

## EN BANC

[ G.R. No. 176343, September 18, 2012 ]

### TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, PETITIONER, VS. MA. ROSARIO S. MANALANG-DEMIGILLO, RESPONDENT.

#### DECISION

##### **BERSAMIN, J.:**

The issuance by the proper disciplining authority of an order of preventive suspension for 90 days of a civil officer or employee pending investigation of her administrative case is authorized provided that a formal charge is served to her and her charge involves dishonesty, oppression, grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that she is guilty of the charge as to warrant her removal from the service. Proof showing that the respondent or employee may unduly influence the witnesses against her or may tamper the documentary evidence on file at her office is not a prerequisite before she may be preventively suspended.

##### **Antecedents**

Trade and Investment Development Corporation of the Philippines (TIDCORP) is a wholly owned government corporation whose primary purpose is to guarantee foreign loans, in whole or in part, granted to any domestic entity, enterprise or corporation organized or licensed to engage in business in the Philippines.<sup>[1]</sup>

On May 13, 2003, the Board of Directors of TIDCORP formally charged Maria Rosario Manalang-Demigillo (Demigillo), then a Senior Vice-President in TIDCORP, with grave misconduct, conduct prejudicial to the best interest of the service, insubordination, and gross discourtesy in the course of official duties. The relevant portions of the formal charge read:

After a thorough study, evaluation, and deliberation, the Board finds merit to the findings and recommendation of the Investigating Committee on the existence of a probable cause for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, Insubordination, and Gross Discourtesy in the Course of Official Duties. However and to avoid any suspicion of partiality in the conduct of the investigation, the Board hereby refers this case to the Office of the Government Corporate Counsel to conduct a formal investigation on the following:

1) The incident during the Credit Committee Meeting on 06 March 2002 where you allegedly engaged yourself in a verbal tussle with Mr. Joel C. Valdes, President and CEO. Allegedly, you raised your voice, got angry,

shouted at Mr. Valdes and were infuriated by his remarks such as "are we talking of apples and apples here?", "everybody should focus on the issues at hand" and "out of the loop";

2) The incident during the Reorganization Meeting on 18 July 2002 where you appeared to have been rude and arrogant in the way you answered Mr. Valdes to some questions like "Ano gusto mo? Bibigay ko personally sa iyo...sasabihan ko personally ikaw?", "You know Joel alam natin sa isa't-isa...that...I don't know how to term it...there is no love lost no?", "Ang ibig sabihin kung may galit ka..." "Let's be candid you know..." "What is the opportunity? Let me see...pakita ko sa'yo lahat ang aking ano..." and "Anong output tell me?";

3) The incident during the Planning Session on 05 August 2002. Records show that you reacted to the statement of Mr. Valdes urging everybody to give support to the Marketing Group in this manner - "But of course, we would not want to be the whipping boy!" Records also show that in the same meeting, you used arrogant and threatening remarks to the President and CEO like "don't cause division to hide your inefficiency and gastos! If you push me to the wall, I have goods on you too...", "You want me to charge you to the Ombudsman?", "May humihingi ng documents sa akin, sabayan ko na sila", "Now I'm fighting you openly..."and "I am threatening you";

4) The incident involving your Memorandum to Mr. Valdes dated 19 September 2002, the pertinent portions of which read, as follows:

"I am repulsed and nauseated by the information that yesterday, 18 September 2002 at the OPCOM meeting, you claim to have talked to me or consulted me about the car you caused to be purchased for the Corporate Auditor Ms. Maria Bautista.

I have never talked to you about your desire to give Ms. Bautista a car.

This is a brazen lie, a fabrication. Such moral turpitude! How low, how base, how desperate!

Accordingly, as you have given me no (sic), I am taking you to task for this and all the illegal acts you have done and are doing against me and TIDCORP."

It appears that the said Memorandum was circulated even to those who were not privy to the cause of the issuance of such statement.

5) The incident where you assisted and made it appear to be acting as counsel of Mr. Vicente C. Uy in the case involving the latter relative to the conduct of the APEC Capacity Building for Trade and Investment Insurance Training Program in April 2002;

6) The incident on 13 November 2002 where you allegedly urged and induced officials and employees at the 3rd floor of TIDCORP to proceed to the Office of the President and CEO to give support to EVP Jane Tambanillo who was allegedly then being forced to resign by Mr. Valdes. This caused not only a commotion but disturbance and disruption of the office work at both 3<sup>rd</sup> and 4<sup>th</sup> floors;

7) The incident on 13 November 2002 where you allegedly shouted at Atty. Jane Laragan and berated Mr. Valdes in front of officers and employees whom you gathered as per allegation number 6; and

8) Relative to allegation number 7, your stubborn refusal to obey the order of Mr. Valdes to go back to work as it was only 9:30 a.m. and instead challenged him to be the one to bring you down to the 3rd floor instead of asking the guard to do so.

Pursuant to Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service and in the spirit of justice, fair play, and due process, you are hereby given the opportunity to submit additional evidence to what you have already submitted during the preliminary investigation, if any to the Board, through the OGCC, within seventy two (72) hours from receipt of this Memorandum.

