

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 202

IMPOSING THE PENALTY OF REPRIMAND ON EMMA E. HIZON, CHIEF, MANAGEMENT INFORMATION SERVICE, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS.

This refers to the administrative complaint filed by the Department of Transportation and Communications (DOTC) against Ms. Emma E. Hizon, Chief, Management Information System (MIS), that Department, for alleged gross violation of reasonable office rules and regulations, gross misconduct, dishonesty and usurpation of official functions.

Records show that the DOTC, thru then Secretary Rainerio O. Reyes, entered into a contract with MECO Enterprises, Inc., (MECO, for brevity) for the comprehensive preventive and remedial maintenance of certain DOTC computer units and printers. After the expiration of the contract in May, 1987, the same was renewed by Secretary Reyes upon recommendation of Ms. Cynthia Ordan, then Officer-In-Charge (OIC) of the Computer Systems Division, DOTC, and herein respondent at a total cost of P127,500.00 covering the period from June 1, 1987 to May 31, 1988. It appears that said recommendation was made by Ordan, despite the fact that another contractor, the Computer Engineering Corporation, had been declared as the lower bidder in the bidding conducted in June 1987.

Sometime in August 1987, Ordan was replaced as Officer-In-Charge of the Computer Systems Division (CSD) by Millard Villaverde who undertook a study of the MECO-DOTC Computer Service Contract and found the contractual cost of P127,500.00 exorbitant.

bl Hence, Villaverde sought respondent's approval to renegotiate the said contract with a view to lowering the contract cost, which approval respondent readily gave. Thus, through Villaverde's initiative, MECO lowered the maintenance cost from P127,500.00 to P68,000.00 by excluding some of the hardware items from the original contract coverage and placing them on "on call basis".

In the ensuing renegotiation, MECO, on the assumption that the approval of DOTC higher authorities had been obtained, accepted Villaverde's proposal that the original maintenance cost of P127,500.00 be reduced to P68,000.00 and the difference to be rebated to the Department in the form of computer equipment and implements. A revised DOTC-MECO Maintenance Service Contract embodying the agreement was, therefore, prepared, signed by Villaverde and Matthew Tan, MECO President and General Manager, and thereafter presented to respondent who acquiesced to the terms incorporated therein and unilaterally approved said contract.

Pursuant to the revised contract, MECO, in the guise of a donation, delivered on October 8, 1987, and August 19, 1988, to the Computer Systems Division, DOTC, computer equipment and accessories. As there remained a balance of the supposed rebates, Villaverde requested that computer books and other materials be bought by MECO to complete the rebate. However, MECO rejected the request for being impractical and instead offered to give Villaverde P10,000 for him to purchase the needed materials. Villaverde accepted said amount and deposited it with the PNB Ortigas Branch, Pasig, Metro Manila, in his personal account, with respondent's knowledge and approval. This was done, as Villaverde was unable to deposit said amount in CSD's name which has no legal personality. Thereafter, part of the cash rebate was used to purchase computer manuals, books, snacks, etc., for the use of the CSD staff, likewise with the respondent's approval. Said disbursement was supported by corresponding receipts and were duly recorded by the Division Secretary.

Acting upon an unsigned letter-complaint received in February 1988 denouncing respondent and Villaverde's actions, Secretary Reyes directed the Investigation, Security and Law Enforcement Staff (ISLES), DOTC, to conduct an investigation thereof.

In its Investigation Report of March 6, 1989, the ISLES found respondent Hizon and Villaverde liable for usurpation of functions by performing acts beyond the scope of their authority, improper receipt and use of government funds, and attempting to cover up said irregularities. Hence, it recommended that appropriate administrative charges be filed against the two.

Conformably thereto, Secretary Reyes, on March 10, 1989, filed a complaint against respondent and Villaverde for violation of reasonable office rules and regulations, gross misconduct, dishonesty, and usurpation of official functions. On the same day, Secretary Reyes forwarded to my office the complaint against respondent Hizon for appropriate action, she being a presidential appointee.

