



ANTIQUERA, Celso D.
 Re Drug Use; Grave Misconduct
 (Appeal)
 X-----X

This is a
**MUST - READ
 RESOLUTION**
 CSC Res No. 07-1625 dated August 13, 2007
 CSLO

RESOLUTION NO. 071625

Celso D. Antiquera, Traffic Aide I, Metropolitan Manila Development Authority (MMDA), appeals the MMDA Decision dated July 2, 2004, as affirmed in an Order dated November 12, 2004 and further sustained in a Memorandum dated August 16, 2005, dismissing him from the service together with other MMDA employees for the use of prohibited drugs.

The dispositive portion of the assailed Decision reads, as follows:

"WHEREFORE, premises considered, respondents CELSO ANTIQUERA, ALFREDO TORRES, EDUARDO FRANCO, FERNANDO ASUNZA, NELSON ARZAGA, FERNANDO DALIGDIG, and MANUEL APOLONI are all found GUILTY of GRAVE MISCONDUCT and are penalized with DISMISSAL from the service. x x x"

In his present appeal, the appellant makes the following assignment of errors, viz.:

"I

"Appellee gravely erred in finding Appellant guilty of Grave Misconduct and penalized him with dismissal from the service;

"II

"Assuming that Appellant was found positive for prohibited substances/ drugs, Appellee committed serious error in not imposing the penalty as provided in Memorandum Circular No. 06 series of 2003 issued by Appellant (this should be Appellee)."

Anent his first assignment of error, the appellant argues that the MMDA failed to prove the quality of the confirmatory test done on the result of the screening test. He contends that the testing procedures that were undertaken were deficient in identifying the chemical structure of the substance found in his urine sample. In addition, the

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transmission of the urine sample from the MMDA Medical and Dental Clinic to the St. Andrew Drug Screening Laboratory, which took two days, together with the attendant handling thereof, could have affected its quality. Further, he scores the transmission of the urine sample to the St. Andrew Laboratory, as this supposedly violated an MMDA Memorandum, which directed that positive urine samples should be coursed to the Dangerous Drugs Board (DDB)/ Philippine National Police (PNP) Crime Laboratory for analysis.

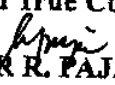
As regards his second assigned error, he notes that in MMDA Memorandum Circular No. 6, s. 2003, which was issued pursuant to Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, it was therein decreed that drug use shall be a ground for suspension or termination subject to civil service law and rules. However, he alleges that the penalty of dismissal imposed on him amounted to grave abuse of discretion since no evidence was ever adduced to qualify his offense to grave misconduct. On the contrary, he claims that in a voluntary drug testing with the same screening laboratory, he was subsequently found to be negative of drug use; purportedly bolstering his argument that he was not a drug user. He moreover claims that in his nine (9) years of service to the MMDA, he has never been charged of any wrongdoing except this one. Finally, he avers that everybody deserves a second chance.

Commenting on the appeal, the MMDA calls for the outright dismissal of the appeal. It opines that the appeal was belatedly filed computed from the time the appellant received the Order dated November 12, 2004, denying his motion for reconsideration.

But even if the appeal can be given due course, the MMDA submits that the guilt of the appellant has been amply established and that the penalty imposed on him appropriately fell within the purview of the MMDA Memorandum No. 6, s. 2003, considering that he failed to satisfactorily explain why he was positive for metamphetamine hydrochloride.

Based on the extant records of the case, the present case arose from the random drug testing conducted by the MMDA on its employees pursuant to the mandate of RA No. 9165. MMDA medical personnel made unannounced field visits, where MMDA traffic enforcers, among others, were required to provide a sample of their urine. The samples were then initially screened and those tested positive were sent to a drug-testing laboratory, in this case the St. Andrew Drug Testing Laboratory, for confirmatory testing.

It appears that after a screening test, the MMDA Medical and Dental Clinic found traces of methamphetamine or "shabu" in the appellant's urine sample. Thus, as part of the procedure, the same urine sample was forwarded to the St. Andrew Laboratory for the needed confirmatory testing. The test confirmed the initial result.

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On the basis of the above finding, the MMDA formally charged the appellant and other similarly situated MMDA personnel, as follows:

"That on July 10, 2003, Dr. Esmeraldo C. Bacuyay, Chief, Medical and Dental Clinic, after conducting random drug test results with positive confirmatory examination results. As such, you violated RA 9165 which is tantamount to Misconduct under the CSC rules. x x x"

x x x

They were likewise placed under a ninety (90)-day preventive suspension.

In an answer embodied in an affidavit, the appellant belied any culpability. He averred, among others, that the existence of illegal substance in his urine sample was due to the fact that he joined pot drug sessions on several occasions in order to infiltrate the drug syndicate in their community, as part of his role as a crusading member of the *Bantay Bayan*.

Formal investigation thereupon ensued. The prosecution presented, among others, the medical technologist of the St. Andrew Laboratory, who tested the appellant's urine sample, a certain Mary Grace Gonzaga.

Thereafter, and upon the recommendation of the investigating officer, the MMDA issued the assailed Decision.

Aggrieved, the appellant moved for reconsideration but was denied. Undaunted, he again sought for reconsideration, this time alleging that he voluntarily submitted himself to a drug test and the result was negative. In a memorandum dated August 16, 2005, the MMDA held that a second motion for reconsideration was proscribed under the rules.

The issues for resolution are, as follows:

1. Whether the appeal is filed belatedly; and,
2. Whether the guilt of the appellant has been substantially established.

After thorough scrutiny of the records of the case, the Commission finds the appeal devoid of merit.

For one, the appeal was belatedly filed. As correctly observed by the MMDA in its comment, the appellant received his copy of the MMDA decision on his case on October 18, 2004. Thereafter, he moved for reconsideration, which was dismissed in an Order dated November 12, 2004, a copy of which he received on April 16, 2005. Instead of appealing directly to the Commission, as provided for in the Civil Service Law and rules, he interposed before the MMDA a second motion for reconsideration, which is considered a prohibited pleading. Being a proscribed pleading, the second motion for

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reconsideration did not toll the running of the period for appealing to the Commission. Thus, when he eventually commenced an appeal before the Commission on January 3, 2006, after being put on notice of the dismissal of his second motion for reconsideration on December 15, 2005, the statutory period for appeal had already lapsed and he squandered his chance to seek an appellate review of his dismissal from the service.

Even conceding for a moment that the instant appeal was timely filed, it is still not persuasive. Based on the records submitted, the Commission is convinced beyond any shadow of doubt that the appellant was guilty of using prohibited drugs. The result of the random drug testing showed conclusively that his urine sample contained traces of *methamphetamine hydrochloride*, which, in common parlance, is known as "met" or "shabu."


The appellant attempts to shake off his liability by casting doubt on the drug testing procedure. More specifically, he questions the quality of the screening test adopted by the screening laboratory. Yet, the problem with this argument is that it borders on speculation as to what is the best method to be utilized for screening test. This is certainly not a justiciable issue or is a matter outside of administrative adjudication. The choice as to which drug testing method to adopt is best addressed to the sound discretion of the authorized testing laboratory, given its technical competence and expertise on the area. Absent any palpable flaw in the procedure or grave abuse of discretion, which must be clearly and convincingly shown, the testing procedure thus conducted is deserving of weight and credence.

Moreover, a reading of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 does not impose any particular method of screening or confirmatory testing to be utilized. What it mandates is that "the drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of the drug and the confirmatory test which will confirm a positive screening test." No specific testing method is, however, decreed, giving rise to a reasonable inference that an accredited drug-testing laboratory is given much leeway in adopting such modern and accepted method it deems appropriate under the circumstances.

