



Mamamayan Muna

MERCADO, Apolinario M.
 Re: Dishonesty; Grave Misconduct;
 Conduct Prejudicial to the Best
 Interest of the Service (Appeal)

X-----X

This is a

**MUST - READ
 RESOLUTION**

CSC Res No. 07-0514 dated March 12, 2007
 CSLO

RESOLUTION NO. 070514

Apolinario M. Mercado, Legislative Staff Employee II, House of Representatives Electoral Tribunal (HRET), Quezon City, appeals the decision dated September 12, 2005 of the Tribunal¹, headed by then Chief Justice Artemio C. Panganiban, finding him guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from the service and its accessory penalties. Mercado also appeals the HRET Resolution dated October 13, 2005 which denied his motion for reconsideration. The appellant was found guilty of said administrative offenses due to his involvement in the tampering of ballots to favor the protestant in a protest case pending before the HRET.

Pertinent portions of the assailed Decision read, as follows:

"The participation of APOLINARIO MERCADO in the operation perpetrated by the group composed of PAGOROGON, DIAZ Jr., MENDOZA and LABANG to tamper with the election results to favor the protestants in the cases pending in the HRET was confirmed by witness Eduardo Mendoza. Despite the vigorous cross-examination made by the counsel for respondent, this witness remained steadfast in his testimony that indeed, the respondent was with them during their nefarious scheme.
 x x x

x x x

"The fact that Mr. Pagorogon did not name respondent in his counter-complaint in the previous administrative case does not help the latter, for it is a known fact that the respondent did not testify against Pagorogon unlike the three other witnesses who were counter-charged in the case. x x x The principle of Res Inter Alios Acta does not apply in this case as the witnesses testified and positively identified the respondent as one of the perpetrators of the pilfering and tampering of ballots, and that

¹ "Tribunal" as used in this Resolution, refers to the collegiate body headed by then Chief Justice Artemio Panganiban, which rendered the assailed decision in this appeal.

he received money for his participation therein. In short, the witnesses repeated their testimony in the previous case and implicated the respondent. In particular, the testimony of Eduardo Mendoza positively identified the respondent as being with Pagorogon when they tampered with the ballots, and that respondent received monetary reward for his participation.

"For the defense, the testimony of respondent is mostly self-serving in that he denies having ever been a participant in the wrong-doing. x x x

x x x

"The penalty of dismissal from the service may seem a bit harsh, but its imposition is not without basis. The preservation of the sanctity of the ballots, being the heart and soul of the work of the Tribunal, requires each employee thereof, to render utmost loyalty, honesty and sincerity to the Tribunal. Respondent Mercado is duty-bound to uphold the highest degree of honesty and integrity in the performance of his work. The Tribunal will not countenance improper and irresponsible conduct of any of its employees. The grave offense committed by respondent Mercado warrant his dismissal from the service."

Mercado files the present appeal based on the following grounds:

- I. The Decision is null and void since it was rendered by the HRET without jurisdiction in the absence of a formal charge.
- II. The HRET erred in equating the complaint to a formal charge;
- III. The HRET erred in ordering the preventive suspension of Mercado in the absence of a formal charge against him.
- IV. The Decision is not supported by law and admissible, clear and convincing substantial evidence.
- V. The Decision is a tool for harassment upon the appellant.

Relevant portions of Mercado's appeal read, as follows:

"32. Section 34 of the 'Uniform Rules' provides that the filing or issuance of the Formal Charge by the disciplining authority determines the reckoning of the pendency of the administrative case. In the case at bar, the filing by complainant secretary of the Tribunal Atty. Panga-Vega



of her complaint against respondent, pending the issuance of a Formal Charge, did not as yet place Mercado under the class of employees with pending administrative case.

"33. Most importantly, Section 34 of the 'Uniform Rules' fixes the time in which the commencement of the administrative case is determined, that is, the issuance of a Formal Charge by the disciplining authority, or the determination by it of the existences of a prima facie case in a complaint initiated by a private complainant.

