

ATTY. RAUL Q. BUENSALIDA, CESO III, COMPLAINANT, V. MARINEL V. GABINETE, UTILITY WORKER I, MUNICIPAL CIRCUIT TRIAL COURT, LUPON-BANAYBANAY, DAVAO ORIENTAL, RESPONDENT.

A.M. No. P-16-3593 (Formerly OCA EPI No. 12-3976-P). February 21, 2017

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PER CURIAM:

For resolution is the Memorandum[1] dated November 11, 2015 of the Office of the Court Administrator (OCA), recommending that respondent Marinel V. Gabinete (Gabinete) be found guilty of grave misconduct, and meted the penalty of dismissal from service with forfeiture of all retirement benefits and privileges, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

Complainant Raul Q. Buensalida (Buensalida) is the Area Director of Philippine Postal Corporation (PhilPost) for Area 7, Eastern Mindanao. Respondent Gabinete occupies the position of Utility Worker I, and is assigned to the Municipal Circuit Trial Court of Lupon-Banaybanay, Davao Oriental (MCTC).

Sometime in January 2012, Percy A. Olarte (Postmaster Olarte), Postmaster I of the PhilPost Post Office in Lupon, Davao Oriental, discovered that forty-four (44) registered mail items containing refund checks in the total amount of Forty-Eight Thousand Two Hundred Eighty-Five Pesos and 70/100 (P48,285.70),[2] posted by Philippine Health Insurance Corporation (PHIC) had gone missing.[3]

Immediately thereafter, Postmaster Olarte prepared a letter-report dated January 18, 2012 (Letter Report) detailing the incident.[4]

The Letter Report prompted Buensalida to order the conduct of an investigation. Pursuant to Buensalida's directive, PhilPost's investigating team[5] issued an Investigation Report[6] dated September 12, 2012 identifying Gabinete as the culprit, on the basis of the following observations:

- On 19 July 2012, an interview was conducted with MS. ROSE GOROSPE RAMOS, Manager, One Network Bank xxx, Banaybanay Branch. She provided information that some of the reported missing PHIC [c]hecks were negotiated and presented for payment at 3A'[s] Store at Purok 4, Poblacion, Banaybanay, Davao Oriental.
- 3A's Store is owned by one MS. MARIETA[7] MEJOS CONSON who readily admitted that she did [encash] the subject PHIC [c]hecks which were presented and negotiated for payment by one MAR[I]NEL GABINETE, a [c]ourt employee from Lupon, Davao Oriental and deposited the same in her bank account at One Network Bank, Banaybanay Branch. Ms. CONSON executed [an] affidavit on 23 July 2012. x x x
- Further verification revealed that some missing PHIC checks were deposited at One Network Bank, Lupon Branch.
- A check issued to one LUCENA QUEZON was presented and negotiated by her personally at a cooperative in Lupon, Davao Oriental. However, she executed an affidavit that she knows the person of MARINEL GABINETE

who personally handed to her the PHILHEALTH Refund Check without the mailing envelope. x x x[8] (Emphasis omitted)

Thereafter, Buensalida sent a letter-complaint[9] (Complaint) dated September 19, 2012 to the Presiding Judge[10] of the MCTC, requesting that the necessary administrative and/or criminal cases be filed against Gabinete in view of the results of the investigation.

On October 11, 2012, the OCA received a copy of the Complaint.[11] Accordingly, the OCA directed Gabinete to file her comment thereto.[12]

In her Comment[13] dated November 23, 2012 (Comment), Gabinete denied the charges against her, and averred that Buensalida is merely using her to cover up the negligence of PhilPost's employees.

In a Resolution[14] dated February 9, 2015, the Court, upon the OCA's recommendation, referred the matter to Judge Emilio G. Dayanghirang III (Judge Dayanghirang), Executive Judge of the Regional Trial Court of Lupon, Davao Oriental (RTC), for full investigation, report and recommendation.

Pursuant to the Court's directive, Judge Dayanghirang heard the case. Buensalida presented the testimonies of (i) 3A's Store owner Marieta Conson (Conson); (ii) PhilPost Investigator Ulysses Barriga (Barriga); (iii) Lucena Quezon (Quezon); and (iv) Postmaster Olarte, along with fourteen (14) affidavits of non-receipt executed by the payees of the missing PHIC checks.[15] Respondent, on the other hand, adopted the allegations in her Comment, and impugned the relevance and reliability of the affidavits of non-receipt.[16] Based on such evidence, the RTC made the following factual findings:

- Postmaster Olarte and Gabinete were long-time friends, and that because of their close relationship, Gabinete gained access to the former's office and would sometimes help out in sorting letters and scanning records.[17]
- Conson and Gabinete were friends. Gabinete frequently encashed her salary checks at Conson's store. Thus, when Gabinete presented the PHIC checks to her for encashment, she accepted the same without much suspicion.[18]
- Quezon and Gabinete were childhood friends. Quezon was the payee of one of the PHIC checks which went missing from the Lupon Post Office. According to Quezon, Gabinete personally handed her the PHIC check issued in her name. Quezon no longer bothered to ask how Gabinete got hold of the same, since she was very happy when she received it.[19]

On the basis of the foregoing findings, Judge Dayanghirang issued an Investigation, Report and Recommendation[20] dated May 22, 2015, finding Gabinete guilty of grave misconduct:

WHEREFORE, premises considered, the undersigned finds respondent Marinel V. Gabinete GUILTY OF GRAVE MISCONDUCT.

The undersigned recommends that respondent Marinel V. Gabinete be DISMISSED from service, with forfeiture of all benefits excluding accrued leave credits, if any[,] and with prejudice to re-employment in any branch or agency of the government.

SO ORDERED.[21]

After an evaluation of the records of the case, the submissions of the parties, and Judge Dayanghirang's findings, the OCA made the following recommendation in its Memorandum dated November 11, 2015:

From the established facts and circumstances on record, complainant was more than able to discharge his burden of proving with substantial evidence that respondent was the one who took the subject PHIC checks

and had them encashed.

Preliminarily, this Office notes that the lack of direct evidence does not ipso facto bar the finding of liability against respondent. This Office based its findings on the fact that complainant was able to establish respondent's liability through credible and sufficient circumstantial evidence that led to the inescapable conclusion that respondent committed the imputed act.

x x x x

First, Postmaster Olarte's testimony sufficiently establishes that respondent had the time and opportunity to take the subject PHIC checks as she had access to the post office being a court employee and long-time friend of Postmaster Olarte.

Second, Ms. Quezon's unequivocal statements that it was respondent who handed the check to her, which was among the missing PHIC checks, confirm respondent's possession thereof.

Third, respondent's possession of the missing PHIC checks was corroborated by Ms. Conson who positively pointed to respondent as the one who negotiated and encashed the subject lost PHIC checks.

x x x x

Substantial evidence clearly exists to hold respondent liable for [grave] misconduct punishable by dismissal from the service. Moved by bad faith and dishonesty, respondent took advantage of her friendship with Postmaster Olarte and the latter's unquestioning trust for her own personal gain and benefit. It is just unfortunate that it was the unwitting negligence of Postmaster Olarte in allowing respondent to have access to her office and records that made it possible for respondent to encash the PHIC checks.[22] (Emphasis supplied)

The Court agrees with, and accordingly adopts, the OCA's recommendation.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.[23] Misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present.[24] Gabinete's misconduct involved the unauthorized taking of registered mail matter, and the subsequent diversion of the proceeds of the checks contained therein. The elements of corruption, clear intent to violate the law and flagrant disregard for established rules are evidently present.

As aptly put by Judge Dayanghirang, Gabinete's defense rests solely on her bare denial, which cannot prevail over the positive testimony of Buensalida's witnesses. Such testimonies corroborate one another, and, taken together, positively identify Gabinete as the culprit. In the absence of any showing of any malice or ill-motive on the part of said witnesses, Gabinete's claim that their testimonies were merely fabricated is bereft of merit.[25]

Under Section 46(A)(3), Rule 10 on the Schedule of Penalties of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[26] grave misconduct is punishable by dismissal from service in the first instance. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and being barred from taking civil service examinations.[27] While the Court is aware that it may consider circumstances to mitigate the imposable penalty prescribed under the RRACCS, no such circumstance appears from the records of the case.

WHEREFORE, the Court finds respondent Marinel V. Gabinete GUILTY of GRAVE MISCONDUCT, meriting the penalty of DISMISSAL from service, with FORFEITURE of retirement and other benefits, except accrued leave credits, and PERPETUAL DISQUALIFICATION from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or financial institution. Respondent

is further ORDERED to immediately RETURN to the Philippine Health Insurance Corporation the proceeds of the refund checks subject of this case amounting to Forty-Eight Thousand Two Hundred Eighty-Five Pesos and 70/100 (P48,285.70) with legal interest at the rate of six percent (6%) per annum computed from the date of judicial demand on October 11, 2012, until the date of this Decision. Thereafter, the total amount shall earn interest at the rate of six percent (6%) per annum, from the date of this Decision until it is fully paid.

The Office of the Court Administrator shall likewise refer this administrative case and its records to the Ombudsman for whatever action it may take within its jurisdiction. This Decision shall be immediately executory.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, and Caguioa, JJ., concur.

Reyes, J., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on February 21, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled administrative matter, the original of which was received by this Office on May 26, 2017 at 2:05 p.m.

Very truly yours,

(SGD) FELIPA G. BORLONGAN-ANAMA
Clerk of Court

[1] Rollo, pp. 204-211.

[2] Id. at 7-8.

[3] Id. at 58.

[4] Id. at 5, 58.

[5] Composed of Engr. Joselito G. Bajao, CPSO Ulysses A. Barriga and Elmer P. Obelidhon, Sr.

[6] Rollo, pp. 62-64.

[7] Also spelled as "Marita" in some parts of the records.

[8] Rollo, pp. 62-63.

[9] Id. at 1-2.

[10] The name of the incumbent judge at the time the Investigation Report was issued does not appear in the records.

[11] Id. at 1, 69.

[12] Id. at 65.

[13] Id. at 67-68.

[14] Id. at 72-73.

[15] Investigation, Report and Recommendation dated May 22, 2015, pp. 2-5; rollo, pp. 190-193.

[16] Id. at 192-193.

[17] Id. at 191.

[18] Id. at 192.

[19] Id.

[20] Id. at 189-201.

[21] Id. at 201.

[22] Id. at 207-210.

[23] *Abulencia v. Hermosisima*, 712 Phil. 248, 252 (2013).

[24] Id.

[25] Rollo, p. 195.

[26] Civil Service Commission Resolution No. 1101502, promulgated on November 8, 2011.

[27] Id. at Section 52(a).

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