

TAMPUS, Joel B.

Re: Appeal; Formal Charge;
Preventive Suspension

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RESOLUTION NO. 021309

Joel B. Tampus, Registration Officer I, Office of the City Civil Registrar, City Government of Lapu-Lapu, appeals from the Order dated January 11, 2002 of Mayor Arturo O. Radaza, said local government unit, charging him with Grave Misconduct and Neglect of Duty and placing him under preventive suspension for a period of three (3) months..

In his appeal, Tampus alleges, as follows:

"On the first issue, the Order of January 11, 2002, although captioned as an administrative complaint, was the only paper or document served upon the appellant. There was no accompanying written complaint, no certified true copies of documentary evidence, no affidavits of witnesses. Aside from the absence of the foregoing documents, a careful perusal of the questioned Order, it is apparent on its face that the same do not contain narrations of the relevant and material facts which shows (sic) the acts or omissions allegedly committed by the appellant. Finally, there is no certification or statement of non-forum shopping.

"Moreover, the said Order of January 11, 2002, did not properly apprise herein appellant of the nature and cause of the accusation against him to enable him to intelligently prepare his defense or answer. x x x . A mere citation of the acts complained of is not enough, because, it does not clearly apprise the appellant of the nature and the cause of the accusation against him. x x x.

X X X

"Appellant is even very surprise why he was charged of (sic) falsifying his daily time records, when he had been regularly receiving his salary since the time that he was unjustifiably assigned to do work in distant island, causing him to be away from his family and incurring additional expenses in going to and returning home from work.

"If indeed the appellant was remiss on his assigned duties and committed falsification, then why did his superior cleared (sic) him and allowed (sic) to be paid his salary.

"Between the immediate superior of the appellant and the Mayor of Lapu-Lapu City, the former is in a better position to determine whether herein appellant has in fact committed an offense or malfeasance. And as of the moment, the immediate superior of the appellant has said nothing on the matter which lend (sic) credence to the fact that appellant has not committed the acts complained of. Had it been otherwise, the Department Head concerned would have made by now a report of his subordinate's misconduct.

X X X

"Fundamental fairness, which is the essence of due process, requires that the respondent should be given ample opportunity to be informed of nature and cause of the accusation against him. He should be given a chance to fully understand or comprehend of (sic) what he is being charge (sic) with, otherwise, he is denied due process. x x x.

"Lastly, the Order dated January 11, 2002 does not clearly show or support the charge stated therein. x x x. The absence therefore of a formal charge does not give authority or vest jurisdiction upon the mayor of Lapu-Lapu City to order the preventive suspension of herein respondent."

When requested to comment, Mayor Radaza argued, as follows:

"The instant of the case is an off shoot of the case filed by the appellant against the appellee, allegedly for violating this rights when appellee transferred him to Olango Island and later on to Caubian Island both within the jurisdiction of Lapu-Lapu City. In appellee's answer, affidavits were executed by inhabitants of Caubian where appellant was detailed describing his neglect of duty and gross misconduct, gambling during office hours and not doing his job as detailed in the order of his transfer.

"Appellant's case was dismissed. x x x.

"This (sic) office of the City Attorney then requested the appellant to file counter affidavits since he was (sic) now charge (sic) with grave misconduct and neglect of duty as a result of the affidavits filed. The counsel of the appellant asked for copies even when they had (sic) copies but to comply with due process the Office of the City Attorney gave appellant copies of the affidavits.

"The appellant filed counter affidavits and the City Attorney's Office conducted a preliminary investigation and found probable cause.

"The suspension was signed by the appellee because the witnesses are residents of Caubian where appellant is detailed to prevent any harassment.

X X X

"From the foregoing, appellant was afforded due process in every possible way and preventive suspension is allowed under the Uniform Rules on Administrative Cases in the Civil Service."

It appears that Tampus is employed as Registration Officer I at the Office of the City Civil Registrar, City Government of Lapu-Lapu. On July 13, 2001, Mayor Radaza issued a Memorandum (Detail Order) reassigning Tampus to Olango Island and directing him to provide assistance to the residents thereat in the preparation of the requirements for their application pertaining to civil registration such as, but not limited to, marriage license application and certification of live birth and death.

On August 7, 2001, another Memorandum (Reassignment) was issued by Mayor Radaza to Tampus, pertinent portions of which read, as follows:

"Effective upon receipt hereof, you are hereby re-assigned and hold office temporarily in Caubian Barangay Hall, Lapu-Lapu City, to perform such duties and functions inherent to your position particularly to assist the applicants in barangay Caubian in processing their paper works in the application of Marriage Contract, certification of Death and Live Birth, etc.

"Your Daily Time Record (DTR) shall be signed by the undersigned after duly counter-signed by Brgy. Councilor Eduardo Matbagon."

Tampus appealed the aforementioned Memoranda issued by Mayor Radaza to the Civil Service Commission Regional Office (CSCRO) No. VII, Cebu City. Said appeal was dismissed by CSCRO No. VII in its Decision dated October 1, 2001, pertinent portion of which reads, as follows:

"Except for his base allegations that his reassignment has caused him inconvenience and financial burden, Mr. Tampus has failed to show and prove convincingly that his reassignment resulted in diminution of his rank, status or salary. He has not presented any proof or evidence which establish (sic) the fact that indeed there is such reduction in his rank, status or salary as Registration Officer I."

Dissatisfied, Tampus appealed to the Commission but the same was dismissed in an Order dated January 4, 2002 for failure to comply with the provisions on perfection of appeals. No action has been taken by Tampus after the dismissal of his appeal on the matter of his reassignment.

Meanwhile, on August 31, 2001, Eduardo Matbagon, Sr., Barangay Kagawad of Barangay Caubian, Lapu-Lapu City, and Dario Lumapas, a resident of the same barangay, executed sworn statements alleging that they frequently saw Tampus playing *mahjong* during office hours instead of doing his official duties and functions. Upon knowledge thereof, Mayor Radaza issued a Memorandum dated September 4, 2001 to Tampus requiring him to submit an explanation in writing why he should not be terminated from the service for Gross Dereliction of Duty and Gross Misconduct in connection with his alleged engaging in Illegal Gambling during office hours.

In a letter dated September 6, 2001, Tampus through counsel, requested the City Attorney that he be furnished with a copy of any supporting affidavit/s or sworn statement/s concerning the acts complained of. On September 7, 2001, the City Attorney furnished Tampus' counsel with the requested documents. In response, Tampus submitted as his counter-affidavits the undated affidavits of Margelina A. Escarlan and Fidel L. Booc, both residents of Barangay Caubian.

Thereafter, a preliminary investigation was conducted by the City Attorney. In his Investigation Report dated November 12, 2001, the City Attorney, after a finding of a *prima facie* case against Tampus, recommended the filing of Gross Neglect of Duty and Gross Misconduct charges against the latter.

On January 11, 2002, a formal charge was issued to Tampus, which he received on January 21, 2002, and worded in this wise:

"ADMINISTRATIVE COMPLAINT

*"You, Mr. Joel P. Tampus, Registration Officer I of this city, is hereby formally charged with **NEGLECT OF DUTY and GROSS MISCONDUCT** in that you willfully failed to perform your assigned duties and functions and for falsifying your daily time record.*

"You are also hereby preventively suspended for the duration of your hearing not to exceed (3) months.

"You are likewise requested to see the City Attorney for the schedule of your hearing/s."

Hence, the instant appeal.

There are two (2) issues that need to be resolved, to wit:

- 1) Whether the formal charge issued to Tampus is valid; and
- 2) Whether the preventive suspension imposed upon Tampus is proper.

The first issue is answered in the affirmative.

Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service provides, as follows:

*"Section 16. **Formal Charge.** – After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer*

whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice."

A reading of the formal charge issued to Tampus by Mayor Radaza would reveal that the demands of due process are complied with. While it is true that the formal charge is silent as to the narration of specific acts or omissions constituting the offenses charged, it cannot be denied that the same was clearly spelled out in detail in the affidavits of Matbagon and Lumapas which were furnished earlier to Tampus' counsel during the preliminary investigation. Hence, it cannot be said that Tampus was totally uninformed of the nature and cause of accusation against him when he was issued the assailed formal charge. As pronounced by the Supreme Court in **Dadubo vs. Civil Service Commission (223 SCRA 747)** where it aptly ruled in this wise:

"The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him. x x x."

What is paramount is that Tampus was given a reasonable opportunity to explain his side of the controversy. Well-settled is the rule that the essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense (**Larin vs. Executive Secretary, 280 SCRA 713**).

Anent the second issue, the Commission finds the three (3)-month suspension imposed upon Tampus not in order.

Section 85(a) of the Local Government Code of 1991 provides, as follows:

"Section 85. Preventive Suspension of Appointive Local Officials and Employees. – (a) The local chief executives may preventively suspend for a period of sixty (60) days any subordinate official or employee under his authority pending investigation if the charge against such official or employee involves dishonesty, oppression, grave misconduct or neglect in the performance of duty,

or if there is a reason to believe that the respondent is guilty of charges which would warrant his removal from the service." (Emphasis supplied)

As can be gleaned from the aforequoted provision, local chief executives are empowered to place under preventive suspension any subordinate appointive official or employee pending investigation of the charge against the latter involving offenses enumerated therein for a maximum period of sixty (60) days only. In the formal charge issued by Mayor Radaza, Tampus was placed under preventive suspension for a period of three (3) months, which is violative of the aforementioned law.

Finally, it is noted that Tampus' reassignment took effect on August 7, 2001, hence, he should be restored to his official station in Lapu-Lapu City Hall after the lapse of one (1) year considering that this is a case of unconsented

reassignment contemplated in **Section 6(a), Rule III of CSC Memorandum Circular No. 40, s. 1998 otherwise known as the Revised Omnibus Rules on Appointments and Other Personnel Actions** which reads, thus:

"Section 6. Other Personnel Movements. - x x x

"a. Reassignment - x x x. If reassignment is without the consent of the employee being reassigned it shall be allowed only for a maximum period of one (1) year. x x x."

It is observed, however, that the aforementioned one-year period which commenced on August 7, 2001, was effectively interrupted when Tampus was placed under preventive suspension under a Formal Charge dated January 11, 2002 which he received on January 21, 2002. Thus, the inclusive period from January 21, 2002 to March 21, 2002 which was the valid duration of a preventive suspension of a local government employee and which Tampus actually served, shall not be counted in the computation of the one-year period.

This is so since a person under preventive suspension is not rendering actual service. As defined by **Memorandum Circular No. 41, s. 1998 (Revised Omnibus Rules on Leave), specifically Section 28 thereof**, actual service refers to the period of continuous service since the appointment of the official or employee concerned, including the period or periods covered by any previously approved leave with pay. This being the case, the one-year period of Tampus' reassignment should be extended for a period equivalent to the duration of his preventive suspension and therefore, he should be restored to his official station in Lapu-Lapu City Hall by October 7, 2002.

As to the one month period in excess of the allowable two months duration of preventive suspension, the same is deemed included in the period of unconsented reassignment. That being the case, he is deemed not to have left the service during that period and became entitled to the payment of backwages corresponding to that period.

WHEREFORE, the appeal of Joel B. Tampus is hereby **PARTLY GRANTED** insofar as the impropriety of the imposition of the three-month preventive suspension upon him is concerned. Hence, he is entitled to the payment of backwages for the period in excess of the prescribed sixty days. This is without prejudice, however, to the continuance of the formal investigation of the case against Tampus for Grave Misconduct and Neglect of Duty. He should likewise be restored to his original station in Lapu-Lapu City Hall prior to his reassignment by October 7, 2002.

Quezon City, OCT 09 2002

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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