"34. A formal charge is akin to the information in criminal cases, the filing of which vests the court of tribunal the jurisdiction to hear and try the case. Section 16 even specifically provided the contents of a Formal Charge, as this is the pleading that formally informs the respondent of the charges against him and vests the disciplining authority of jurisdiction.

"35. The requirement of a Formal Charge in administrative cases is jurisdictional. It being so, its non-filing can be questioned at any stage of the proceedings. Consequently, absent the formal charge, the disciplining authority has not acquired jurisdiction to try and decide the instant complaint against Mercado.

x x x

"37. Section 19 of the 'Uniform Rules' provides that the order of preventive suspension must be issued only when there was already a Formal Charge filed, so that the service of the Formal Charge and the order of preventive suspension may be made upon respondent simultaneously.

"38. Unfortunately for respondent, he was meted a preventive suspension on February 10, 2005 simultaneously at the filing of his counter-affidavit to the complaint of Atty. Panga-Vega.

"39. The preventive suspension of Mercado is therefore null and void. Mercado is entitled to the restitution of salary and benefits that had been unlawfully deprived from him during the period of his suspension without pay.

x x x



"63. The testimony of Eduardo Mendoza miserably failed to pinpoint with particularity the alleged act of taking of (sic) marking of ballots in point of time, space and place. His testimony is a complete falsehood as it became apparent during the direct and cross examinations that the points expected to be the damning evidence against appellant Mercado were only concocted by somebody and fed on Mendoza for the latter to act as mouthpiece.

x x x

"71. Mr. Eduardo Mendoza cannot be considered an ordinarily innocent eyewitness. The testimony of an innocent eyewitness in general carries much weight, more so if the testimony is affirmative.

"72. But, witness Mendoza, early in the direct examination admitted his participation in the conspiracy to pilfer the ballots on March 1, 2002, and in the process pointed to Mercado as a co-conspirator.

"73. Mendoza's admission or confession as one of the conspirator's in the instant case, as well as his previous admissions or confession implicating himself to the conspiracy will only bind himself. The same cannot be used as proof to prove the complicity of another, without violating the rule on 'Res inter alios acta'

x x x

"78. In establishing the commission of a crime or offense, it is axiomatic its corpus delicti, the body of the crime or offense itself must be proven. Herein the actual pilferage of the ballots itself perpetrated allegedly by Mr. Pagorogon and Diaz should be proven first and foremost with clear and convincing evidence independent of the testimony of Mendoza, because the pilferage is the very corpus delicti of the criminal and administrative offense of grave misconduct and dishonesty or acts prejudicial to the best interest of the service x x x.

"79. It may be recalled, that in the previous administrative cases nos. 03-001 and 03-002, the corpus delicti, without real evidence being presented like the marked ballots or missing ballots, was proven because all of the respondents interposed admissions and implicated themselves altogether. While the decision thereon was exhaustive as to the extent of the participation of the respondents, again, as discussed in the foregoing, the Decision in Admin. Cases nos. 03-001 and 03-002 cannot be admitted as evidence against respondent in this subsequent case.



"80. It cannot be presumed that the corpus delicti of the pilferage of ballots has already been established here, and think that the only issue to be resolved is whether or not Mr. Mercado was indeed a participant thereto. There is no evidence in the instant case presented by the prosecution. Prosecution's sole witness, Mr. Mendoza, has no personal knowledge of the pilferage or marking of ballots. At most, the information of Mr. Mendoza, assuming he was credible, was second-hand as told to him by Pagorogon, which remained uncorroborated by another credible witness. Its quantum cannot qualify clear and convincing substantial evidence.

"81. With the lone testimony of Mendoza, dishonesty, gross misconduct and the prejudice caused the best interest and integrity of the Tribunal was not proven. The Tribunal sought the filing of the administrative case upon an order incorporated in the decision in Administrative Cases Nos. 03-001 and 03-002. Necessarily, the Tribunal was expecting that any such judgment on the case against Mercado that will result in the finding of guilt should not be wanting in evidence.

