

CIVIL SERVICE COMMISSION, PETITIONER, VS. EMMA S. JAVIER, UTILITY WORKER I, RESPONDENT.

A.M. NO. P-05-1981 (FORMERLY OCA I.P.I. NO. 02-1516-P). April 06, 2005

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PER CURIAM:

Respondent Emma S. Javier, Utility Worker I in the Regional Trial Court, Makati City, Branch 145, was formally charged by the Civil Service Commission (CSC) with grave misconduct and dishonesty due to alleged cheating during the Career Service Examinations (Sub-Professional) conducted on November 23, 1996 at the Fort Bonifacio High School in Makati City. The charge[1] sheet reads:

The Civil Service Commission-National Capital Region conducted a fact-finding investigation pursuant to a report that you Emma S. Javier, an Aide at the Regional Trial Court, Branch 145, Makati City probably committed the administrative offenses of Grave Misconduct and Dishonesty during the Career Service (Sub-Professional) examination given on November 23, 1996 at the Fort Bonifacio High School, Makati City. During the said investigation, evidence established the following facts:

- That you applied for the abovementioned examination and assigned in Room No. 011;
- That you took the examination on November 23, 1996 as scheduled;
- That during the said examination, CSC personnel on duty caught you using "codigo" (inserted in a handkerchief) containing the alleged answers to the questions.

Considering that cheating during Civil Service examinations constitutes the administrative offenses of Grave Misconduct and Dishonesty, you should be charged with the said administrative offenses.

WHEREFORE, you are hereby formally charged with Grave Misconduct and Dishonesty. Accordingly, you are given five (5) days from receipt hereof to submit to this Office, CSC-NCR located at No. 25 Kaliraya St., Quezon City a written answer under oath, together with the affidavits of your witnesses and documentary evidence, if any. You are advised of your right to the assistance of counsel of your choice. (Underscoring supplied)

The case was docketed as Adm. Case No. 96-12-128.

In her Answer[2] dated December 19, 1996, respondent, vehemently denying the charges against her, proffered as follows:

A couple of days prior to the examination, she received a codigo from a friend (whom she did not name) who got it from a group of employees. Since she did not want to offend her friend and as she really wanted to pass the examination, she brought the codigo with her to the examination room, attaching it to the inner portion of her folded handkerchief.

At the examination room, before the examination started, she was overcome by a feeling of guilt, drawing her to forego the use of the codigo. She being asthmatic and as the room was very dirty and dusty, she needed the handkerchief, hence, she placed it along with the codigo between her thighs. The watchers, who had been alerted

that there had been examination leakages, soon checked every examinee in the course of which they recovered from her the handkerchief with the *codigo*.

Respondent argues that there is no such offense as "illegal possession of an unused *codigo*" or "attempted cheating."

Being based on a wrong premise that she was caught in the act of cheating, she contends that the accusations against her must fail.

Attempting to strengthen her disclaimer of having availed of the *codigo*, she invites attention to a comparison of the answers contained therein and those in her answer sheet which shows that only 15 of her 72 answers match those in the *codigo*.

Attached to respondent's Answer is an affidavit^[3] executed by Emelita E. Galao, a co-examinee, who partly corroborated her claim. Thus, Galao, who was seated 2 to 3 empty chairs away from respondent claims that she saw one of the two watchers approach respondent and point to the latter's lap; that respondent took out between her thighs a blue, well-folded handkerchief and handed it over to a watcher; and that the watcher unfolded the handkerchief to which was attached a small sheet of paper.

Carmelita Bernardino, one of the watchers, in her testimony before the CSC declared as follows: As she and her co-watcher noticed respondent to be restless and fidgety in her seat, they suspected that respondent was doing something fishy. On approaching respondent, her co-watcher asked her to hand over the handkerchief which when unfolded yielded the *codigo*.^[4]

In the course of the presentation of evidence against her, respondent filed a Motion to Dismiss^[5] on the ground of failure to present the *codigo* and failure of the witnesses to categorically declare that they actually saw her cheating during the examination.

