



Republic of the Philippines
Supreme Court
Manila

EN BANC

**Re: Illegal and Unauthorized
Digging and Excavation Activities
Inside the Supreme Court
Compound, Baguio City.**

A.M. No. 2016-03-SC

X-----X

**Re: Investigation Report on the
Alleged Unauthorized Digging
and Excavation Activities within
the Supreme Court Compound in
Baguio City.**

A.M. No. 16-06-07-SC

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
MENDOZA,
REYES,*
PERLAS-BERNABE,
LEONEN,
JARDELEZA, *and*
CAGUIOA, *JJ.*

Promulgated:
February 21, 2017

X-----*Alfonso C. Sereno*-----X

DECISION

PER CURIAM:

This administrative matter refers to the illegal and unauthorized digging and excavation activities inside the Supreme Court Compound in Baguio City (SC Compound-BC).

The present case is rooted on a complaint¹ dated January 6, 2016 filed by Elvie A. Carbonel (Carbonel), casual Utility Worker II, Maintenance Unit, SC Compound-BC, before the Office of Administrative Services (OAS) against Engr.

* On official leave.
¹ *Rollo*, A.M. No. 2016-03-SC, pp. 631-633.

Teofilo G. Sanchez (Engr. Sanchez), SC Supervising Judicial Staff Officer and Officer-in-Charge of the Maintenance Unit, and Edgardo Z. Hallera (Hallera), casual Utility Worker II of the same unit, for grave misconduct relating to the illegal and unauthorized digging and excavation activity allegedly conducted outside the cottages of Associate Justices Presbitero J. Velasco, Jr., (Cottage J) and Martin S. Villarama, Jr., (Cottage F).²

The complaint alleged that: *first*, Engr. Sanchez ordered Hallera to conduct excavation activities near the Cottages F and J³ to search for hidden Japanese treasures;⁴ and *second*, due to the said excavation activities in the area, the structural soundness of the foundation of the cottages was compromised.⁵

On January 8, 2016, the OAS sent a three-man team composed of its personnel to the SC Compound-BC to determine the veracity of the complaint. The team found no apparent signs of disturbance on the ground or traces of recent excavation and excavated soil on the site during its initial investigation; nevertheless, it recommended that a formal investigation be conducted after several employees admitted that there was a hole which was deliberately concealed by Hallera.⁶

On January 11, 2016, the OAS furnished Engr. Sanchez and Hallera with a copy of the complaint and directed them to submit their respective comments within five days from notice.

In his Memorandum⁷ dated January 14, 2016, Engr. Sanchez categorically denied that he surreptitiously ordered Hallera to dig and excavate within the compound to search for hidden Japanese treasures. He insisted that Carbonel made exaggerations as to the depth of the hole, considering that only the tip of the ten-foot high ladder is shown in the photograph. He also doubted Carbonel's allegation that the structural soundness of the cottages was affected by the excavation activities, since the latter is no expert on building structures and foundations.

Hallera likewise denied the accusations hurled against him in his *Sinumpaang Salaysay*⁸ dated January 14, 2016. He explained that he dug a hole near Cottage J with a depth of four feet in order to get fertile soil for use in the

² Cottage F is presently occupied by Associate Justice Estela M. Perlas-Bernabe.

³ *Rollo*, A.M. No. 2016-03-SC, p. 631.

⁴ *Id.* at 631-A.

⁵ *Id.*

⁶ *Id.* at 3-4.

⁷ *Id.* at 620-621.

⁸ *Id.* at 622-623.

Yg/Borlongan-Dra

garden, but he claimed that the excavation could not have compromised the structural soundness and stability of the cottage.

Aside from the internal investigation conducted by the OAS, the matter also became the subject of a separate investigation of the National Bureau of Investigation (NBI), through its regional office in the Cordillera Administrative Region (CAR), Baguio City, in response to the Letter⁹ dated March 1, 2016 of Associate Justice Marvic Mario Victor F. Leonen, requesting assistance for the conduct of an independent investigation regarding the alleged unauthorized digging and excavation activities within the SC Compound-BC.

The Report and Recommendation of the NBI

In a Final Report¹⁰ dated June 7, 2016, the NBI concluded that there were two unauthorized excavation sites within the SC Compound-BC: the *first* was located below the stairs going to the 2nd level of Cottage F, and the *second* was at the front yard of Cottage J.

The NBI found that the excavation in Cottage F, which occurred sometime in 2013-2014, involved Hallera and Carbonel, with the latter employed as the caretaker of the cottage at that time. On this point, the NBI relied on the testimony of Danilo V. Julio (Julio), a maintenance personnel assigned to Cottages E and D, who stated that when he was called by Hallera to Cottage F to check on the hole, it was Carbonel who pointed to the stockroom under the stairs and insisted that the metal detector had a strong signal in that area.¹¹

Hallera, too, affirmed Julio's statements and admitted that the purpose of the excavation was to look for hidden Japanese treasures. He however claimed that he only followed Carbonel's instructions to prove that there was no treasure therein.¹²

The NBI further reported that the excavation near Cottage J happened sometime in 2014 until April 2015, and it involved Engr. Sanchez and Hallera. The entrance of the hole, which was supported by a wooden frame, was about two by three feet in circumference. The circumference got narrower as the hole went deeper, but the actual depth of the excavation and whether there were branching tunnels could not be determined.¹³

⁹ Id. at 47.

¹⁰ Id. at 33-46.

¹¹ Id. at 40.

¹² Id.

¹³ Id. at 40-41.

J.B. Noyas - [Signature]

As for the participation of Engr. Sanchez, the NBI cited the testimony of Elvis L. De Guzman (De Guzman), a casual utility worker, who recounted that when he reported Hallera's digging activities near Cottage J to Engr. Sanchez in 2014, the latter told him "[m]alalim na pala ano. Hayaan mo lang siya, alam naman niya ginagawa niya, huwag niyo nalang pakialaman."¹⁴ De Guzman also testified that during the Supreme Court Summer Session in 2015, he saw Engr. Sanchez assisting Hallera at the digging site by holding a flashlight while the latter prepared to go down the hole.¹⁵

Upon the NBI's inquiry, the National Museum of the Philippines confirmed that no person was issued with the requisite permit to conduct treasure-hunting activities within the vicinity of the SC Compound-BC.¹⁶ Consequently, the NBI recommended that Engr. Sanchez, Hallera and Carbonel be charged with violation of Section 48 of Republic Act No. 10066, or the National Cultural Heritage Act of 2009, on top of their administrative liabilities for grave misconduct and conduct prejudicial to the best interest of the service.¹⁷

On July 5, 2016, the Court *en banc* issued a resolution referring the NBI's Final Report to Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, for consolidation with the findings and result of the internal investigation conducted by the Complaints and Investigation Division of the OAS.¹⁸

The Report and Recommendation of the OAS

The OAS adopted, albeit with modification, the NBI's findings and conclusions.

In its Consolidated Report¹⁹ dated September 19, 2016, the OAS found sufficient basis to hold Hallera and Carbonel administratively liable for grave misconduct and conduct prejudicial to the best interest of the service for their participation in the treasure-hunting activities in the SC Compound-BC.²⁰ However, it found the allegation against Engr. Sanchez of his involvement in the treasure-hunting activities unsubstantiated. Thus, it recommended the dismissal of the administrative case against Engr. Sanchez for lack of evidence.²¹

¹⁴ Id. at 42.

¹⁵ Id.

¹⁶ Id. at 38.

¹⁷ Id. at 44-45.

¹⁸ Id. at 27.

¹⁹ Id. at 2-24.

²⁰ Id. at 17-18.

²¹ Id. at 18-19.

7/5/16 NBI Report - Engr. Sanchez

The OAS explained that De Guzman's testimony as to the participation of Engr. Sanchez in the excavation near Cottage J was neither corroborated nor confirmed by the evidence. It also pointed out that De Guzman could have been impelled by improper motives or vengeance when he testified against Engr. Sanchez, given the unfavorable treatment he received from the latter in the past.²²

Accordingly, the OAS recommended that Hallera and Carbonel be found guilty of grave misconduct and conduct prejudicial to the best interest of the service for having been directly involved in the illegal and unauthorized digging and excavation in Cottages F and J, and be imposed the penalty of dismissal from the service, with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations.²³

Insofar as Engr. Sanchez is concerned, the OAS found him liable for simple neglect of duty for his failure to act prudently or to take the appropriate course of action upon receiving information regarding the excavation near Cottage J. The OAS thus recommended that he be suspended for one year without pay.²⁴

The OAS likewise recommended that Engr. Sanchez be required to show cause why he should not be administratively dealt with for an alleged incident regarding the missing pine lumber which is considered to be Supreme Court property.²⁵

The Court's Ruling

After a careful review of the records of the case, we find reasonable grounds to hold Hallera and Carbonel administratively liable for grave misconduct and conduct prejudicial to the best interest of the service, and Engr. Sanchez for simple neglect of duty.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."²⁶ To constitute as grave misconduct, "the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence."²⁷

²² Id. at 18-19.