In this regard, you are informed of your right to be assisted by a counsel of your choice and to indicate in your answer whether or not you elect a formal investigation. Nevertheless, and in accordance with the aforecited provision of the Uniform Rules on Administrative Cases in the Civil Service, any requests for clarification, bills of particulars or motion to dismiss which are obviously designed to delay the administrative proceeding shall not be entertained. If any of these pleadings are interposed, the same shall be considered as an answer and shall be evaluated as such.

Finally, and after considering Section 19 of the same Rules, which gives authority to the disciplining body to issue an order of preventive suspension, you are hereby preventively suspended for a period of ninety (90) days from receipt hereof.

Let a copy of this memorandum and the complete records of the case be forwarded immediately to the Office of the Government Corporate Counsel (OGCC) for appropriate action.<sup>[2]</sup>

TIDCORP referred the charge to the Office of the Government Corporate Counsel (OGCC) for formal investigation and reception of evidence. Pending the investigation, TIDCORP placed Demigillo under preventive suspension for 90 days.<sup>[3]</sup>

Demigillo assailed her preventive suspension in the Civil Service Commission (CSC),<sup>[4]</sup> which issued on January 21, 2004 Resolution No. 040047 declaring her preventive suspension to be "not in order."<sup>[5]</sup> The CSC stated that under Section

19(2), Rule II, of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules), a civil service officer like Demigillo might be preventively suspended by the disciplining authority only if any of the two grounds were present, to wit: (1) there was a possibility that the civil service employee might unduly influence or intimidate potential witnesses against him; or (2) there was a possibility that the civil service employee might tamper the documentary evidence on file in her office.<sup>[6]</sup> According to the CSC, TIDCORP did not prove with substantial evidence the existence of any of such grounds, explaining thus:

xxx. As the party claiming affirmative evidence, that is, Demigillo's possibility of influencing potential witnesses or tampering with evidence, TIDCORP is bound to prove the same by substantial evidence. However, it failed to. TIDCORP claims that its witnesses "*refused to issue any sworn statement during the preliminary investigation in deference to their immediate superior x x x and that the same witnesses, however, intimated that they may be compelled to tell the truth if called to testify during the investigation.*" On the basis of these statements, it is clear that the witnesses' refusal to execute sworn statement is by reason of their "*deference*" to Demigillo not on account of her "*intimidation or influence.*" Further, the fact that said witnesses "*will be compelled to tell the truth*" is not because of Demigillo's continued presence or absence in the office but because they are bound by their oath to tell the truth during the investigation. Under these circumstances, it is not difficult to ascertain that the order of preventive suspension is not necessary. Anent the potential tampering of documents by Demigillo, the Commission similarly finds the same remote. There is no showing that the documentary evidence of the case leveled against her were in her possession or custody as would otherwise justify the imposition of preventive suspension. As borne by the evidence on record, the acts complained of against Demigillo constitute verbal tussles between her and President Valdes which were all recorded and documented by the TIDCORP. In this situation, there is no chance of Demigillo's tampering with documents.

From the foregoing disquisition, the Commission finds that the preventive suspension of Demigillo for ninety (90) days was improvidently made because the possibility of exerting/influencing possible witnesses or tampering with documents, which is the evil sought to be avoided in this case, does not exist.<sup>[7]</sup>

Upon denial of its motion for reconsideration by the CSC,<sup>[8]</sup> TIDCORP appealed to the Court of Appeals (CA),<sup>[9]</sup> submitting the sole issue of:

WHETHER OR NOT THE CSC ERRED IN SO HOLDING THE PREVENTIVE SUSPENSION OF APPELLANT DEMIGILLO WAS NOT IN ORDER.<sup>[10]</sup>

On November 7, 2006, the CA promulgated its decision affirming the CSC,<sup>[11]</sup>

holding and ruling as follows:

The main issue in this case is whether or not respondent Demigillo was validly placed under preventive suspension on the ground that she could possibly influence or intimidate potential witnesses or tamper the evidence on record in her office, thus, affecting the investigation of the case against her.

Petitioner argues that the preventive suspension imposed against respondent Demigillo is valid as it is in accordance with the CSC rules and regulations and Section 51, Chapter 6, Title I (A), Book V of Executive Order No. 292 which states that "the proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service", hence, the CSC erred in holding the same not in order. Further, petitioner contends that since the provision of the Administrative Code of 1987 on preventive suspension does not set any condition on its imposition, the provision in the Uniform Rules on Administrative Cases in the Civil Service promulgated by the CSC should be stricken out as it is not found in the law itself.

We are not persuaded.

We agree with the CSC Resolution No. 040047 which cited Section 19 (paragraph 2), Rule II, Uniform Rules on Administrative Cases in the Civil Service as basis in ruling against the order of preventive suspension against herein respondent. The pertinent portion of the provision reads, as follows:

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office.

Based on the aforequoted provision, any of the two grounds: (1) to preclude the possibility of exerting undue influence or pressure on the witnesses against him; or (2) tampering of documentary evidence on file with his office, can be validly invoked by the disciplining authority to justify the imposition of the preventive suspension. As correctly pointed out by respondent in her motion for leave to file and admit attached comment, and comment to amended petition for review, under Section 19 (paragraph 2), Rule II, of the Uniform Rules of Administrative Cases in the Civil Service (URACCS), preventive suspension is warranted in order to preclude the respondent from exerting "undue influence" on the witnesses against her. But in this case, TIDCORP failed to prove the