By Order^[6] of January 29, 1998 the pertinent portion of which reads as follows, the CSC denied respondent's motion:

[T]he argument that the alleged crib sheet or "*codigo*" was "never presented as evidence" is a premature statement since the case has not yet reached its conclusion. As to the claim that the prosecution was not able to prove by substantial evidence the charge against the respondent, it may be recalled that it is only the Commission, after the hearing, who can declare that the quantum of proof was not established by the prosecution. Consequently, the prosecution should have at the least completed their presentation of evidence. In this case, the prosecution had not rested their case and therefore, the motion to dismiss has no basis.

The CSC thus continued its investigation. It later, however, discontinued the investigation and referred the matter to this Court by letter^[7] of December 20, 1999 to Chief Justice Hilario G. Davide, Jr. through then Court Administrator Alfredo L. Benipayo.

By Resolution^[8] of January 13, 2003, this Court referred the case to the Executive Judge of RTC Makati City for investigation, report and recommendation.

Upon termination of the investigation, the investigating judge submitted his Report and Recommendation^[9] dated February 3, 2004 with a finding that respondent is indeed guilty of cheating and recommended that she be meted with the penalty of suspension of ninety (90) days without pay, to wit:

Considering the admission of respondent that indeed she was in possession of a "*codigo*" while taking the Civil Service examination, there is already infraction of the rules.

Government employees, as recipients of public trust, hold a distinct position in society and must always bear in

mind that their actions reflect their status as such.

According to CSC Resolution No. 95-1995 dated March 21, 1995, citing the case of Sonia Mendoza, the mere possession of a "codigo" inside the examination room is an act of cheating itself. Moreover, the Commission, in its CSC Resolution No. 94-3097 promulgated on June 4, 1994, held that:

"Even if the codigo had not been utilized, the fact of possession is manifest intent to cheat.

xxx

It must be stressed that when one is seen or caught in possession of a codigo during the conduct of an examination, regardless of whether or not he was able to use the same, it is considered an act of cheating."

RECOMMENDATION

Suspension for ninety (90) days without pay. (Emphasis and underscoring in the original)

By Memorandum[10] of September 24, 2004 addressed to Third Division Chairman Artemio V. Panganiban, the OCA concurred with the findings of the investigating judge but modified the recommended penalty, to wit:

After a careful study of the records of the case, this Office concurs with findings of the investigating judge. Respondent Javier categorically admits that the "codigo" was hers, having procured it through a friend who obtained it from a Makati City Hall employee. She also admits having brought the "codigo" with her, hidden within the folds of her handkerchief, on the day of the examination. She denies, however, that she used the "codigo," claiming that she changed her mind after a sudden attack of guilt and remorse, especially when she remembered her three children to whom she must serve as a role model.

If indeed she had a change of heart, she must have had it too late in the day. Even if she was already in the examination room, she still had plenty of opportunity to dispose of the incriminating "codigo" before the examination started. She claims that she needed her handkerchief because the examination room was dirty and dusty and she was suffering from asthma. We find this a most lame excuse since she could by all means have kept the handkerchief with her; she just needed to dispose the small piece of paper inserted within. She could have easily slipped the piece of paper along with her things when the CSC examiners asked the examinees to place their belongings in front of the room, or she could have crumpled the "codigo" into a tight ball when it was announced that anyone caught cheating shall have (sic) face dire consequences. Instead, she kept the "codigo" hidden inside the folded handkerchief, just within her reach, undetectable by others but very accessible to her.

The respondent's claim of having decided not to use the "codigo" was also belied by her behavior during the examination. An innocent person who has nothing to hide would be composed as she would have a clear conscience. Ms. Carmelita S. Bernardino, one of the two (2) CSC watchers, testified that her and her co-watcher's attention was caught by respondent who seemed to be restless and fidgety in her seat. Ms. Bernardino, backed by over thirty-one (31) years of experience in giving such examinations and observing the actuations of examinees, became suspicious, especially after receiving reports of a leakage in the examination and catching an examinee in the act of cheating during the examination.

Respondent Javier's insistent assertion that she did not cheat in the examination because she did not use the said "codigo" is without merit. The afore-cited CSC administrative cases and Resolutions clearly state that mere possession of a "codigo" inside the examination room is an act of cheating itself, regardless of whether or not the same was actually used by the one caught in possession thereof. The possession of the "codigo" and the use thereof are acts involving moral turpitude. And "moral turpitude has been defined as including any act done contrary to justice, honesty, modesty or good morals."

Having held the position of utility worker for over two (2) decades, we understand the respondent's desire and need to be promoted. Such a promotion would mean a better position not only professionally but also

economically. The proffered "codigo" proved to be too much of a temptation for the respondent, given her deep yearning to pass and the great possibility of failing again (for the seventh time). However, the desperate measure she chose cannot be countenanced by the Court which has, time and again, reiterated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His conduct at all times, must not only be characterized by propriety and decorum but above else must be above suspicion. Indeed, every employee of the judiciary should be an example of integrity, uprightness and honesty. Regrettably, respondent Javier has shown a lack of said moral qualifications to continue as an employee in the judiciary.

While we agree with the findings of the Executive Judge concerning the liability of respondent Javier, we however differ with his recommendation to merely subject the respondent to a penalty of ninety (90) days suspension without pay. The recommended penalty is below that provided in pertinent Civil Service Rules. Under Section 2[3], Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292 and Other Pertinent Civil Service Laws, dishonesty is a grave offense punishable with dismissal even in the first offense. This penalty is reiterated in Civil Service Memorandum Circular No. 30, series of 1989 and again in Civil Service Memorandum Circular No. 19, series of 1999. The penalty of dismissal from the service, under Section 9, Rule XIV of the Omnibus Rules, carries with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits and the disqualification for reemployment in the government service.

IN VIEW OF THE FOREGOING, we respectfully submit for the consideration of the Honorable Court the following recommendations:

- That the instant administrative complaint be RE-DOCKETED as a regular administrative matter; and
- That Ms. EMMA S. JAVIER, Utility Worker I in the Regional Trial Court (Branch 145) at makati City, be found guilty of DISHONESTY; and
- That respondent Javier be DISMISSED from the service, with forfeiture of all her benefits (except her accrued leave credits pursuant to Rule 140, Sec. 11[1], Rules of Court) and with prejudice to re-employment in the government or any of its subdivisions, instrumentalities, or agencies including government-owned or controlled corporations. (Underscoring supplied)

This Court finds no reason to disturb the findings of the investigating judge and the OCA.

If respondent indeed eventually decided against using the codigo, she should and could have disposed of it instead of keeping it in her possession during the examination. As correctly pointed out by the OCA, she could have easily slipped the codigo along with her personal belongings when the CSC examiners asked the examinees to place them in front of the examination room, or she could have crumpled it and disposed of it when it was announced that anyone caught cheating would face dire consequences.

The testimony of Bernardino, who had for a long time been proctoring during examinations, that respondent was uneasy and restless during the examination inspires credence. Respondent's behavior indeed invited suspicion. It betrayed her guilt.

Assuming arguendo that respondent did not use the codigo found in her possession, she is not exempt from liability. For the mere act of having in her possession the codigo, is in itself an act of dishonesty. For examinees are not, in the first place, allowed to have in their possession crib sheets during examination.

Respondent's misconduct constitutes a manifest indifference to the values of integrity, uprightness and good conduct which are expected of men and women who work with the courts of justice, from the judge to the least and lowest of its personnel.[11]

Her act of dishonesty is a malevolent act. Similar acts have always and should remain anathema to the civil service. They have no place in the court system. Respondent cannot thus be allowed to stay in the service any longer, the objective not being to punish her but to improve the public service and preserve the public's faith and confidence in the government.[12]

WHEREFORE, respondent Emma S. Javier, Utility Worker I, Regional Trial Court, Makati City, Branch 145, is found GUILTY of Dishonesty and is hereby DISMISSED from the service effective immediately, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to her reemployment in any branch or instrumentality in the government including government-owned and controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo at 84-85.

[2] Id. at 16-19.

[3] Id. at 21.

[4] Id. at 192-208.

[5] Id. at 103-109.

[6] Id. at 118-119.

[7] Id. at 82.

[8] Id. at 145.

[9] Id. at 280-283.

[10] Id. at 288-293.

[11] *Concerned Employee v. Nuestro*, 388 SCRA 568, 572 (2002).

[12] *Civil Service Commission v. Delia T. Cortez*, 430 SCRA 593, 608 (2004).

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