"82. It is humbly submitted that such expectation has not been met. The records are wanting in evidence to support a guilty verdict upon Mercado. The administrative case should have been dismissed for lack of clear and convincing substantial evidence."

The case against appellant was a consequence of the Decision dated October 21, 2004 promulgated by the Tribunal in Administrative Case Nos. 03-001 and 03-002 which found HRET employees Leo N. Pagorogon, Eduardo L. Mendoza, Florentino S. Diaz, Jr. and Jeffrey B. Labang guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and thereby imposed upon them the penalty of dismissal from the service and its accessory penalties. In the same Decision, the HRET directed the Secretary of the Tribunal, Atty. Daisy B. Panga-Vega, to file the proper criminal and administrative charges against the appellant for his alleged participation in the pilfering and marking of the ballots involved in two protest cases namely, Castañeda vs. Espino (HRET Case No. 01-003) and Cariño vs. Lanot (HRET Case No. 01-015). Notably, the appellant was not included in those charged and subsequently found guilty of said offenses since he was not impleaded in said cases. Thus, the Tribunal directed the filing of administrative charges against him.

As culled from the records, the antecedent facts of the case are as follows:

As provided for in Article VI, Section 17 of the 1987 Constitution, the HRET shall be the sole judge of all contests relating to the election, returns, and qualifications of



the House of Representatives. Pursuant to this constitutional mandate, the Tribunal approved the HRET General Instructions on Revision of Ballots. As defined by said rules, Revision includes the *"classification, segregation, examination and physical recount of the ballots, and the recording of the parties' claims and objections to the ballots counted for each contending party. These objections and claims, recorded by the party's revisors in the Revision Reports, will then be ruled upon by the Tribunal in the preliminary appreciation of ballots."* The revision of ballots is conducted by a revision team of three (3) members: a head revisor appointed by the Tribunal and two revisors representing each party to the contest.

On March 18, 2003, a break-in was discovered at the main storage room (bodega) of the HRET. Atty. Panga-Vega notified the National Bureau of Investigation which investigated the incident. It was further revealed that prior to the break-in or sometime in October 2002, Atty. Emmanuel Mapili, also of the HRET, discovered anomalies during the preliminary appreciation of the ballots in *Cariño vs. Lanot* (HRET Case No. 01-015). Atty. Mapili reported markings in ballots contained in at least two ballot boxes which were not reflected in the revision reports. It also appeared that the pen used to mark the ballots invariably differs from that used by the voters on the ballots that were marked. Also in the HRET Case No. 01-003, *Castañeda vs. Espino*, the same anomaly was observed where the numbers "13-0" and "0-13" were written on the ballots for protestee Espino yet this observation was not noted in the revision report.

Atty. Panga-Vega then summoned Marites Flores and Heidi Rodriguez, who were both assigned as revision supervisors during the revision proceedings conducted in relation to the two protest cases. Both Flores and Rodriguez confirmed that the markings noted by Atty. Mapili's team were not present during the revision proceedings and thus, they were not noted in the revision reports they prepared. Upon this discovery, both Attys. Panga-Vega and Mapili postulated that the markings were made after the revision proceedings but before the appreciation proceedings conducted by the latter's team.

Attys. Panga-Vega and Mapili then conducted their investigation on employees who participated in both protest cases which eventually led to the filing of a complaint by Atty. Panga-Vega against Leo N. Pagorogon, Ballot Box Custodian of the Canvass Board Service, for Dishonesty, Grave Misconduct, Gross Neglect of Duty, Gross Inefficiency and Incompetence in the Performance of Office Functions and Conduct Prejudicial to the Best Interest of the Service. In said complaint, it was alleged that Pagorogon offered his services to the party-protestants in the two cases, induced and connived with his fellow employees, and tampered and marked the ballots of the protestees to reduce their votes in favor of the protestants.