On April 25, 1989, I placed respondent under preventive suspension for a period of ninety (90) days pending investigation of the charges against her, as requested by Secretary Reyes. Said suspension order (memorandum) was, however recalled by me on September 8, 1989, thru then Deputy Executive Secretary Magdangal B. Elma (now Presidential Assistant for Legal and Judicial Affairs), upon the expiration of respondent's 90-day preventive suspension.

Likewise, on March 10, 1989, respondent and Villaverde were jointly charged by Secretary Reyes before the Office of the Ombudsman on the basis of the same facts and circumstances. In its resolution of April 3, 1989, however, the Ombudsman dismissed said complaint upon finding that the facts charged therein do not constitute a criminal offense. In its subsequent order of May 10, 1989, the Ombudsman denied Secretary Reyes' motion for reconsideration of its aforementioned resolution.

On April 18, 1989, an amended complaint was filed against respondent and Villaverde containing basically the same allegations as the original complaint, this time signed by DOTC Undersecretary Romeo I. De Vera.

In her Answer, dated April 29, 1989, respondent denied the accusations against her and alleged, among others, that (a) the DOTC and/or the government benefited from the renegotiated transaction; (b) the transgression of procedural rules on the acceptance of equipment and cash rebate and booking of properties and funds donated to the government is excusable, considering respondent's honest and noble intention to give benefit or advantage thereto; and (c) said procedural infraction was not willfully done. By way of affirmative defense, respondent pleaded the lack of jurisdiction of DOTC to hear the charges against her, she being a presidential appointee,

On March 21, 1989, I issued a memorandum to DOTC Secretary Reyes authorizing him to investigate, personally or through a committee created by him, all administrative/charges/complaints against presidential appointees in the DOTC, subject to certain conditions, thereby overruling in effect the jurisdictional objection raised by respondent.

Pursuant to said Memorandum, the case of respondent was referred to the DOTC Administrative Action Board (Ad-Hoc) for formal investigation. On June 13, 1989, after the complainant had rested its case, respondent filed a verified petition for injunction before the Regional Trial Court of Pasig (Branch 163) docketed as Civil Case NO. 58260, praying that the AAB (Ad Hoc) be enjoined from further proceeding with the hearing of the administrative case against her for lack of jurisdiction.

On October 3, 1989, Presiding Judge Ramon C. Tuason issued an order enjoining the DOTC Administrative Action Board from proceeding with the hearing/trial of the case against respondent, until further orders from the court.

Upon assumption in office of DOTC Secretary Oscar M. Orbos, respondent wrote him a letter on February 23, 1990, requesting speedy disposition of her case, alleging therein that she is now convinced that she could be afforded a fair and just hearing. In a related move, respondent filed a "MANIFESTATION AND MOTION" with the DOTC on April 24, 1990, whereby she waived her right to formal hearing and prayed that the case be submitted for resolution on the basis of the pleadings submitted. Likewise, upon respondent's motion, the RTC, Branch 163, Pasig, Metro Manila, issued an Order in Civil Case No. 58260 on April 30, 1990, lifting and setting aside the writ of preliminary injunction issued by it on October 3, 1989.

After due hearing, the DOTC found respondent liable for allowing Villaverde to renegotiate the DOTC-MECO Computer Service Contract for June 1, 1987 to May 31, 1988, and consenting to and tolerating the acceptance and disbursement of the ₱10,000 cash rebate from MECO without complying with existing rules and regulations on the matter.

However, the DOTC opined that said acts constituted only a violation of government accounting and auditing rules and regulations, rather than the offenses of dishonesty, misconduct and usurpation of official functions.

To buttress its findings, the DOTC in its 1st indorsement to my Office of June 7, 1990, stated:

"'Dishonesty' has been defined as 'an absence of integrity or disposition to betray, cheat, deceive or defraud, bad faith' (Arca v. Lepanto Consolidated Mining Co., CA G.R. 17679-R[1958]; while the offense of 'misconduct implies a wrongful intention and not a mere error of judgment' [In re: Impeachment of Horrilleno, 43 Phil. 214 (1922)]. In this case none appears on record to show any trace of deceit or bad faith or bad intention on the part of respondent Hizon. On the contrary, the records are replete with pieces of evidence which not only show absence of culpable intention but of honesty and good faith. It is noted that from the inception to the consummation of the irregularities all the actuations have been motivated by good intention. The evaluation made by Mr. Villaverde led to the discovery that the original DOTC-MECO service contract was deleterious to the Department. The act therefore of Villaverde and Hizon of renegotiating the contract was induced by their desire to correct the pernicious terms embodied therein. The acceptance of the computers and its implements as well as the cash rebate was inspired by the intention to augment the few computers that the CSD had at that time. The use of the cash rebate to purchase the necessary computer book, magazines and other implement as well as refreshments for the CSD Staff during overtime is likewise undeniably done for the good of the CSD. It cannot be denied that what is good for the CSD, in the ultimate analysis, is really for the good of the Department and public service as a whole. None can be found in the records to show that respondent Hizon acted for her own convenience or profit.

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"The charge of usurpation of official functions, pertains to the criminal and not the administrative aspect of Villaverde and Hizon's actions; hence, outside of the ambit of the jurisdiction of this Department".

While respondent's effort to enhance the efficiency and effectiveness of the DOTC Computer Systems Division in renegotiating an otherwise exorbitant and disadvantageous contract is commendable, I cannot, sad to say, countenance her act of wilfully disregarding reasonable office rules and regulations, her noble intentions notwithstanding. While it is true that the renegotiation of the DOTC-MECO contract resulted in the reduction of the contract cost from ₱127,500.00 to ₱68,000.00 and donation by MECO to the DOTC of the difference of ₱59,500.00 in the form of office equipment and supplies, to the benefits of the government, and more importantly, were it not for the timely intervention of respondent and her subordinate, Millard Villaverde, the DOTC would have been shortchanged by the transaction earlier entered into by then DOTC Secretary Reyes, these circumstances cannot relieve respondent of her liability consequent to her violation of reasonable office rules and regulations.

As aptly observed by the DOTC Secretary:

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"x x x It is clear, however, that this act of respondent Hizon was a remedial measure to cure whatever procedural defects which surrounded the questioned transaction. Ms. Hizon having been long in the government service, and considering her position as Department Service Chief could have known better the standing rules and regulations governing the matter. Her approval of or consent to depositing the cash rebate in the name of her subordinate, Mr. Villaverde, as well as, the spending of a part of said rebate even for official purpose of the staff as claimed, in disregard of prescribed rules concerning the safekeeping and proper use of public funds or trust funds exposed them to the inconvenience of explaining their actuations. Ms. Hizon who is occupying a sensitive and responsible position wilfully violated the aforementioned rules and regulations."

However, considering that this is respondent's first offense on record and that her questioned actuations were motivated by good faith, I am inclined to agree with the DOTC Secretary that

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respondent should be merely reprimanded and advised to be extra cautious in the performance of her duties and responsibilities and sternly warned that commission of another or similar offense will be dealt with more severely.

WHEREFORE, and as recommended by the Secretary of Transportation and Communications, respondent Emma E. Hizon, Chief, DOTC Management Information Service, is hereby REPRIMANDED for violation of office rules and regulations and admonished to be more cautious in the discharge of her functions and responsibilities, with a stern warning that repetition of another similar act will be dealt with more severely.

Done in the City of Manila, Philippines, this 12th day of December, in the year of Our Lord, nineteen hundred and ninety.

Armando P. Aguirre

By the President:

Mariano Sarmiento II
MARIANO SARMIENTO II
Deputy Executive Secretary

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