

EN BANC

[A.M. NO. P-05-1981 (FORMERLY OCA I.P.I. NO. 02-1516-P), April 06, 2005]

CIVIL SERVICE COMMISSION, PETITIONER, VS. EMMA S. JAVIER, UTILITY WORKER I, RESPONDENT.

DECISION

PER CURIAM:

Respondent Emma S. Javier, Utility Worker I in the Regional Trial Court, Makati City, Branch 145, was formally charged by the Civil Service Commission (CSC) with grave misconduct and dishonesty due to alleged cheating during the Career Service Examinations (Sub-Professional) conducted on November 23, 1996 at the Fort Bonifacio High School in Makati City. The charge^[1] sheet reads:

The Civil Service Commission-National Capital Region conducted a fact-finding investigation pursuant to a report that you Emma S. Javier, an Aide at the Regional Trial Court, Branch 145, Makati City probably committed the administrative offenses of Grave Misconduct and Dishonesty during the Career Service (Sub-Professional) examination given on November 23, 1996 at the Fort Bonifacio High School, Makati City. During the said investigation, evidence established the following facts:

1. That you applied for the abovementioned examination and assigned in Room No. 011;
2. That you took the examination on November 23, 1996 as scheduled;
3. That during the said examination, CSC personnel on duty caught you using "codigo" (inserted in a handkerchief) containing the alleged answers to the questions.

Considering that cheating during Civil Service examinations constitutes the administrative offenses of Grave Misconduct and Dishonesty, you should be charged with the said administrative offenses.

WHEREFORE, you are hereby formally charged with Grave Misconduct and Dishonesty. Accordingly, you are given five (5) days from receipt hereof to submit to this Office, CSC-NCR located at No. 25 Kaliraya St., Quezon City a written answer under oath, together with the affidavits of your witnesses and documentary evidence, if any. You are advised of your right to the assistance of counsel of your choice. (Underscoring supplied)

The case was docketed as Adm. Case No. 96-12-128.

In her Answer^[2] dated December 19, 1996, respondent, vehemently denying the charges against her, proffered as follows:

A couple of days prior to the examination, she received a *codigo* from a friend (whom she did not name) who got it from a group of employees. Since she did not want to offend her friend and as she really wanted to pass the examination, she brought the *codigo* with her to the examination room, attaching it to the inner portion of her folded handkerchief.

At the examination room, before the examination started, she was overcome by a feeling of guilt, drawing her to forego the use of the *codigo*. She being asthmatic and as the room was very dirty and dusty, she needed the handkerchief, hence, she placed it along with the *codigo* between her thighs. The watchers, who had been alerted that there had been examination leakages, soon checked every examinee in the course of which they recovered from her the handkerchief with the *codigo*.

Respondent argues that there is no such offense as "illegal possession of an unused *codigo*" or "attempted cheating."

Being based on a wrong premise that she was caught in the act of cheating, she contends that the accusations against her must fail.

Attempting to strengthen her disclaimer of having availed of the *codigo*, she invites attention to a comparison of the answers contained therein and those in her answer sheet which shows that only 15 of her 72 answers match those in the *codigo*.

Attached to respondent's Answer is an affidavit^[3] executed by Emelita E. Galao, a co-examinee, who partly corroborated her claim. Thus, Galao, who was seated 2 to 3 empty chairs away from respondent claims that she saw one of the two watchers approach respondent and point to the latter's lap; that respondent took out between her thighs a blue, well-folded handkerchief and handed it over to a watcher; and that the watcher unfolded the handkerchief to which was attached a small sheet of paper.

Carmelita Bernardino, one of the watchers, in her testimony before the CSC declared as follows: As she and her co-watcher noticed respondent to be restless and fidgety in her seat, they suspected that respondent was doing something fishy. On approaching respondent, her co-watcher asked her to hand over the handkerchief which when unfolded yielded the *codigo*.^[4]

In the course of the presentation of evidence against her, respondent filed a Motion to Dismiss^[5] on the ground of failure to present the *codigo* and failure of the witnesses to categorically declare that they actually saw her cheating during the examination.

By Order^[6] of January 29, 1998 the pertinent portion of which reads as follows, the CSC denied respondent's motion:

[T]he argument that the alleged crib sheet or "codigo" was "never presented as evidence" is a premature statement since the case has not yet reached its conclusion. As to the claim that the prosecution was not able to prove by substantial evidence the charge against the respondent, it may be recalled that it is only the Commission, after the hearing, who can declare that the quantum of proof was not established by the prosecution. Consequently, the prosecution should have at the least completed their presentation of evidence. In this case, the prosecution had not rested their case and therefore, the motion to dismiss has no basis.

The CSC thus continued its investigation. It later, however, discontinued the investigation and referred the matter to this Court by letter^[7] of December 20, 1999 to Chief Justice Hilario G. Davide, Jr. through then Court Administrator Alfredo L. Benipayo.

By Resolution^[8] of January 13, 2003, this Court referred the case to the Executive Judge of RTC Makati City for investigation, report and recommendation.

Upon termination of the investigation, the investigating judge submitted his Report and Recommendation^[9] dated February 3, 2004 with a finding that respondent is indeed guilty of cheating and recommended that she be meted with the penalty of suspension of ninety (90) days without pay, to wit:

Considering the admission of respondent that indeed she was in possession of a "codigo" while taking the Civil Service examination, there is already infraction of the rules.

Government employees, as recipients of public trust, hold a distinct position in society and must always bear in mind that their actions reflect their status as such.

According to CSC Resolution No. 95-1995 dated March 21, 1995, citing the case of Sonia Mendoza, the mere possession of a "codigo" inside the examination room is an act of cheating itself. Moreover, the Commission, in its CSC Resolution No. 94-3097 promulgated on June 4, 1994, held that:

"Even if the codigo had not been utilized, the fact of possession is manifest intent to cheat.

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It must be stressed that when one is seen or caught in possession of a codigo during the conduct of an examination, regardless of whether or not he was able to use the same, it is considered an act of cheating."

RECOMMENDATION

Suspension for ninety (90) days without pay. (Emphasis and underscoring in the original)