On April 8, 2003, Pagorogon filed a counter-complaint where he accused Attys. Panga-Vega and Mapili together with Victor L. Canua², Eduardo L. Mendoza and Florentino S. Diaz, Jr., also employees of the HRET, of allegedly being part of the syndicate in manipulating the ballots in the two protest cases. Notably, Pagorogon filed a counter-complaint against Canua, Mendoza and Diaz whose earlier affidavits were the basis for filing of the complaint against Pagorogon.

In his counter-complaint, Pagorogon alleged that Atty. Panga-Vega was the mastermind of the nefarious scheme while Canua, Mendoza and Diaz were the ones who actually executed the reduction and marking of ballots. He alleged that he divided the pay-off of Two Hundred Thousand Pesos (P 200,000.00) which he allegedly received from Atty. Panga-Vega, equally between him and Diaz, Mendoza and Jeffrey B. Labang, another HRET employee. Pagorogon later amended his counter-complaint to implead Labang.

On May 8, 2003, the HRET then referred the two administrative cases to retired Deputy Ombudsman Jesus F. Guerrero for investigation, report and recommendation where there were consolidated and heard jointly.

On November 28, 2003, Judge Guerrero submitted his Report and Recommendation. The pertinent findings which were included in the Decision dated October 21, 2004 of the Tribunal are herein quoted, to wit:

"From the record of the testimonies of the witnesses of both parties, there have been at least six (6) incidents wherein ballots under storage for revision and preliminary appreciation in the cases of CASTAÑEDA v. ESPINO (HRET Case No. 01-003) and CARINO v. LANOT (HRET Case No. 01-015) were either stolen/pilfered and/or marked.

"The first incident was on February 27, 2002. This involved only FLORENTINO S. DIAZ and respondent LEO N. PAGOROGON. x x x

"The second incident was on March 1, 2002. Those involved were EDUARDO L. MENDOZA, DIAZ, one APOLINARIO MERCADO and respondent PAGOROGON. In this incident, Mendoza and Mercado acted as look-outs, while Diaz and Pagorogon entered the ballot box room and pilfered and stole the ballots for protestee Espino. After office hours of the same day, Diaz, Pagorogon and Mercado met at Ever Gotesco

² Victor Canua, who acted as utility assistant in the preliminary appreciation of ballots, was included in the charge. He was exonerated since he did not participate in the scheme when Pagorogon demanded the keys to the ballot boxes from him and instead reported the matter to his supervisor. Canua was acted as a witness in the administrative against Pagorogon.

Commonwealth Mall, where they had dinner at Max's restaurant. After that they met the lawyer of protestant Castañeda, Atty. Gerardo 'Jervy' Erguiza, Jr., outside the mall, whereupon Pagorogon handed the stolen/pilfered ballots to Erguiza and the latter in turn handed over a brown envelope which contained P200,000.00, half of which was given to Mercado and Diaz as payment for their services and cooperation in the reduction operation, the same to be shared equally between Diaz and Mercado. Mendoza received P10,000.00.

"The third incident happened during the preliminary appreciation of ballots in the Castañeda v. Espino case, sometime in October 2002, Pagorogon and Diaz met at the Canvass Board Service office at around ten o'clock in the morning. PAGOROGON, DIAZ and JEFFREY B. LABANG went to the revision room during lunch break, when nobody was around. Diaz had the key to the room, opened it, and he and Pagorogon entered the room. Labang and Mercado stayed outside as look-outs. Pagorogon then brought out the ballots and started to mark these with the figures '13-0' and '0-13', while Diaz sealed the gaps in the door of the revision room from the HRET with masking tape. Diaz locked the door, left through another door (that led to the Senate Electoral Tribunal) and returned after forty minutes, after which all of them left the revision room.

"The fourth incident occurred sometime in October 2002 during the preliminary appreciation proceedings in the Castañeda v. Espino case, and this time, only PAGOROGON, DIAZ and LABANG were involved. x x x.

"The fifth incident took place where DIAZ and LABANG continued, on order of Pagorogon, the marking of ballots in the Espino case, while they were at the Main Ballot Box Room. x x x.

