial to the best interest of the service"* [5] and offered the following explanation:

2.1 On January 24, 2008, I applied for optional retirement as a member of the Philippine National Police (PNP). At that time, I was informed that my application would be effective on March 31, 2008, or a period of three (3) months from its submission date.

2.2. However, I was advised that, as part of the new policy on optional retirement, the effectivity of my application would be six (6) months from date of its submission, or on July 14, 2008.

2.3 Pending the approval of my application for optional retirement, I applied with the Honorable Supreme Court for the position of Chief Security Officer. In the course of my interview, I declared that the Philippine National Police (PNP) had yet to formally approve my application for optional retirement.

2.4 Due to the urgent need to fill-in the said vacant position I was hired by the Honorable Supreme Court as its employee which took effect on July 14, 2008. From then on, and as shall be further discussed hereunder, I have faithfully discharged my duties and responsibilities in order to ensure the safety and security of the Honorable Supreme Court, as an institution; the Honorable Justices; and the court personnel.

2.5 In good faith, and without concealing any material fact from the Honorable Supreme Court, I submitted all the required documents and clearances in support of my appointment. At that time, I had no reason to doubt that my optional retirement would be deemed effective on July 14, 2008-which date actually coincided with the effectivity of my employment with the Honorable Supreme Court.

2.6 But, then, as fate had it, my application for optional retirement was not immediately acted upon by the Philippine National Police (PNP) within the original period of my request. As it is, such application was bypassed several times, and I was considered optionally retired on September 30, 2009.

2.7 During the period of almost fourteen (14) months, my employment with the Honorable Supreme Court overlapped with that of the Philippine National Police (PNP). In the interim, I likewise received my corresponding monthly salaries from the Philippine National Police (PNP). Not for anything else, I did so for economic reasons.

2.8 Without proffering any justification for my actions, which I now realize to be totally uncalled for, I was then of the honest impression that I was still entitled to such monthly salaries pending the approval of my application for optional retirement which dragged for a longer period of time with no fault on my part." [6]

Offering no justification and admitting his fault, and cognizant of the consequences of his wrong judgment, respondent extends his apologies to the Court and to the PNP. He also informed the OAS that he made arrangements with the PNP for the return, as in fact he had already returned, the total amount of P 560,982.86 representing his salaries and allowances which he received from the PNP covering the period July 2008 to September 2009. [7] He allegedly made such restitution to shield the PNP from undue prejudice and to erase the stigma which the incident has caused upon his person and honor.

Finally, advancing his track record of good performance both in the PNP and the Court, respondent seeks compassion and prays that the consequences be tempered.

II. Recommendation

In its report to the Court dated June 27, 2011, the OAS presented its findings that by respondent's own admission, without offering any justification, his acts have prejudiced the government. His offer of mitigating circumstance - delay in the processing of his retirement papers - is unacceptable as records of the PNP will contradict this. The Service Record issued by the PNP in his favor for retirement purposes was dated August 26, 2008. [8] Likewise, his Certificates of Clearances, namely: (a) no pending administrative case was dated August 13, 2008 [9]; (b) no money accountability was dated October 29, 2008 [10] and; (c) property accountability/responsibility was dated October 31, 2008 [11]. These documents clearly show that he only started processing the requirements for his application for optional retirement when he was already connected with the Court.

The OAS found respondent's claim that he applied for optional retirement as early as January 2008 to be merely an afterthought. The OAS further noted that the vacancy for the position of SC Chief Judicial Staff Officer of the Security Division existed only after April 30, 2008. Such circumstances lead the OAS to conclude that respondent first made clear to be appointed to the Court prior to filing his

application for retirement to be sure that he transfers to another government agency, at the same time enjoying the fruits of his retirement from the PNP. It should be noted that governing law on retirement of members of the PNP is different from those with the Court. If the law is the same, respondent's employment with the Court is simply one of "transfer". However, his application to and subsequent appointment to the Court is one of reemployment as evidenced by his sworn Certificate of Gratuity ^[12] which he submitted to the OAS and where he clearly indicated that the inclusive dates of employment with the PNP was from March 29, 1999 to July 13, 2008, and that the cause of his separation was optional retirement.

The OAS thus found respondent's indirect claim of good faith unavailing. His regular receipt of his salaries from the PNP despite presumably exclusively working with the Court implies a deliberate intent to give unwarranted benefit to himself and undue prejudice to the government especially so by his regular submission of monthly/daily time record as a mandatory requirement for inclusion in the payroll.

The OAS also found that respondent became aware of the approval of his application for retirement as early as September 30, 2009. Notwithstanding such knowledge, he did not immediately refund his overpayment, if that was indeed the case, and that his act of returning his salaries after the period of 20 months was also a mere afterthought as he did so only because the Court became aware of it and directed him to explain. Would he have done so if no report of his actuation was ever brought to the attention of the Court? The lapse of almost 2 years without him doing so speaks of his intent not to return the same.

Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. ^[13]

The OAS found respondent's actuation even amounts to gross dishonesty. His receipt of salaries from the PNP despite not rendering any service thereto is a form of deceit. Jurisprudence states that dishonesty implies a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." ^[14]

That respondent actually rendered services to the PNP, if any, despite employment in the Court, is inconsequential. The prohibition against government officials and employees, whether elected or appointed, from concurrently holding any other office or position in the government is contained in Section 7, Article IX-B of the 1987 Constitution which provides: