

CABALITAN, Romeo E.

Re: Grave Misconduct;

Motion for Reconsideration

(CSC Resolution No. 02-0465)

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RESOLUTION NO. 030021

Romeo E. Cabalitan, former Legal Officer II under temporary status, Bureau of Agrarian Legal Assistance (BALA), Department of Agrarian Reform (DAR), Quezon City, moves for the reconsideration of CSC Resolution No. 02-0465 dated March 25, 2002 finding him guilty of Grave Misconduct for which he was imposed the penalty of dismissal from the service.

Said Resolution reads, in part, as follows:

"In a complaint filed with the DAR, it is alleged that sometime in February 1999, appellant Cabalitan offered, in exchange for the amount of Five Hundred Pesos (P500.00) each, to his officemates a document, which appears like a card, ostensibly exempting the holder thereof from the Unified Vehicular Volume Reduction Program (UVVRP) of the Metropolitan Manila Development Authority (MMDA). This UVVRP is a scheme resorted to wherein certain motor vehicles—depending on the last digit of their plate numbers—are prohibited on certain weekdays from traversing the streets of Metro Manila to significantly reduce traffic congestion. Apparently, the 'card' which appellant had been offering, purportedly exempts the vehicle of the holder thereof from this prohibition.

"It appears that appellant succeeded in convincing several of his officemates to procure the said 'exemption card' after paying him P500.00 for each card. As it subsequently turned out, however, traffic enforcers never honored the said exemption card thereby causing the holders thereof severe inconvenience and humiliation whenever they use their respective motor vehicles during the prohibited day. This prompted appellant's officemates to subsequently verify with the MMDA the authenticity of said cards but were informed that the same were all sham and of no use at all.

"Consequently, appellant's officemates who paid for the supposed exemption cards demanded from him the return or reimbursement of their money but he interposed several excuses. . .

"The evidence on record fully establishes the fact that appellant himself was actively engaged and showed extraordinary eagerness in 'selling' or rather offering personally to his officemates the said exemption cards. He transacted business with his officemates right in their Offices and during office hours. . .

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"It need not be overemphasized that when a government employee reports for work, from the commencement of his work schedule until its completion, he is being paid by the government for every minute and every hour thereof. Hence, he is expected to devote his entire working time to the performance of his official functions and duties and is not supposed to be performing such other activities to satisfy his own personal interest. . .

"True, for obvious reasons, the dispensing of a spurious exemption card is definitely alien and unrelated to the official functions and duties of appellant. Appellant, however, cannot relieve himself from any liability since such act, performed during office hours at that, is indubitably a direct violation of the Civil Service Law and rules as explained above. There is, therefor, no merit in his argument that since the act of offering an exemption card to his officemate is not related to his official functions, he cannot be held liable therefore. Indeed, for having deliberately violated an established rule, appellant is indubitably guilty of Grave Misconduct, a grave offense punishable by dismissal from the service.

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"WHEREFORE, the appeal of Romeo E. Cabalitan is hereby DISMISSED for want of merit. He is found guilty of Grave Misconduct for which he is imposed the penalty of dismissal from the service including all its accessory penalties. . ."

In his motion for reconsideration, Cabalitan, through counsel, argues, as follows:

"The findings of the Honorable Commission that there was indeed a Grave Misconduct committed by our client due to the deliberate and intentional transaction made by Romeo E. Cabalitan during office hours as testified to by the two prosecution witnesses belies the fact that it was so deliberate and intentionally done as pictured by the witnesses so as to let it appear that it was only said Romeo E. Cabalitan using the office hours then and can not be made possible without the participation also of the said witnesses. Moreover, there is a principle in law that is applicable to the case at bar that of pari-delicto.

"Moreover, the basis of the alleged misconduct is not even related to the duties and functions of the respondent as an employee of the DAR. Misconduct has been defined 'such as affects his performance of his

duties as an officer and not as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer. *Absence of showing that the acts are linked with the performance of his official duties, the pending administrative case against him should be dismissed.*' (Palma, Sr. vs. Fortich, 147 SCRA 397)

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"Consequently, in this case, there is no misconduct in office as that contemplated by law. Absence of showing that the acts are linked with the performance of his official duties, he must be exculpated from any liability on the charges."

It is apparent that Cabalitan's act of "selling exemption cards" which, subsequently turned out to be fictitious, is definitely not part of or related to his official duties and functions as Legal Officer II. The Commission is fully aware of this. In fact, the Commission unequivocally stated in the Resolution being sought to be reconsidered that "for obvious reasons, the dispensing of a spurious exemption card is definitely alien and unrelated to the official functions and duties of appellant (Cabalitan)." It would, thus, appear that Cabalitan should not be held liable for the serious offense of Grave Misconduct warranting the imposing upon him of the penalty of dismissal from the service. In explaining this principle, the Supreme Court, in the case of **Tenza vs. Espinelli, 108 SCRA 157**, ruled that:

"Misconduct warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of office."

This does not mean, however, that Cabalitan is entirely free from any administrative liability. It must be stressed that in the Resolution being sought to be reconsidered, it had been unquestionably established that Cabalitan had exhibited the temerity of selling fictitious exemption cards to his officemates, during office hours, instead of performing his official duties. Be it noted that whenever Cabalitan reports for work on any given working day, he is being paid for every minute of the hour and every hour of his working period. Hence, he is expected to be performing his official functions and duties during his entire working period and is not expected to be engaging in any other business such as selling exemption cards. Indeed, Cabalitan's act of selling exemption cards during office hours is not only in violation of the Civil Service Law and rules but an act constituting the offense of Conduct Prejudicial to the Best Interest of the Service. Hence, he must pay for such misdeeds.

WHEREFORE, the motion for reconsideration of Romeo E. Cabalitan is hereby **DENIED** for lack of merit. Accordingly, CSC Resolution No. 02-0465 dated March 25, 2002 is affirmed but with the modification that Romeo E. Cabalitan is found guilty only of Conduct Prejudicial to the Best Interest of the Service for which he is imposed the penalty of nine (9) months suspension from the service. Considering, however, that his appointment as Legal Officer II under temporary

status had already expired on December 31, 2000 and that the same was never renewed, the penalty herein imposed is deemed served.

Quezon City, JAN 08 2003

(Original Signed)
KARINA CONSTANTINO-DAVID
Chairman

(O.B.)
JOSE F. ERESTAIN, JR.
Commissioner

(Original Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Original Signed)
ARIEL G. RONQUILLO
Director III

*FPG/KPZ/Y9/w31
Cabalitan/vog/jrl
NDC 02-0248*