Furthermore, the appellant does not, in any way, question the competence and credibility of the drug testing laboratory and its personnel who actually conducted the confirmatory testing, Mary Grace Gonzaga. On the contrary, he admitted the Notice of Proficiency of Gonzaga evidencing that the latter was a DDB-proficient Chemist. This being the case, Gonzaga should be presumed to know fully well the process to be undertaken in the conduct of drug testing, and that her finding should be worthy of credence, absent any proof of malice, fraud or bad faith on her part.

The other allegation of the appellant that the quality of the sample could have been affected by its handling or possible switching of samples considering that there was a two-day delay in the transmission of the urine sample from the MMDA Medical and Dental Clinic to the St. Andrew's Clinic, deserves scant consideration. This is purely conjectural since the appellant has failed to substantiate it.

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That the confirmatory testing of the appellant's urine sample was undertaken by the St. Andrew's Clinic, and not by the DDB/PNP Crime Laboratory, contrary to the provision of a Memorandum dated June 24, 2003, does not, in any way, invalidate or nullify the result of the drug test. It should be noted that the Clinic itself is an authorized or accredited drug-testing laboratory, and in fact, the result of its finding on the confirmatory testing involving the appellant's urine sample was issued under the name of the DDB. At any rate, the said issue is merely procedural in nature, and, as a rule, no vested right arises from matters of procedure.

Anent the appellant's argument that he was found negative of drug use when he subsequently submitted himself for a voluntary drug test before the same laboratory, the same is unconvincing owing to the fact that a different urine sample was used.

In all events, the clincher against the appellant's case is his own admission in a previous affidavit that he had "on two or three occasions participated in pot drug session" in an effort to infiltrate the drug syndicate in their community purportedly as part of his function as member of Bantay Bayan. Apart from the fact that the said story smacked of a highly unbelievable tall tale, it betrays his changing stands on the issue of his drug use that, if at all, only serves to erode or impeach his credibility, making any of his statements suspect.

It is settled that the use of illegal or prohibited drugs is a serious and grievous offense. This is because of the perils it poses not only on the users themselves but also on the general public. It is a common knowledge that drug addicts become useless if not dangerous members of society and, in some instances, turn out to be among the living dead. The dangers would all the more be multiplied or compounded if the person involved is one connected with the government, who happens to be performing some vital frontline services such as traffic enforcement as in the present case. It is for this reason that a government official or employee found to be using illegal drugs is considered to be guilty of grave misconduct, punishable with the supreme penalty of dismissal from the service with all its attendant accessory penalties. Substance abuse or drug addiction is directly anathema to the abiding tenet that a public office is a public trust.

Regrettably, the appellant cannot make use of his length of service and this case being his first offense to get off lightly. It has been ruled, in not a few cases, that rather than mitigate liability, length of service should serve to aggravate culpability. For, one in the service long enough should know better than to engage in nefarious activities. Upon the other hand, the grave nature of the offense committed by the appellant negates appreciating in his favor the fact that this happens to be his first commission.

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WHEREFORE, foregoing premises considered, the instant appeal is hereby **DISMISSED**. Accordingly, the MMDA Decision dated July 2, 2004, as affirmed in an Order dated November 12, 2004 and a Memorandum dated August 16, 2005, finding Celso D. Antiquera guilty of Grave Misconduct and imposing upon him the penalty of dismissal from the service is **AFFIRMED**. He is likewise imposed the accessory penalties of forfeiture of retirement benefits, disqualification to hold public office, cancellation of civil service eligibilities and bar from taking future civil service examinations.

Quezon City, **AUG 13 2007**


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

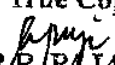

KARINA CONSTANTINO-DAVID
Chairman


CESAR D. BUENAFLOR
Commissioner

Attested by:


JUDITH D. CHICANO
Director IV
Commission Secretariat and Liaison Office

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