²³ Id. at 23-24.

²⁴ Id. at 24.

²⁵ Id.

²⁶ *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 85, citing *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005).

²⁷ Id., citing *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

J. B. Reyes

Corruption, as an element of grave misconduct, is present when an official or fiduciary person unlawfully and wrongfully uses his station or character *to procure some benefit* for himself or for another person, contrary to duty and the rights of others.²⁸

For misconduct to warrant removal from office of an officer, the act should directly relate to or be connected with the performance of the official functions and duties of a public officer amounting either to maladministration or to willful, intentional neglect and failure to discharge the duties of the office.²⁹

In the present case, it is clear that Hallera and Carbonel took advantage of their positions as casual utility workers assigned as the caretakers of Cottages J and F, respectively, in order to engage in treasure-hunting activities in search for hidden Japanese treasures on the SC Compound-BC grounds. These actions could only have been perpetrated for their own personal enrichment, considering that such activities were covertly carried out without the knowledge and permission of the Court.

Note, too, that when Hallera and Carbonel engaged in these treasure-hunting activities, they violated Section 1 of the Code of Conduct for Court Personnel which mandates court personnel to perform their official duties properly and with diligence at all times and to commit themselves exclusively to the business and responsibilities of their office during working hours.

Consequently, we hold Hallera and Carbonel administratively liable for grave misconduct for participating in illegal and unauthorized digging and excavation activities within the SC Compound-BC, and for conduct prejudicial to the best interest of the service, as their actions unquestionably tarnish the image and integrity of his/her public office.³⁰

Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies grave misconduct and conduct prejudicial to the best interest of the service as grave offenses, with the corresponding penalties of dismissal from the service, and suspension of six (6) months and one (1) day to one (1) year for the first offense, respectively.

Given the gravity and seriousness of the offense they committed, we deem it proper to impose the penalty for the more serious offense in accordance with Section 50, Rule 10 of the RRACCS which provides:

²⁸ *Re: Theft of the Used Galvanized Iron (GI) Sheets in the SC Compound, Baguio City*, 665 Phil. 1, 10 (2011).

²⁹ See *Pat-og, Sr. v. Civil Service Commission*, 710 Phil. 501, 517 (2013). See also *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

³⁰ *Pia v. Gervacio*, 710 Phil. 197, 206-207 (2013), citing *Avenido v. Civil Service Commission*, 576 Phil. 654, 662 (2008).

Y. P. Legaspi - J.

Section 50. Penalty for the Most Serious Offense – If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Considering however the nature of employment of Hallera and Carbonel, who are both casual employees, the appropriate penalty is the immediate termination of their casual employment, in lieu of dismissal from service.

As for the administrative liability of Engr. Sanchez, we find him guilty of simple neglect of duty for his failure to act appropriately upon having been informed about the unauthorized excavation activities near Cottage J. It is simply inexcusable that upon learning of the existence of the digging site near the cottage, he directed the site's immediate closure *without initiating an investigation on the matter* to determine whether those involved in the excavation activities should be administratively sanctioned, or at the very least, *without reporting the incident to higher management for proper action*.³¹

“Simple neglect of duty x x x signifies a disregard of a duty resulting from carelessness or indifference.”³² It is classified as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.³³ Given his record of having been previously fined in the amount of ₱5,000.00 for simple neglect of duty in an earlier case,³⁴ and severely warned for failure to observe the established procedure in the purchase of equipment for the use of the Court,³⁵ the impossible penalty for this second offense against Engr. Sanchez is dismissal from the service.

However, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.³⁶ In fact, in several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of *mitigating factors*.³⁷

³¹ Rollo, A.M. No. 2016-03-SC, p. 42.

³² *Clemente v. Bautista*, 710 Phil. 10, 17 (2013).

³³ *Id.* at 18.

³⁴ Rollo, A.M. No. 2016-03-SC, p. 22. See *Re: Report on the Alleged incompetence in the performance of duties of Engr. Teofilo G. Sanchez, Supreme Court (SC) Supervising Judicial Staff Officer and former Officer-in-Charge, Maintenance Unit, SC Compound, Baguio City*, A.M. No. 2016-04-SC, July 20, 2016.

³⁵ *Re: Complaint of Mr. Rodrigo P. Itilong against Messrs. Stevenson, Tugas, Roberto Patacsil, Jr., Engr. Teofilo Sanchez and Ms. Elvie Carbonel, relative to Alleged Criminal Activities and Administrative Misconduct with the Supreme Court Compound in Baguio City*, A.M. No. 2009-26-SC, October 12, 2010.

³⁶ *Cabigao v. Nery*, 719 Phil. 475, 484 (2013), citing *Baculi v. Ugale*, 619 Phil. 686, 692-693 (2009).

³⁷ *Id.*, citing *Office of the Court Administrator v. Aguilar*, 666 Phil. 11, 23 (2011).

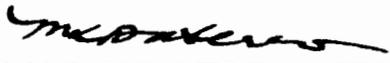
Teofilo Sanchez

In this case, the Court takes into consideration Engr. Sanchez' long years of service in the Judiciary of about ten (10) years³⁸ as a mitigating factor that serves to temper the penalty to be imposed on him.³⁹ Thus, instead of imposing the penalty of dismissal, we hold that the penalty of suspension for two (2) years without pay is proper and commensurate.

WHEREFORE, the Court:

1. FINDS Edgardo Z. Hallera, casual Utility Worker II, Maintenance Unit, SC Compound, Baguio City, guilty of grave misconduct, and hereby TERMINATES his casual employment effective immediately, with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations.
2. FINDS Elvie A. Carbonel, casual Utility Worker II, Maintenance Unit, SC Compound, Baguio City, guilty of grave misconduct, and hereby TERMINATES her casual employment effective immediately, with forfeiture of all benefits, except accrued leave benefits, and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations;
3. FINDS Engr. Teofilo G. Sanchez, SC Supervising Judicial Staff Officer and Officer-in-Charge of the Maintenance Unit, SC Compound, Baguio City, guilty of simple neglect of duty, and hereby SUSPENDS him from office for a period of two (2) years without pay, with a FINAL WARNING that a repetition of the same or similar acts will be dealt with more seriously; and,
4. RESOLVES to docket the alleged incident regarding the missing pine lumber as a separate administrative matter to be raffled among the Members of the Court.

SO ORDERED.

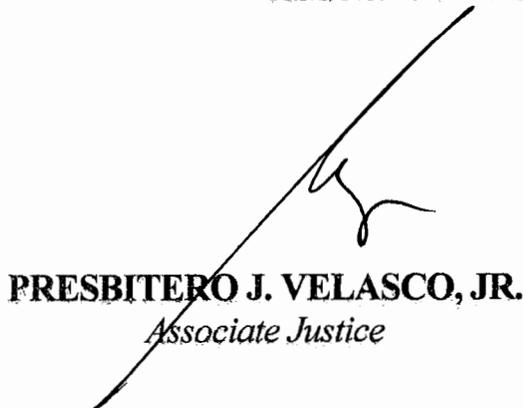

MARIA LOURDES P. A. SERENO
Chief Justice

³⁸ Engr. Sanchez was appointed to the position of Engineer III at the Maintenance Division, Office of Administrative Services of the Supreme Court on January 2, 2007. See *Rollo*, A.M. No. 2006-03-SC, p. 2.

³⁹ REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Section 48(n).



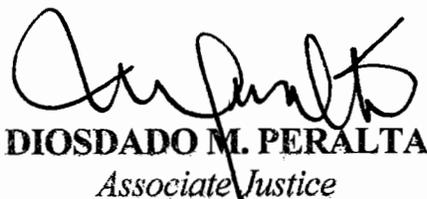
ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

(On official leave)
BIENVENIDO L. REYES
Associate Justice



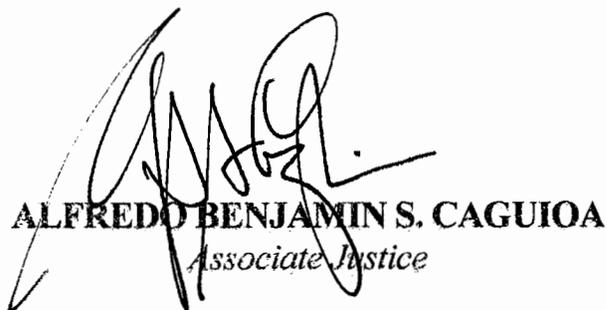
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

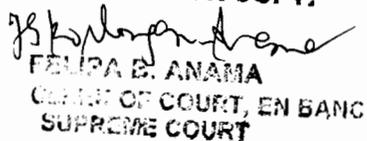


FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT