

## EN BANC

[ G.R. No. 177666, April 30, 2008 ]

**EUGENIO R. AVENIDO, Petitioner, vs. CIVIL SERVICE COMMISSION, Respondent.**

### DECISION

#### PER CURIAM:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision dated 18 January 2007, rendered by the Court of Appeals in C.A. G.R. SP No. 93210,<sup>[1]</sup> affirming the Resolution<sup>[2]</sup> dated 6 August 2004, issued by the Civil Service Commission (CSC), finding petitioner Eugenio Avenido guilty of Dishonesty and Conduct Prejudicial to the Best Interest of the Service, which warranted his dismissal.

While petitioner was employed as an Administrative Officer at the National Telecommunications Commission (NTC), he was approached by a town mate, Pablo Daz (Daz), who was a representative of Animus International Inc. (Animus International), a corporation engaged in the business of importing mobile telephone units and Subscriber Identity Module (SIM) cards. During this visit from Daz, petitioner personally prepared an Order of Payment for a Permit to Import Cellular Phones in favor of Animus International. Thereafter, petitioner accompanied Daz to the office of Marcelo M. Bunag, Jr. (Bunag), the acting assessor and processor of the Amateur, Dealer and Manufacturer Service of the NTC licensing unit. Since petitioner formerly served as an assessor, and is now Bunag's superior, Bunag relied on petitioner's judgment and approved the Order of Payment prepared by the petitioner, which by itself, appeared regular. Petitioner then personally delivered the Order of Payment, together with the payment for the assessed fees of Two Hundred Forty Pesos (P240.00), to the Cashier. Ivy Daban (Daban), Clerk I and acting cashier, received the payment and issued an Official Receipt for the Permit to Import Cellular Phones.<sup>[3]</sup>

In a facsimile letter dated 21 February 2001, Fernandino A. Tuazon, the Officer-in-Charge of the Customs Intelligence and Investigation Service of the Bureau of Customs, sought verification from Onofre de Galindo (Galindo), the Chief of Equipment Standards Division, NTC-NCR, whether Animus International was authorized to import Motorola cellular phones in commercial qualities. Attached to the said letter was a copy of the Permit to Import, which appears to have been signed by petitioner with the title ECE, Attorney III. After examining the records of the NTC-NCR, Galindo discovered that Animus International was not an accredited distributor's supplier of Motorola Philippines.<sup>[4]</sup>

Further investigation conducted by Arnold P. Barcelona (Barcelona), Engineer V and Chief of the Enforcement & Monitoring Section of the NTC, showed that Animus International did not even file any application for a Permit to Import, an important

requisite before the preparation of an Order of Payment and the issuance of a Permit to Import. Animus International, however, was able to import approximately P40,000,000.00 worth of cellular phone SIM cards. Bunag and Barcelona confronted the petitioner regarding the irregularity of the issuance of the Permit to Import in favor of Animus International. Thereafter, Bunag filed an administrative complaint against petitioner.<sup>[5]</sup>

On 6 April 2001, the NTC issued a Show Cause Order,<sup>[6]</sup> wherein the above-mentioned incidents were recounted in detail, and petitioner was formally charged with Dishonesty, Usurpation of Official Function and Falsification of Public Document.

During the formal investigation conducted by the NTC, petitioner was given an opportunity to present his defense. He submitted a certification by the National Bureau of Investigation (NBI) stating that the signature appearing in the Permit to Import was not his. Petitioner averred that the signature was forged by his town mate, Daz. He only admitted to preparing the Order of Payment for the Permit to Import and personally delivered the payment therefor to the Cashier; and he did so *"merely to accommodate one of his townsmate(s), an act of hospitality, which is very much characteristic of the Filipino culture."* <sup>[7]</sup>

In its Decision dated 23 May 2003, the NTC found petitioner liable for Conduct Grossly Prejudicial to the Best Interest of the Service. The NTC gave credence to the testimonies of Bunag and Daban. Bunag testified that petitioner prepared the Order of Payment in the name of Animus International by making the assessment of the required fees. Daban testified that, as cashier, she received from petitioner the assessment fee of P240.00. The NTC underscored the following irregularities in petitioner's acts: (1) the preparation of an Order of Payment without having been presented with an application for Permit to Import and other requirements, and (2) personally delivering the Order of Payment to the Cashier, instead of turning over the documents to Bunag, who should deliver the same to the Cashier. By acting in such manner, petitioner evinced a special interest in the issuance of a Permit to Import in favor of Animus International and a lack of concern for the proper procedure imposed by the government in the issuance of permits and licenses. The NTC also took note of the unusual fact that petitioner did not take any legal action against Daz who had falsified his signature, and caused grave damage to his reputation. The NTC suspended petitioner from service for ten (10) months.<sup>[8]</sup> The dispositive part of the Decision stated that:

WHEREFORE, in light of all the foregoing, the Commission finds respondent EUGENIO R. AVENIDO guilty of the lighter offense of "conduct prejudicial to the best interest of service" and hereby imposes upon him the penalty, for the 1<sup>st</sup> Offense, of Suspension for Ten (10) months, effective upon notice, during which period respondent shall not be entitled to all money benefits including leave credits, with a warning that a repetition of the same or similar offense shall be dealt with more severely.<sup>[9]</sup>

On appeal, the CSC affirmed the findings of the NTC in its Decision dated 23 May 2003, with modification. In its Resolution dated 6 August 2004, the CSC found petitioner guilty of Dishonesty, in addition to Conduct Grossly Prejudicial to the Best Interest of the Service, which merits the penalty of dismissal. The CSC declared that

Dishonesty involves the distortion of truth. By preparing the Order of Payment and delivering the same to the Cashier, petitioner made it appear that Animus International complied with an application for Permit to Import and other requirements; thus, petitioner acted with Dishonesty. Moreover, petitioner's gross disregard for the established procedures in the issuance of a Permit to Import is unquestionably Conduct Prejudicial to the Best Interest of the Service. Lastly, the CSC pronounced that the NTC observed due process for although the Show Cause Order failed to designate any of the offenses as Conduct Prejudicial to the Best Interest of the Service, the acts described therein constituted the said offense.<sup>[10]</sup> The dispositive part of the CSC Resolution reads:<sup>[11]</sup>

**WHEREFORE**, the appeal of Eugenio R. Avenido is hereby **DISMISSED**. However, the Decision of the National Telecommunications Company dated May 23, 2003 is hereby modified to the effect that Avenido is additionally found liable for Dishonesty. Thus, Eugenio R. Avenido is hereby meted out the penalty of dismissal from the service with the accessory penalties of cancellation of his Civil Service Eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service.

In the Decision dated 18 January 2007 in CA G.R. SP No. 93210, the Court of Appeals affirmed the 6 August 2004 Resolution of the CSC. It sustained the findings of the CSC that the Show Cause Order sufficiently described the irregularities committed by the petitioner, even if one of the offenses for which petitioner was found guilty, Conduct Prejudicial to the Best Interest of the Service, was not specified therein. Furthermore, the appellate court decreed that substantial evidence supports the finding that petitioner is guilty of both Dishonesty and Conduct Prejudicial to the Best Interest of the Service.<sup>[12]</sup>

Petitioner filed a Motion for Reconsideration of the afore-mentioned Decision of the Court of Appeals, which was denied in a Resolution dated 24 April 2007.<sup>[13]</sup>

Hence, in the present Petition, the following issues are being raised:<sup>[14]</sup>

## I

WHETHER OR NOT THE PETITIONER WAS AFFORDED AMPLE DUE PROCESS OF LAW;

## II

WHETHER OR NOT SUBSTANTIAL EVIDENCE OBTAINS TO SUPPORT CHARGES AGAINST THE PETITIONER.

The petition is bereft of merit.

Petitioner claims that he was deprived of due process of law when the NTC, thru a Show Cause Order, charged him with Dishonesty, Falsification of Public Documents and Usurpation of Authority, and then found him guilty of Conduct Prejudicial to the Best Interest of the Service, an offense which he avers is so different from the offenses with which he was earlier charged.<sup>[15]</sup>