"The sixth incident occurred sometime in October 2002, during the preliminary appreciation of ballots in the Cariño v. Lanot case. DIAZ, PAGOROGON and LABANG were the persons involved. x x x.

"Mendoza received another P15,000.00 while Apolinario Mercado received P20,000, to Mendoza's, Diaz's and Labang's knowledge. Diaz received a total of P75,000.00. Pagorogon was the one who gave all of them the money after each 'operation', and no other.

x x x



"It appears that Atty. Mapili and Atty. Panga Vega had no hand in all these incidents. Pagorogon's accusations and confession implicating the two have no leg to stand on, for he has presented no witnesses, offered no evidence to prove their participation. His confession, standing alone, could not validly be taken to prove a case against the two; it is self-serving at the very least. Moreover, it appears and Pagorogon completely fabricated the participation of Attys. Panga-Vega and Mapili.

x x x

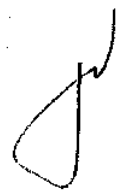
"From all that he (Pagorogon) has submitted, it is apparent that he alone is the mastermind of the scheme x x x ."

The Tribunal accepted the findings and recommendations of Judge Guerrero and in a Decision dated October 21, 2004, Pagorogon, Mendoza, Diaz, and Labang were found guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. The penalty of dismissal from the service and its accessory penalties were imposed upon them. Pagorogon's counter-complaint against Camua, Attys. Panga-Vega and Mapili were dismissed. In the same Decision, the Tribunal directed Atty. Panga-Vega, as the Secretary of the Tribunal, to cause the filing of criminal and administrative charges against Mercado.

On November 26, 2004, Atty. Panga-Vega filed the complaint against Mercado for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In an Order dated January 20, 2005, the Tribunal designated Atty. Rodolfo T. Espinosa to serve as hearing officer. Atty. Espinosa then directed Mercado to file his Counter-Affidavit/Comment to the Complaint. Also, in an Order dated February 10, 2005, the Tribunal, acting on Atty. Panga-Vega's motion for issuance of preventive suspension, directed the preventive suspension of Mercado for ninety (90) days. On February 10, 2005, Mercado filed his Counter-Affidavit with Attachments. On February 14, 2005, Mercado filed a Motion for Reconsideration to the Order of Preventive Suspension and Petition to Appoint a Prosecutor. In an Order dated February 17, 2005, the Tribunal denied said motion.

Atty. Espinosa proceeded with the hearing of the case. The prosecution and defense presented their respective evidence. After the conduct of the formal hearing, both parties submitted their respective memoranda. At the conclusion of the formal investigation, Atty. Espinosa submitted his report and recommendation to the Tribunal.

In a Decision dated September 12, 2005, the Tribunal found Mercado guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest and imposed upon him the penalty of dismissal and its accessory penalties. Mercado moved for the



reconsideration of the same but the same was denied by the Tribunal in HRET Resolution dated October 13, 2005. Hence, Mercado filed this appeal before the Commission.

The issues to be addressed in Mercado's appeal are, to wit:

- a. Whether the absence of a formal charge issued by the Tribunal would render Mercado's preventive suspension and the decision ordering his dismissal null and void;
- b. Whether substantial evidence exists to hold Mercado guilty for the offenses of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

Anent the first issue, the appellant argues that the complaint filed by the Secretary of the HRET, Atty. Panga-Vega, against him should not be equated to a formal charge. He further argues that in the absence of a formal charge, the Tribunal failed to acquire jurisdiction over his case and thus it would render the Decision of the Tribunal null and void. He further contends that the lack of the formal charge would deem that his preventive suspension was also void.

The Commission does not find appellant's contentions valid.

The issuance of a formal charge is an essential requirement of due process since it is the means to inform the person of the charges against him and the acts constituting the same. Also, well-settled is the rule that in administrative cases, the requirements of due process are complied with if the person is apprised of the charges against him and he is given an opportunity to explain his side.

Based from the records, it was the Tribunal which directed the Secretary of HRET to file the administrative complaint against the appellant. This directive was embodied in the Tribunal's decision dated October 21, 2004. The grant of authority to Atty. Panga-Vega to file the "administrative charges" was explicit. In fact, this issue was already raised in appellant's motion for reconsideration before the Tribunal. The Tribunal ruled on this issue in its Resolution dated October 13, 2005 in this wise:

Anent respondent's allegation that no formal charge was filed against him, a perusal of the records reveals that a verified Complaint was filed by Atty. Daisy B. Panga-Vega against respondent on November 26, 2004. x x x. The hearing officer, Atty. Rodolfo T. Espinosa, issued an Order dated January 27, 2005, to which was attached a copy of Atty. Vega's complaint, directing respondent Mercado to file his Counter-Affidavit/Comment. x x x respondent filed his Counter-Affidavit on February 10, 2005. Thereafter hearings were conducted, in which both



complainant and respondent presented their respective witnesses and documentary evidence.

"It is worthy to note that at no time during the investigation proceedings did respondent raise any procedural objection particularly that no verified complaint was actually filed against him. In any event, the Supreme Court ruled that in administrative cases, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. Respondent cannot deny that he actively participated, without any reservation, in every step of the investigatory proceedings conducted. He cannot now belatedly raise the issue of procedural defects."

Evidently, the filing of the complaint was upon the directive and imprimatur of the Tribunal. It is this grant of authority by the Tribunal which is the primary reason why the Commission rules that the complaint filed by Panga-Vega is equated to a formal charge. Furthermore, the complaint filed by Atty. Panga-Vega sufficiently informed Mercado of the charges against him thus complying with the requirement that the respondent must be apprised of the charges against him. Thus, there was substantial compliance with the rules.

Finding that the complaint is valid in properly informing the appellant of the charges, it also follows that the order of preventive suspension is also valid. Be it noted that it was the Tribunal, through its own order, which placed the appellant under preventive suspension.

As to the second requirement of administrative due process, records indicated that Mercado was given every opportunity to present his defense. He availed of this opportunity by actively participating at every stage of the formal investigation. He was able to file his counter-affidavit, he participated in the formal hearings and was represented by counsel. He also submitted a memorandum at the conclusion of the formal hearings.

Therefore, from the records, it is evident that appellant was afforded due process required in administrative proceedings.

Anent the second issue, Mercado was charged with the offenses of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

As defined, Dishonesty is the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and intent to violate the truth. Grave Misconduct is the *"transgression of some established and definite rule*

of action, more particularly, unlawful behavior or gross negligence by a public officer³. It is settled that misconduct, misfeasance, or malfeasance 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 the office.⁴" On the other hand, Conduct Prejudicial to the Best Interest of the Service refers to "such unwarranted act of the respondent resulted in an undue prejudice to the best interest of the service."⁵

Also, it must be emphasized that the quantum of evidence required in administrative cases is substantial evidence or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In his appeal, Mercado argues that the evidence relied upon by the Tribunal is insubstantial to hold him liable for the offenses charged.

The Commission is not persuaded. Contrary to the appellant's averments, substantial evidence has proven Mercado's participation in this nefarious scheme.

A perusal of the records shows that the Tribunal primarily relied on the testimonies of Florentino S. Diaz, Jr. and Eduardo Mendoza as substantial evidence to find the appellant guilty. As mentioned, Diaz and Mendoza, together with Pagorogon, and Labang were found guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service with respect to the pilfering and marking of ballots in which the appellant was also involved.

Records reveal that Diaz executed a Joint Affidavit dated May 26, 2003 together with Mendoza and Labang. In said affidavit, Diaz narrated the events that occurred with respect to the pilferage/markings of ballots in the two protest cases. He identified Mercado as one of the participants in the marking/pilfering of ballots on March 1, 2002 to wit:

"4. Habang ako (Diaz) ay nagkukulekta ng ballot boxes sa Lanao del Norte, tinawagan ako ni G. Pagorogon at sinabihan na kailangang makabalik ako agad dahil may isasagawa kaming 'operasyon' sa kaso ng Castañeda vs. Espino, na noon ay nag-uumpisa na ang revision ng ballots.

"5. x x x Nang magkita kami ni Pagorogon, ako ay sinabihang niyang muli ukol sa nasabing operasyon at sabi niya ang alok ni Castañeda ay may kabuoang P1.2 milyon at ang bahagi ng bawat isa ay tig- P300 thousand kapalit ng paghabawas ng balota ni Espino. Sang-ayon sa kanya, apat kaming maghahati-hati, ako, si G. Pagorogon at sina G.

³ Arcenio vs. Pagorogon. 224 SCRA 246

⁴ Amosco vs. Magro, 73 SCRA 107

⁵ Lucero, Antonio M., CSC Resolution No. 98-0649, March 25, 1998

Apolinario Mercado, LSE II at Eduardo Mendoza, LSA I, Human Resource Management Service (HRMS).

"6. Noong Marso 1, 2002, isinagawa naming ang pagbabawas ng mga balota ni Espino. Sina G. Mendoza at Mercado ang nagsilbing lookout sa bodega. Kaming dalawa ni G. Pagorogon ang kumuha ng mga balota ni Espino sa loob ng mga apat na ballot boxes. Itinago ni G. Pagorogon ang mga nasabing balota sa kanyang bulsa. Pagkatapos ng office hours, nagkita kami ni G. Pagorogon at Mercado sa harap ng Landbank-COA. Sumakay kami sa auto ni G. Pagorogon at dumeretso kami sa Metro KTV x x x. Dahil sarado pa ang nasabing KTV nagtuloy kami sa Ever Commonwealth at pinakain kami muna ni G. Pagorogon sa Max's restaurant. Bandang alas-siyete ng gabi, nakipagkita si G. Pagorogon kay Atty. Gerardo 'Jervy' Erquiza, Jr., abogado ni Castañeda habang kami ni G. Mercado ay nakatayo sa may di kalayuan. Nakita kong may inabot ng letter size brown envelope si Atty. Erquiza kay G. Pagorogon at bilang kapalit nito ay iniabot naman ni G. Pagorogon ang mga balota kay Atty. Erquiza. Pagkatapos, sumakay kaming muli sa auto ni G. Pagorogon at binanggit niya na nakatanggap siya ng P200,000.00 mula kay Atty. Erquiza bilang paunang bayad. Binigay niya sa amin ang P100,000.00 para paghatian naming ni G. Mercado. Binaba niya kami sa Commonwealth Avenue, banding Tandang Sora at umalis na siya."

In another incident in October 2002, Diaz stated in the same Joint Affidavit that Mercado again acted as lookout for which he received the amount of Twenty Thousand Pesos (P 20,000.00). Notably, during the formal investigation against Pagorogon et. al. Diaz admitted and testified on the entire contents of said Joint Affidavit. It is on the basis of the testimonies and admissions of Pagorogon, Mendoza and Labang that they were found guilty of marking and pilfering of ballots and were ordered dismissed from the service.

However, during the formal investigation against Mercado, Diaz made a turnabout. In an undated affidavit which he presented prior to testifying, he refuted his earlier statements in the Joint Affidavit. With this change in the substance of his testimony, Diaz was treated as a hostile witness by the prosecution. Diaz alleged that he was merely forced or persuaded by his superiors in the earlier cases because he was assured he would not be prosecuted but only utilized as witness.

Notably, during the direct examination of Diaz in the March 4, 2005 hearing of Mercado's case, Atty. Michael D. Villaret, counsel for the prosecution, confronted Diaz with his previous testimony in Administrative Case Nos. 03-001 and 03-002 as stated in the Transcript of Stenographic Notes (TSN) dated June 9, 2003 where he affirmed and repeated through direct testimony, the contents of the Joint Affidavit dated May 26, 2003.



When asked if he recalled said testimony, Diaz was evasive and merely said that he could no longer recall such events. Clearly a hostile witness, Diaz kept on denying his earlier testimony in Administrative Case Nos. 03-001 and 03-002. At this juncture, Atty. Villaret requested the marking of said TSN as evidence for the prosecution. Furthermore, the prosecution presented rebuttal witnesses namely Corazon P. Villanueva, Chief of the Cash Management Service; Atty. Josefina S. Olais, Chief Legal Service; Elizabeth Felix, Executive Assistant, all of HRET, who testified on the circumstances behind the preparation of the Joint Affidavit which proved that said affidavit was given voluntarily and with assistance of counsel.

The belated retraction by Diaz especially after he was found guilty and dismissed by the Tribunal will not affect the truthfulness of the Joint Affidavit and the testimony he gave against the appellant. The same is a last ditch effort to save the appellant from liability for Diaz will stand to lose nothing if he perjured himself with this retraction. Nevertheless, it is evident from the Joint Affidavit and Diaz's testimony as shown in the TSN that Mercado participated in the scheme of marking and pilfering ballots and he received a total of P70, 000.00 as pay off for the evil deed.

Witness Eduardo Mendoza, who was also found guilty in the earlier case, confirmed Mercado's participation in the operation perpetuated by Pagorogon to tamper election results to favor the protestant Espino in the protest case of Castañeda vs. Espino. Unlike Diaz, Mendoza remained steadfast in his testimony that the appellant acted as lookout. He actually witnessed the appellant's presence at the scene and in fact, appellant was even going in and out of the storeroom where Pagorogon was doing the marking and pilfering of ballots.

In the present appeal, the counsel for appellant argued to discredit Mendoza as witness but the Commission concurs with the Tribunal in finding his testimony credible. Mendoza stood to gain nothing from testifying against Mercado for he was already a dismissed employee nor does he have any ill motive against the appellant. The testimony of Mendoza in fact bolsters the previous testimony of Diaz in Administrative Case Nos. 03-001 and 03-002. It also proves that Diaz's retraction aims nothing but to perpetuate falsity.

As emphasized earlier, the quantum of evidence needed in this administrative case is substantial evidence. It is not proof beyond reasonable doubt in criminal cases or preponderance of evidence like in civil cases. From the evidence relied upon by the Tribunal and now, this Commission, it is clear that any person with a reasonable mind will conclude that Mercado participated in the scheme of marking/pilfering of ballots. While the appellant made futile efforts to exonerate himself by relying on Diaz's retraction, discrediting Mendoza and by propounding this Commission with arguments on procedural deficiencies allegedly committed by the Tribunal, still the Commission is not persuaded to grant his appeal. To do so would result in a miscarriage of justice. It

would mean turning a blind eye to the evil deed that the appellant committed. Appellant Mercado may not realize this, but the acts he committed are morally deplorable. The appellant compromised the sanctity of the ballot for money. He not only betrayed his duties and responsibilities as utility assistor during the revision proceedings, but also the trust of the public in institutions such as the HRET and worst, the trust of the voters whose ballots he had a hand in desecrating. Thus, it is only fair and just that he be expunged from the roster of civil servants; corrupt and morally deprived people like him should not belong to the civil service.

WHEREFORE, the appeal of Apolinario M. Mercado, Legislative Staff Employee II, House of Representatives Electoral Tribunal (HRET), Quezon City is hereby **DISMISSED** for lack of merit. The decision dated September 12, 2005 of the House of Representatives Electoral Tribunal and the Resolution dated October 13, 2005 are hereby **AFFIRMED**. Accordingly, Mercado is found **GUILTY** of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and meted the penalty of **DISMISSAL** from the service with all its accessory penalties of forfeiture of retirement benefits, perpetual disqualification from reemployment in the government service and cancellation of eligibility.

Quezon City, **MAR 12 2007**


CESAR D. BUENAFLOB
Commissioner


MARY ANN FERNANDEZ-MENDOZA
Commissioner


KARINA CONSTANTINO-DAVID
Chairman

Attested by:


JUDITH D. CHICANO
Director IV
Commission Secretariat and Liaison Office