

## THIRD DIVISION

[ G.R. No. 198554, July 30, 2012 ]

**MAJOR GENERAL CARLOS F. GARCIA, AFP (RET.), PETITIONER, VS. THE EXECUTIVE SECRETARY, REPRESENTING THE OFFICE OF THE PRESIDENT; THE SECRETARY OF NATIONAL DEFENSE VOLTAIRE T. GAZMIN; THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, GEN. EDUARDO SL. OBAN, JR., AND LT. GEN. GAUDENCIO S. PANGILINAN, AFP (RET.), DIRECTOR, BUREAU OF CORRECTIONS, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

For resolution of this Court is the Petition for *Certiorari* dated September 29, 2011 under Rule 65, Section 1 of the Revised Rules of Civil Procedure which seeks to annul and set aside the Confirmation of Sentence dated September 9, 2011, promulgated by the Office of the President.

The facts, as culled from the records, are the following:

On October 13, 2004, the Provost Martial General of the Armed Forces of the Philippines (AFP), Col. Henry A. Galarpe, by command of Vice-Admiral De Los Reyes, issued a Restriction to Quarters<sup>[1]</sup> containing the following:

1. Pursuant to Article of War 70 and the directive of the Acting Chief of Staff, AFP to the undersigned dtd 12 October 2004, you are hereby placed under Restriction to Quarters under guard pending investigation of your case.
2. You are further advised that you are not allowed to leave your quarters without the expressed permission from the Acting Chief of Staff, AFP.
3. In case you need immediate medical attention or required by the circumstance to be confined in a hospital, you shall likewise be under guard.

Thereafter, a Charge Sheet dated October 27, 2004 was filed with the Special General Court Martial NR 2 presided by Maj. Gen. Emmanuel R. Teodosio, AFP, (Ret.), enumerating the following violations allegedly committed by petitioner:

**CHARGE 1: VIOLATION OF THE 96TH ARTICLE OF WAR (CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN).**

SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004, knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net [Worth] for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (P6,500,000.00); cash dividend received from AFPSLAI from June 2003 to December 2003 in the amount of one million three hundred sixty-five thousand pesos (P1,365,000.00); dollar peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his [wife's] names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843, Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS195, 1997 Honda Civic Car with Plate Nr. FEC 134, 1997 Mitsubishi L300 Van with Plate Nr. FDZ 582 and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: his cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (P6,500,000.00); cash dividend received from AFPSLAI in June 2002 and December 2002 in the total amount of one million four hundred thirty-five thousand pesos (1,435,000.00), dollar and peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his wife[s] names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843, Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS-195, 1997 Honda Civic Car with Plate Nr. FEC-134, 1997 Mitsubishi L-300 Van with Plate Nr. FDZ-582, and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 3: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, while in the active military service of the Armed Forces of the Philippines, knowingly, wrongfully and unlawfully violate his solemn oath as a military officer to uphold the Constitution and serve the people with utmost loyalty by acquiring and holding the status of an immigrant/permanent residence of the United States of America in violation of the State policy governing public officers, thereby causing dishonor and disrespect to the military professional and seriously

compromises his position as an officer and exhibits him as morally unworthy to remain in the honorable profession of arms.

CHARGE II: VIOLATION OF THE 97TH ARTICLE OF WAR (CONDUCT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE).

SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assets in his Statement of Assets and Liabilities and Net worth for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

SPECIFICATION NO. 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assets in his Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

Petitioner, upon arraignment on November 16, 2004, pleaded *not guilty* on all the charges.

The Office of the Chief of Staff, through a Memorandum<sup>[2]</sup> dated November 18, 2004, directed the transfer of confinement of petitioner from his quarters at Camp General Emilio Aguinaldo to the ISAFP Detention Center. On the same day, petitioner, having reached the age of fifty-six (56), compulsorily retired from military service after availing of the provisions of Presidential Decree (P.D.) No. 1650,<sup>[3]</sup> amending Sections 3 and 5 of P.D. 1638, which establishes a system of retirement for military personnel of the Armed Forces of the Philippines.

Pursuant to a Resolution<sup>[4]</sup> dated June 1, 2005 of the Second Division of the Sandiganbayan, petitioner was transferred from the ISAFP Detention Center to the Camp Crame Custodial Detention Center.

After trial, at the Special General Court Martial No. 2, on December 2, 2005, the findings or the After-Trial Report<sup>[5]</sup> of the same court was read to the petitioner. The report contains the following verdict and sentence:

MGEN CARLOS FLORES GARCIA 0-5820 AFP the court in closed session upon secret written ballot 2/3 of all the members present at the time the voting was taken concurring the following findings. Finds you:

On Specification 1 of Charge 1 - **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.

On Specification 2 of Charge 1 – **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.

On Specification 3 of Charge 1 – **Guilty**

On Specification 1 of Charge 2 – **Guilty**

On Specification 2 of Charge 2 – **Guilty**

And again in closed session upon secret written ballot 2/3 all the members are present at the time the votes was taken concurrently sentences you to be **dishonorably [discharged] from the service, to forfeit all pay and allowances due and to become due and to be confined at hard labor at such place the reviewing authority may direct for a period of two (2) years.** So ordered. (Emphases supplied)

Afterwards, in a document<sup>[6]</sup> dated March 27, 2006, the Staff Judge Advocate stated the following recommended action:

#### IV. RECOMMENDED ACTION:

The court, after evaluating the evidence, found accused: GUILTY on Charge 1, GUILTY on Specification 1 on Charge 1 – except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; GUILTY on Charge 1, Specification 2 except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planters Bank and Planter's Development Bank; GUILTY on Specification 3 of Charge 1; GUILTY on Charge 2 and all its specifications. The sentence imposed by the Special GCM is to be dishonorably discharged from the service, to forfeit all pay and allowances due and to become due; and to be confined at hard labor at such place the reviewing authority may direct for a period of two (2) years. As it is, the sentence is proper and legal. Recommend that the sentence be approved. The PNP custodial facility in Camp Crame, Quezon City, is the appropriate place of confinement. The period of confinement from 18 October 2004 shall be credited in his favor and deducted from the two (2) years to which the accused was sentenced. Thus, confinement will expire on 18 October 2006. Considering that the period left not served is less than one (1) year, confinement at the National Penitentiary is no longer appropriate.

4. To carry this recommendation into effect, a draft "ACTION OF THE REVIEWING AUTHORITY" is hereto attached.

In an undated document,<sup>[7]</sup> the AFP Board of Military Review recommended the following action:

8. RECOMMENDED ACTION:

A. Only so much of the sentence as provides for the mandatory penalty of dismissal from the military service and forfeiture of pay and allowances due and to become due for the offenses of violation of AW 96 (Conduct Unbecoming an Officer and a Gentleman) and for violation of AW 97 (Conduct Prejudicial to Good Order and Military Discipline) be imposed upon the Accused. B. The records of the instant case should be forwarded to the President thru the Chief of Staff and the Secretary of National Defense, for final review pursuant to AW 47, the Accused herein being a General Officer whose case needs confirmation by the President. C. To effectuate the foregoing, attached for CSAFP's signature/approval is a proposed 1st Indorsement to the President, thru the Secretary of National Defense, recommending approval of the attached prepared "ACTION OF THE PRESIDENT."

After six (6) years and two (2) months of preventive confinement, on December 16, 2010, petitioner was released from the Camp Crame Detention Center.<sup>[8]</sup>

The Office of the President, or the President as Commander-in-Chief of the AFP and acting as the Confirming Authority under the Articles of War, confirmed the sentence imposed by the Court Martial against petitioner. The Confirmation of Sentence,<sup>[9]</sup> reads in part:

NOW, THEREFORE, I, BENIGNO S. AQUINO III, the President as Commander-in-Chief of the Armed Forces of the Philippines, do hereby confirm the sentence imposed by the Court Martial in the case of *People of the Philippines versus Major General Carlos Flores Garcia AFP*:

- a) To be dishonorable discharged from the service;
- b) To forfeit all pay and allowances due and to become due;
- and
- c) To be confined for a period of two (2) years in a penitentiary.

FURTHER, pursuant to the 48<sup>th</sup> and 49<sup>th</sup> Articles of War, the sentence on Major General Carlos Flores Garcia AFP shall not be remitted/mitigated by any previous confinement. Major General Carlos Flores Garcia AFP shall serve the foregoing sentence effective on this date.

DONE, in the City of Manila, this **9<sup>th</sup> day of September, in the year of our Lord, Two Thousand and Eleven.**