

**[ADMINISTRATIVE ORDER NO. 286, June 02,
1992]**

**EXONERATING REGIONAL DIRECTOR JOSE C. PENDOZA OF THE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS**

This refers to the administrative case filed by former Undersecretary Jose F. Mabanta of the Department of Public Works and Highways (DPWH) against Mr. Jose C. Pendoza, Regional Director of the DPWH Region III Office, for dishonesty, falsification of official documents, grave misconduct, neglect of duty and conduct prejudicial to the best interest of the service in connection with the alleged irregularities in the construction of the ₱13 Million Ninoy Aquino By-Way Project.

The charges stemmed from the criminal complaint filed in March 1989 by the DPWH Fact-Finding Committee with the Office of the Ombudsman against Regional Director Pendoza and other DPWH officials stationed at Region III involved in the Ninoy Aquino By-Way Project for violation of the provisions of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and Article 208 of the Revised Penal Code. The said criminal complaint recited that respondent Pendoza, "despite his knowledge of the irregularities being committed in the execution of the project, allowed or tolerated infractions of the law, giving unwarranted benefits to the private contractors to the damage and prejudice of the government."

The same criminal complaint specifically alleged that Regional Director Pendoza allowed the use of substandard materials in the implementation of the Ninoy Aquino By-Way Project and tolerated non-compliance with the specifications prescribed by the Standard Specification for Highways and Bridges, otherwise known as the Red Book.

To support the charges against Regional Director Pendoza, the DPWH Fact-Finding Committee submitted the respective affidavits of Engr. Stephen David, General Construction Foreman Mely Ramoneda and Project Engineer Dante Sarmiento; the Report dated 3 February 1989 submitted by Engrs. Felino Tria, Nestor de Leon, Vicente Miranda and Carlos Baluyot on their investigation of the alleged substandard construction of the concreting of the Ninoy Aquino By-Way; the Report dated 7 February 1989 of Director Jose Espiritu of the Bureau of Research and Standards and Interim Director Edmundo Mir of the Bureau of Construction on the results of the core testing and evaluation; and the Report on Evaluation of Strength and Concrete Cores.

In his counter-affidavit, Regional Director Pendoza denied all the charges and claimed that he followed all the established DPWH procedures and acted in accordance with the results of the tests conducted by his subordinates at the time of the construction.

On 27 December 1989, this Office referred the administrative charges against

Regional Director Pendoza to the Secretary of Justice for formal investigation and recommendation.

On 27 March 1992, the Secretary of Justice forwarded to this Office the report and recommendation of the Investigating Committee he constituted, together with the entire records of the case.

In its Report dated 10 January 1992, the Investigating Committee states that the evidence presented during the proceedings disprove the charge that "despite respondent Pendoza's knowledge of the irregularities, being committed in the execution of the projects, he allowed or tolerated infractions of the law, giving unwarranted benefits to the private contractors to the damage and prejudice of the government."

According to the Investigating Committee, the Ninoy Aquino By-Way Project had been properly awarded to the Panday Pira Construction after a public bidding and the assertion that the said construction company was a mere dummy of other people in collusion with respondent Pendoza had not been established by competent evidence.

The 10 January 1992 Report contains the following relevant findings:

"The project fully complied with the requirements set by standard specifications for highways and bridges of the DPWH. The evidence presented by the respondent clearly proved that the construction was done in accordance with pre-set standards of the DPWH and as established by the test employed to determine the strength of the concrete, called the flexural test (Exhibit 5 up to 5-J) The results of the flexural test show that the samples of the paving , concrete all met the standard strength of 525 pounds per square inch (psi) or were within [the] required 15% allowance, as provided in Ministry Order No. 12 issued on February 27,1984 (Exhibit 6).

"The core test applied by the Inspectorate Team of the DPWH to the drilled samples extracted, from the pavement cannot be relied upon in testing the flexural strength of concrete pavements in the light of conclusive technical studies and evaluations which prove that there is absolutely no correlation between flexural strength measured in the beams and compressive strength measured on the cores as applied to concrete pavements in the Philippines (Exhibits 7, 7-A, 7-A-1, 7-A-2, 7-A-3, 7-B and 7-B-1).

"Moreover, the core test is unreliable in testing [the] strength of concrete pavements in view of the sensitivity of the pavement while it is subjected to prolonged and unnecessary vibrations by the core boring machine. As a matter of fact, the strength of the pavement is effectively lessened in the course of the boring.

"In fact, it is the report of the Inspectorate Team itself which militates against and gravely affects the credibility of the claim of complainant when it failed to recommend the condemnation of the project as completed. As it appears on record, the recommendations were 1) for the