

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 57

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. DIVANA, 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."

Year 2000-2001 from the wrong fund source. The same is an offense constituting Illegal 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 Burt B. Favorito, 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
288162-DD	December 20, 2001	24,550
288170-DD	December 20, 2001	25,000
288305-DD	December 21, 2001	24,900

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 578 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, bearing plate # TAG 211/HI-4161 and Mitsubishi Pajero, with plate # PLM 494/HI-3558 which were all part of the above-said Audit Report. The end-users of these vehicles are Engr. Medel 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, the Commission found a prima 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 17th 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

288561-DD	December 21, 2001	24,700
288562-DD	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 Pajero = 249,020 (10 transactions)
- 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, reenacted 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 all project funds where the DPWH is the implementing Agency.

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XXX

*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 is ~~good~~ 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, 1988, 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)

In 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, 1992. 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 accounting and auditing rules and regulations, shall be signed by the official and/or supplier concerned over their respective printed names." (emphasis supplied)

It is clear from the aforequoted that the signature and the request, by the end-user of the vehicle to be repaired, are conditions sine qua non, absence of which cannot be dispensed with and thus, no transaction shall prosper in its absence.

The end-user of the Mercedes Benz, Engr. Chua executed a sworn statement that **"personally I have no actual knowledge on how much was the cost of the repair and whether or not parts replaced were necessary, if parts were actually installed and if actual repairs were undertaken. XXX"** (Sworn Statement, August 19, 2002). Atty. Ofilada, the end-user of the Nissan Pick-up, in her affidavit declared, inter alia, **"that during the period covered by the Memorandum Receipt, the vehicle was never turned-over to the BOE for repairs, and for issuance to field offices. XXX"** Lastly, the end-user of Mitsubishi Pajero, Assistant Regional Director Reyes, executed an affidavit that **"I state that I have no personal knowledge on the said documented transactions since I have no participation whatsoever, direct or indirect, in any of the attendant processes of documentation regarding the repairs of the vehicle."** He continued, **"that I learned the details of the supposed ten (10) repair transactions only upon being furnished photocopies of the accounting records and documents by the office of Atty. Sulaik and to which I state lack of knowledge thereof."** He even emphasized **"that all the accounting documents and records supporting the supposed repair transactions show that my signature or initial does not appear anywhere therein."**(emphasis ours)

The allegation that the recommendation for approval and the approval of the RSEs is purely a ministerial act is likewise devoid of merit. A ministerial act is one the discharge of which by the officer concerned is imperative and requires neither judgment nor discretion (Lamb vs. Phipps, 22 Phil 456). The respondents, four Directors and an Assistant Bureau Director are required by the law to exercise their judgment to ascertain if, on the face of the document itself, the same is complete. The aforequoted DPWH D.O No. 33 requires the certification by the end-user that there is need for the emergency purchase of the equipment, spare parts, or repair of an equipment. Likewise, The respondents cannot be unaware of the DPWH Memorandum dated 31 July 1997 which mandates the following documentary requirements (a) for a certification of emergency purchase/repair by the end-user; (b) the RSE prepared and signed by the end-user; and (c) the certificate of acceptance signed by the end-user "prior to funding and/or processing of payment." The glaring absence of the names and signatures of the end-users of subject service vehicles on the certification, requisition for supplies and equipment and the certificate of acceptance can be seen by the naked eye without the

help of a high-powered/magnifying lens. The individual affidavits of the three end-users attesting to the fact that there were no actual repairs done, solidifies the conclusion of fraud against the respondents.

The application of the ruling in the case of Sistoza vs. Desierto, et.al., (G.R. No. 144784, September 3, 2002) to the instant case is misplaced. The Honorable Justice Josue N. Bellosillo said, among others, that:

“Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates. XXX”

This must be read in relation to the doctrine of command responsibility. Command responsibility refers to the accountability of all heads of departments and other superior officers to closely, supervise, coordinate, control and monitor the discharge of duties by subordinates. It includes the responsibility to control and monitor the activities of those operating within his area of jurisdiction and to take preventive or corrective measures as may be warranted under the premises. (paragraph 3, Memorandum from the President, dated November 19, 1999, Invoking The Doctrine of Command Responsibility for corruption in Government Offices)(emphasis supplied). The high ranking respondents who have the duty to “closely” supervise, control and monitor the discharge of duties by subordinates cannot shift the blame to their subordinates to escape liability. As heads of their respective offices, they assume full responsibility over all the actions of their subordinates, thus, caution must be employed prior to the approval of any transaction before them.

Furthermore, supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of a duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determines priorities in the execution of plans and programs; prescribe standards, guidelines, plans, and programs (Sec. 38(1), chap. 7, Book IV, **Administrative Code of 1987**).

The Honorable Justice added:

“Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, nor definite, nor certain defects or when the public officer’s trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. XXX”

In the present case, the absence of the signature and/or the certification by the end-user in the documents in question is a palpable, patent, definite and certain defect which ordinary prudence cannot ignore.

The defense of good faith shall likewise fail. Good faith refers to a state of the mind which is manifested by the acts of the individual concerned. It consists of the

honest intention to abstain from taking an unconscionable and unscrupulous advantage of another (**Abando vs. Lozada**, G.R. No. 82564, October 13, 1989). This state of mind is proven to be lacking if there is a positive act that shows the contrary intention. The positive act referred to is the signing/affixing of their signatures on the recommendation and approval of the documents in question.

The failure of the respondents to exercise their functions diligently have caused undue injury to the government which resulted to the unnecessary wastage and losses in public funds and revenues. The said failure of the respondents is tantamount to neglect. Neglect as applied to public officers "means a failure on his part to do and perform some of the duties of his office" (Words and Phrases, Volume 27, Copyright 1955).

The processing of transactions, beginning from the preparation of the RSEs, to the recommendation, to its approval; Certification of Emergency Purchase/Repairs; Certificate of Acceptance; Report of Waste Materials; Request for Obligation of Allotment; preparation and approval of disbursement vouchers up to the signing/countersigning of checks in payment for the purported repairs/replacement of defective spare parts were tainted with manifest partiality, evident bad faith and/or gross inexcusable negligence.

Herein respondents have shown their interest for personal gain as manifested by their acts of recommending, approving, including the signing/ countersigning of checks for the manifestly anomalous transactions covering the purported repairs and/or replacements of defective spare parts of the subject service vehicles. In the case of Diaz vs. CSC, these acts are referred to as a form of dishonesty. Dishonesty is a form of conduct which connotes untrustworthiness and lack of integrity, a disposition to lie, cheat, deceive, betray. This censurable conduct assumes a greater meaning when the offender is a public officer who is circumscribed with a heavy burden of responsibility to the public, and whose conduct must, at all times, be impressed with decency, decorum and propriety (CA-G.R. SP No. 40526, November 15, 1996).

The accountability of public officers has been enshrined in Article XI, Section 1 of the 1987 Constitution:

"Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."

It is the mandate of the Constitution that all public officers and employees must serve with responsibility, integrity, loyalty and efficiency (**De Luna vs. Ricon**, 250 SCRA 1, (1995)). In this case, it has been clearly shown that the respondents did not live up to this constitutional precept. Neither did they faithfully and conscientiously fulfill their sworn duties in accordance with their "**Panunumpa sa Katungkulan**" (Oath of Office), to wit:

"Ako, si _____ na hinirang sa katungkulan bilang _____, ay taimtim na nanunumpa na tutuparin ko nang **buong husay at katapatan, sa abot ng aking kakayahan, ang mga tungkulin ng aking kasalukuyang katungkulan at ng iba pang pagkaraan nito'y gagampanan ko sa ilalim ng Republika ng Pilipinas; na aking itataguyod at ipagtatanggol ang Saligang Batas**

ng Pilipinas; na tunay na mananalig at tatalima ako rito; na susundin ko ang mga batas at mga kautusang legal ng mga sadyang itinakdang may kapangyarihan ng Republika ng Pilipinas; at kusa kong babalikatin ang pananagutang ito nang walang anumang pasubali o hangaring umiwas." (emphasis supplied)

The quantum of proof necessary for a finding of guilt in administrative cases is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The evidences against herein respondents are more than adequate to support a conclusion that they are liable as charged.

Premises considered, we find all the respondents guilty of dishonesty, grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service.

WHEREFORE, PREMISES CONSIDERED, this Commission finds the respondents Burt B. Favorito, Emily M. Tanquintic, Florendo B. Arias, Oscar D. Abundo, and Abraham S. Divina, Jr. **GUILTY** and so recommends to Her Excellency, President Gloria Macapagal-Arroyo that the penalty of **DISMISSAL** from the service with forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service be imposed.

SO RESOLVED."

After a careful review of the records of the case, this Office affirms *in toto* the findings of the PAGC and holding respondents Burt B. Favorito, Emily M. Tanquintic, Florendo B. Arias, Oscar D. Abundo, and Abraham S. Divina, Jr., **GUILTY of the charges against them.**

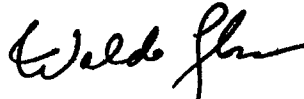
WHEREFORE, in view of the foregoing considerations, and as recommended by the Presidential Anti-Graft Commission (PAGC), the penalty of **DISMISSAL** from the service with forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service are hereby **IMPOSED** on **BURT B.**

**FAVORITO, EMILY M. TANQUINTIC, FLORENDO B. ARIAS, OSCAR D. ABUNDO,
and ABRAHAM S. DIVINA, JR.**

SO ORDERED.

Done in the City of Manila, this 30 th day of JANUARY in the year of Our
Lord, year two thousand three.

By authority of the President:



WALDO Q. FLORES
Senior Deputy Executive Secretary