

## EN BANC

[ G.R. No. 179245, July 23, 2008 ]

**RASH C. ROQUE, PETITIONER, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, THE HON. SECRETARY JOSE D. LINA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), RESPONDENTS.**

### DECISION

#### PER CURIAM:

This is a petition for review on *certiorari*<sup>[1]</sup> of the Decision of the Court of Appeals in CA-G.R. SP No. 93349 promulgated on May 29, 2007, and its Resolution promulgated on August 9, 2007. The Decision of the Court of Appeals affirmed the Resolutions of the Civil Service Commission (CSC) dated July 20, 2004 and December 13, 2005, dismissing petitioner Rash C. Roque from the public service for grave misconduct.

This case arose from an alleged anomaly in the procurement of various supplies, materials or equipment for the Fourth Quarter of Calendar Year (CY) 2002 of the Bureau of Fire Protection-National Capital Region (BFP- NCR).

On December 16, 2002, the BFP-NCR Prequalifications, Bids and Awards Committee (PBAC) issued several resolutions supposedly pursuant to a sealed canvass bidding, recommending the award and contract to deliver various supplies, materials and equipment to the purported winning bidders. Petitioner Roque, as the Regional Director of the BFP-NCR, approved the awards and issued the corresponding Notices of Award to the following bidders:

1. Rakish General Merchandise for P420,000 worth of battery solution and for P475,900.15 worth of barricade tapes;
2. Mitoni Business Ventures for P473,661.82 worth of computer units and spare parts and for P477,989.28 worth of various office supplies;
3. Rich River Commercial for P478,282.91 worth of Good Year tires;
4. Lubhag Enterprises for P208,707.25 worth of various electrical supplies and for P405,235.98 worth of janitorial supplies;
5. A. Rouge Printing Corporation for P459,798.55 worth of computer units and accessories; and
6. Miralles Trading for P473,695.04 worth of computer supplies.<sup>[2]</sup>

Chief Inspector Rolando Biazon of the Logistics Section issued the corresponding Purchase Orders to the suppliers after he inspected and accepted the delivery of supplies. The checks in payments for these supplies were signed by petitioner and the Chief of Finance Service Unit, Danilo dela Peña, and were given to the suppliers who, in turn, negotiated said checks with the Land Bank of the Philippines, Cubao Branch, on December 27, 2002, January 3, 2003 and January 6, 2003.

On January 2, 2003, complainants Supt. Ariel A. Barayuga, District Fire Marshal; Supt. Ramon O. Giron, Chief of Administrative Branch; and Ruben U. Pascua, Regional Supply Accountable Officer, who are all officers of the BFP-NCR, reported to Fire Chief Francisco Senot that there was an anomaly in the purchase of supplies for the fourth quarter of CY 2002.

The complainants alleged that the BFP-NCR Regional Office received an Advice Sub-Allotment and a Notice of Transfer of Cash Allocation from the BFP Central Office only sometime in the second week of December 2002, but by December 27, 2002, the bidding was completed and the purported winning bidders were able to encash their checks in payment of their products.

They further alleged that SFO2 Cabungcal, OIC Regional Supply Accountable Officer, was authorized to sign the documents relative to the procurement of supplies for the fourth quarter of CY 2002, in lieu of complainant Pascua. Moreover, complainants were intrigued by the fact that the fourth quarter operational support fund was released to BFP-NCR ahead of the third quarter operational fund, which remained unliquidated.

Lastly, complainants alleged that petitioner authorized Biazon to pay in advance the funds for minor maintenance of fire trucks in the amount of more or less P750,000.

Fire Chief Senot immediately acted on the complaint and issued an order creating an investigation and inventory team to inspect the BFP-NCR stockroom where the supplies were stored. Upon learning about the Order, petitioner requested that the ocular inspection be held in abeyance until verification of Pascua's motive in filing the complaint against him. Petitioner alleged that Pascua had a personal grudge against him because he discovered Pascua's gross deficits in gasoline, diesel and other petroleum products.

On January 5, 2003, the team proceeded to inspect the stockroom, but Biazon refused to open it allegedly upon petitioner's instruction. However, when no team member was around, Biazon surreptitiously tried to open the stockroom using the keys in his possession. In order to preserve the contents of the stockroom, a monitoring team from the Central Office was detailed to watch the stockroom around the clock.

On January 21, 2003, Department of Interior and Local Government (DILG) Undersecretary Marius Corpus instructed Senior Superintendent Romero, Chief of Internal Affairs Services, to open the stockroom despite Biazon's refusal. Eventually, the stockroom was opened with the help of Cabungcal.

After an inventory, the team discovered that twelve (12) computer units were delivered to the BFP-NCR which were reportedly inspected and accepted by Biazon on December 23, 2002. Biazon explained that payments were made prior to delivery

of the items and he submitted the corresponding delivery receipts to the team. It was discovered that the delivered units were withdrawn several days after the delivery.

On January 22, 2003, Sr. Supt. Romero sent a radio message directing all district, city, and municipal fire marshals under petitioner's supervision to submit on or before January 23, 2003 the list of supplies, materials and equipment received by their respective offices for the fourth quarter of CY 2002, indicating the respective dates of delivery. On January 23, 2003, Fire Chief Senot relayed the radio message to the Office of the Regional Fire Marshal with a note that the same was for strict compliance.

On the other hand, petitioner issued a memorandum canceling the directives on the list of inventory sent to him. He also issued another memorandum directing his staff and the district, city, and municipal fire marshals under his supervision to hold in abeyance compliance with the radio messages. He further issued a memorandum directing complainant Giron to refrain from further issuing any memorandum or radio message without his approval. He sought the court's intercession by filing a petition for prohibition with a prayer for the issuance of a temporary restraining order to stop Sr. Supt. Romero from further conducting an investigation.

On January 27, 2003, DILG Secretary Jose D. Lina, Jr. issued Department Order No. 2003-59 relieving petitioner as Regional Fire Marshal/Assistant Regional Director (RFM/ARD) and placing him on "DS" at Headquarters Service Support Unit, BFP-National Office, in the exigency of the service.

On February 12, 2003, the team reported the result of the investigation finding, thus:

1. No actual bidding transpired in the procurement of the supplies.
2. Petitioner merely directed the members of the PBAC to sign the resolutions and the abstracts of Canvass/Bid.
3. The Commission on Audit was not notified of the supposed bidding.
4. Petitioner entered into contract with the suppliers wherein the supplies were overpriced by more or less P1,067,025.50 to the prejudice of the government.
5. The electrical supplies, barricade tapes and computer parts which were reported to have been paid and delivered were not in the stockroom.

The team recommended that petitioner and other BFP officials involved in the anomaly be charged with grave misconduct for violation of the rules on procurement of supplies, for deliberate disobedience to the lawful order of higher authorities and for suppression of evidence.

On February 14, 2003, DILG Secretary Lina issued Department Order No. 2003-146 creating a committee to conduct a preliminary investigation of the case against petitioner, Danilo D. Mayuga, Ester P. Adordionicio, Danilo V. Pinion, Marco M. Manaois, Rolando G. Biazon, Willie G. Cabungcal, Efren P. Guardiano, Danilo C. dela Peña, Fennimore V. Jaudian, Sixto C. Bautista and Edgardo P. Antonio, who are all

employees of the BFP-NCR.

The committee directed the respondents to submit their counter-affidavits within 15 days from receipt of notice.

In his counter-affidavit, petitioner denied the allegations against him and elected the conduct of a formal investigation. He alleged that it was presumed that the members of the PBAC regularly performed their duties relative to the conduct of a public bidding, such as the issuance of a resolution recommending the award of contracts to the successful bidders. As head of BFP-NCR, he had the authority to award the contracts to the winning bidders pursuant to the PBAC resolution. He stated that the allegation that the supplies were overpriced was based on suspicion, surmise and conjecture. He justified his approval of the payment of the supplies on the basis of supporting certifications of proper authorities and stated that even though the signature of the accountant did not appear on some checks, the accountant's signature on all other papers sufficed. He denied that there was suppression of evidence, that he refused to allow the team to open the stockroom and that he instructed Biazon not to open it.

DILG Secretary Lina found a *prima facie* case against petitioner. On June 30, 2003, petitioner was charged with grave misconduct in that he:

1. Caused the procurement of supplies, materials and equipment intended for the BFP, NCR for the Fourth Quarter (2002) in violation of law and rules on procurement;
2. Made it appear that a sealed bidding was conducted when there was none;
3. Directed the members of the PBAC to sign resolutions and abstract of bids in his office;
4. Failed to notify the COA of the alleged opening of the bids;
5. Signed the Notice of Awards;
6. Approved the payment of supplies, materials and equipment when he knew that there was no Certification of Supply Availability Inquiry and Certification of Availability of Funds issued by the Regional Accountant and that the items were not yet fully delivered;
7. Disobeyed orders of superiors and countermanded the same; and
8. Suppressed evidence.<sup>[3]</sup>

Petitioner was directed to submit his Answer within ten days from receipt of the Order, but he did not file an Answer.

On November 24, 2003, the committee issued an order setting the case for preliminary hearing on December 2, 2003. The order was received by petitioner's counsel on November 25, 2003, but neither petitioner nor his counsel appeared on the date set. The preliminary hearing was reset to December 9, 2003. The Order was received by petitioner's counsel on December 3, 2003, but again neither

petitioner nor his counsel appeared. Hence, petitioner was declared to have waived his right to present evidence.

On December 11, 2003, the counsel for complainant filed a motion for early resolution of petitioner's case.

On January 21, 2004, Secretary Lina issued a decision finding petitioner guilty of grave misconduct for all the acts he was charged to have committed, and dismissing him from the service. Petitioner's motion for reconsideration was denied.

Petitioner appealed DILG Secretary Lina's decision to the CSC. On July 20, 2005, the CSC issued Resolution No. 050947 finding petitioner guilty of grave misconduct for approving the payment of supplies without a certification from the Accountant that funds were available and for disobeying and/or countermanding the lawful orders of his superiors.

The dispositive portion of Resolution No. 050947 reads:

**WHEREFORE**, the appeal of Rash C. Roque is hereby **DISMISSED**. Accordingly, the Decision of Department of the Interior and Local Government Secretary Jose D. Lina dated January 21, 2004 finding Roque **GUILTY** of Grave Misconduct with a penalty of dismissal from the service is **AFFIRMED**. Roque is also imposed the accessory penalties of perpetual disqualification from re-entering the government service, forfeiture of retirement benefits and cancellation of Civil Service eligibility pursuant to the Uniform Rules on Administrative Cases in the Civil Service.

Let a copy of this Resolution be forwarded to the Office of the Ombudsman for its appropriate action and the GSIS for the implementation of the accessory penalty of forfeiture of retirement benefits.<sup>[4]</sup>

Petitioner's motion for reconsideration was denied by the CSC in Resolution No. 051850 dated December 13, 2005.

Petitioner filed a petition for review of the CSC decision before the Court of Appeals. On May 29, 2007, the Court of Appeals rendered a decision, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the instant petition is **DISMISSED** and the assailed Resolution Nos. 05-0947 and 05-1850 dated July 20, 2004 and December 13, 2005, respectively, of public respondent commission are **AFFIRMED**.<sup>[5]</sup>

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution dated August 9, 2007.

Hence, this petition.

The issues are: