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[A.M. No. CA-15-31-P. June 16, 2015]
(Formerly OCA I.P.I. No. 13-218-CA-P)

COMMITTEE ON SECURITY and SAFETY, COURT OF APPEALS, *complainant, vs.* **REYNALDO V. DIANCO — Chief Security, JOVEN O. SORIANOSOS — Security Guard 3, and ABELARDO P. CATBAGAN — Security Guard 3**, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; CARDINAL PRINCIPLES; DUE PROCESS REQUIREMENT, SATISFIED.— [T]he essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. In *Department of Health v. Camposano,* which restated the guidelines laid down in *Ang Tibay v. Court of Industrial Relations,* we held that due process in administrative proceedings requires observance of the following cardinal principles: (1) the right to present one's case and submit supporting evidence must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) *the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. In the present case, Dianco cannot claim that he was deprived of due process. Records show that Dianco submitted to the jurisdiction of the CA Assistant Clerk of Court by participating in the proceedings before it. He was duly represented by counsel.

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He filed his answer during the formal investigation and Comment on the Report upon the request of this Court. He further submitted documentary evidence on his behalf. His active participation in every step of the investigation and this Court's consideration of his arguments effectively removed any badge of procedural deficiency, if there was any, and satisfied the due process requirement.

2. ID.; ID.; CIVIL SERVICE COMMISSION (CSC) RESOLUTION NO. 06-0538; DISHONESTY; DEFINED; CLASSIFICATION OF DISHONESTY AND IMPOSABLE PENALTY.— In a long line of cases, dishonesty has been defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Although dishonesty covers a broad spectrum of conduct, Civil Service Commission (*CSC*) Resolution No. 06-0538 set the criteria for determining the severity of dishonest acts. CSC Resolution No. 06-0538 recognizes that dishonesty is a grave offense generally punishable by dismissal from service. Nonetheless, some acts of dishonesty are not constitutive of offenses so grave that they warrant the ultimate penalty of dismissal. Thus, the CSC issued parameters "in order to guide the disciplining authority in charging the proper offense" and in imposing the correct penalty. The resolution classifies dishonesty into three acts: (1) serious, (2) less serious, and (3) simple. Serious dishonesty is punishable by dismissal. Less serious dishonesty is punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Simple dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, six (6) months and one (1) day to one (1) year for the second offense, and dismissal for the third offense.

3. ID.; ID.; COURT PERSONNEL; ADMINISTRATIVE CHARGES; MISCONDUCT, DEFINED; THE ACT MUST HAVE A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE EMPLOYEE'S OFFICIAL DUTIES.— To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In the case of *Manuel v. Calimag, Jr.*, we opined that: Misconduct in office has been authoritatively

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defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. **It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office** x x x. More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.'

4. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT AND SERIOUS MISCONDUCT, DISTINGUISHED.— The misconduct, however, is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct.

5. ID.; ID.; ID.; ID.; THE EMPLOYEE'S ACT OF FALSIFYING OFFICIAL DOCUMENTS TO COVER UP DECEPTION, GRAVELY ABUSING HIS AUTHORITY TO COMMIT THE DISHONEST ACT, AND INSTIGATING UNSCRUPULOUS SCHEMES TO CIRCUMVENT ADMINISTRATIVE POLICIES CONSTITUTE SERIOUS DISHONESTY.— [T]he records show that Dianco admitted to the dishonest act of padding the food bill in order to charge the cost of the Fundador (*₱1,043.00 as reflected in the computer-generated liquidation report*) and the bottles of beer (*as beverage*) on the excursion funds. x x x The fact that the liquor had already been purchased before the

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excursion does not exculpate Dianco from administrative liability. What appears clear is that Dianco employed falsification and deception in order to recover for himself a patently unauthorized expense.x x x During the preliminary hearing and even thereafter, Dianco never denied Sorianosos's accusation that he instructed him to "fix" the entries in the computer-generated liquidation report x x x. **Dianco, by these acts, clearly committed serious dishonesty**. He **gravely abused his authority and moral ascendancy in order to commit the dishonest act by directing his subordinate to cooperate with his dishonest conduct**. Dianco further **orchestrated a series of falsifications to cover up his deception.** x x x. As the CA Security Chief who has been in service for twenty (20) years, Dianco should serve as an example to be followed in uplifting the standard of service of his fellow security personnel, not an instigator of unscrupulous schemes to circumvent administrative policies. To be sure, he cannot serve this purpose given the nature of the offense he committed and its potential penal consequences.

6. **ID.; ID.; ID.; ID.; DISHONESTY NEED NOT BE COMMITTED IN THE COURSE OF THE PERFORMANCE OF DUTY BY THE PERSON CHARGED, AND THE FACT THAT THE FUNDS INVOLVED ARE NOT PUBLIC IN NATURE, IS NOT SUFFICIENT TO EXCULPATE HIM FROM ANY ADMINISTRATIVE LIABILITY FOR SERIOUS DISHONESTY; RATIONALE.—** Although the respondent Dianco claims that the funds involved are not public in nature, that is not sufficient to exculpate him from any administrative liability for serious dishonesty. In *Remolona v. Civil Service Commission,* we said: [D]ishonesty, x x x need not be committed in the course of the performance of duty by the person charged. The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders

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the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

7. **ID.; ID.; ID.; ID.; INSTIGATING THE VIOLATION OF THE "NO ALCOHOL" POLICY CONSTITUTES GRAVE MISCONDUCT; PUBLIC OFFICIALS AND EMPLOYEES MUST ENTER PUBLIC SERVICE WITH UTMOST DEVOTION AND DEDICATION TO DUTY, AND ENDEAVOR TO DISCOURAGE ANY PERCEPTION OF IMPUNITY.—** [W]e find Dianco administratively liable for grave misconduct. In the present case, Dianco's acts run contrary to the policy of promoting a high standard of ethics in the public service. x x x. The fact that Dianco initiated the drinking spree with a clear intent to violate the prohibition during the excursion was admitted by Dianco himself. In fact, **even prior to the excursion, Dianco already had too much to drink**. Although Dianco avers that there is no written policy against drinking, the absence of any general policy, by itself, **does not negate the fact that Dianco instigated a violation of a policy clearly established for that specific activity**. Dianco's and Sorianosos's admissions during the preliminary investigation proved that they were well aware of the prohibition. x x x [P]ublic officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence, and skill. They must enter public service with utmost devotion and dedication to duty and endeavor to discourage any perception of impunity. In instigating the violation of the "no alcohol" policy, Dianco placed the CA in a bad light and compromised the image of public service and public servants.

8. **ID.; ID.; ID.; ID.; DISMISSAL FROM SERVICE IMPOSED FOR SERIOUS DISHONESTY AND GRAVE MISCONDUCT; MITIGATING CIRCUMSTANCES, NOT APPLICABLE.—** [W]e find Dianco guilty of serious dishonesty and grave misconduct, which are enough to warrant his dismissal from service. Although Dianco pleads the existence of circumstances to mitigate his liability, these circumstances do not apply to the offenses of serious dishonesty and grave misconduct since both are punishable with dismissal for the first offense, a penalty with

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no minimum, medium or maximum periods. The penalty of dismissal from the service likewise carries with it the forfeiture of Dianco's retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service.

9. ID.; ID.; ID.; WHERE THE APPOINTMENT DOES NOT INDICATE A SPECIFIC STATION, AN EMPLOYEE MAY BE TRANSFERRED OR REASSIGNED PROVIDED THE TRANSFER AFFECTS NO SUBSTANTIAL CHANGE IN TITLE, RANK AND SALARY, NEITHER DOES ILLEGALITY ATTACH TO THE TRANSFER OR REASSIGNMENT OF AN OFFICER PENDING THE DETERMINATION OF AN ADMINISTRATIVE CHARGE AGAINST HIM, OR TO THE TRANSFER OF AN EMPLOYEE FROM HIS ASSIGNED STATION TO THE MAIN OFFICE, EFFECTED IN GOOD FAITH AND IN THE INTEREST OF THE SERVICE.— Neither can Dianco claim that his reassignment on May 2, 2011, amounted to a penalty. Where the appointment does not indicate a specific station, an employee may be transferred or reassigned provided the transfer affects no substantial change in title, rank and salary. As we aptly held in *Orcino v. CSC*: x x x [T]he rule that outlaws unconsented transfers as anathema to **security of tenure applies only to an officer who is appointed — not merely assigned to a particular station**. Such a rule does not prescribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency. The use of approved techniques or methods in personnel management to harness the abilities of employees to promote optimum public service cannot be objected to. **Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him, or to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to Section 32 of the Civil Service Act**. In the present case, Dianco's ressignment did not amount to any substantial change in title, rank, and salary. Although he suggests that his reassignment was done in bad faith, he failed to substantiate his allegations with supporting evidence. Dianco must be reminded that the burden of proving bad faith rests on the one alleging it. As *Culili v.*

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Eastern Telecommunications, Inc. teaches us, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same."

10. ID.; ID.; ID.; ADMINISTRATIVE CHARGES; ABSENT BAD FAITH AND PRIOR INTENT TO COMMIT ANY DISHONEST CONDUCT, THE "FIXING" OF THE ENTRIES IN THE COMPUTER-PRINTED LIQUIDATION REPORT UNDER THE COMPULSION OF A SUPERIOR OFFICER, CONSTITUTES LESS SERIOUS DISHONESTY; PROPER PENALTY.— We believe that Sorianosos committed a dishonest act by "fixing" the entries in the computer-printed liquidation report. Nonetheless, we do not believe that a finding of serious dishonesty on his part is justifiable under the circumstances, considering the amount involved and that he merely acted under the compulsion of a superior officer. The fact that Sorianosos initially **prepared the computer-generated liquidation report, without any intercalations, demonstrates an absence of bad faith and that he had no prior intent to commit any dishonest conduct.** By error of judgment, Sorianosos was persuaded by his superior, Dianco, to commit a dishonest act. x x x. We, however, cannot agree with the Report that Sorianosos only committed simple dishonesty with respect to this aspect of the case, as **the gravity of the dishonest act involves criminal consequences**. For this reason, we believe that Sorianosos should be held administratively liable for less serious dishonesty, which carries with it the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense.

11. ID.; ID.; ID.; ID.; VIOLATION OF THE "NO ALCOHOL" POLICY CONSTITUTES SIMPLE MISCONDUCT; PROPER PENALTY.— We concur, however, with the Report's finding that Sorianosos is administratively liable for simple misconduct with respect to the violation against the use of alcoholic beverages. This offense carries an imposable penalty of suspension of one (1) month and one (1) day to six (6) months. Sorianosos partook of the liquor despite the prohibition against its consumption within the premises. There is no evidence to show that there is a clear intent to violate any established rule on Sorianosos's part. Considering that Sorianosos is administratively liable for two offenses, the penalty to be imposed should be corresponding to the most serious charge or count and the rest of the offenses may be considered

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aggravating circumstances. Since the most serious offense of which Sorianosos is found guilty is less serious dishonesty, the offense of simple misconduct should be considered as an aggravating circumstance, which warrants the maximum penalty of one (1) year suspension.

12. ID.; ID.; ADMINISTRATIVE PENALTIES; MITIGATING, AGGRAVATING OR ALTERNATIVE CIRCUMSTANCES IN THE IMPOSITION OF ADMINISTRATIVE PENALTIES MUST ONLY BE CONSIDERED WHEN CLEAR PROOF IS SHOWN, USING THE SPECIFIC STANDARDS SET BY LAW AND JURISPRUDENCE, THAT THE FACTS IN A GIVEN CASE JUSTIFY THE MITIGATION OF THE PRESCRIBED PENALTY.— Mitigating, aggravating or alternative circumstances in the imposition of administrative penalties must only be considered when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty. In appreciating the presence of mitigating, aggravating or alternative circumstances in a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability, which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity, and competence are employed in the government service.

13. ID.; ID.; ID.; LENGTH OF SERVICE IS CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE WHEN THE OFFENSE COMMITTED IS SERIOUS OR GRAVE OR IF LENGTH OF SERVICE IS A FACTOR THAT FACILITATES THE COMMISSION OF THE OFFENSE.— Although Sorianosos has been in the service for twenty (20) years, that may not be considered as a mitigating circumstance in his favor. Length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case. It is usually considered as an aggravating circumstance when the offense committed is **serious or grave** or if length of service is a factor that facilitates the commission of the offense. In the present case, the offense of less serious dishonesty is considered as a grave offense; for which reason, Sorianosos's length of service should be considered as an aggravating circumstance.

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14. ID.; ID.; ID.; MITIGATING CIRCUMSTANCES; HUMANITARIAN CONSIDERATIONS CANNOT BE USED TO MITIGATE ADMINISTRATIVE LIABILITY FOR THIS IS A SUBJECTIVE STANDARD THAT SHOULD BE APPLIED ONLY WITH UTMOST CARE IN ADJUDICATION, FOR THE COURT IS REQUIRED TO AVOID IDENTIFYING ITSELF WITH THE USE OF SUBJECTIVE STANDARDS, AS IT IS GUIDED BY THE RULE OF LAW, NOT BY THE PECULIAR DICTATES OF INDIVIDUAL CONSCIENCE; EMPLOYEE'S ACKNOWLEDGMENT OF THE INFRACTION NOT CONSIDERED AS MITIGATING CIRCUMSTANCE.— Section 53 allows analogous circumstances to be considered as mitigating. In *Civil Service Commission v. Belagan,* we considered the respondent's unblemished record in the past and numerous awards as mitigating. Similarly, in *Vidallon-Magtolis v. Salud,* we likewise mitigated respondent's administrative liability as he had not been previously charged or administratively sanctioned. x x x In the present case, we consider as mitigating the fact that this is Sorianosos's first offense and that he had previously received awards in the performance of his duties. However, we cannot use humanitarian considerations to mitigate administrative liability for this is a subjective standard that should be applied only with utmost care in adjudication. Judicial prudence, at the very least, requires that the Court avoid identifying itself with the use of subjective standards, as it is guided by the rule of law, not by the peculiar dictates of individual conscience. Similarly, we cannot consider Sorianosos's acknowledgment of the infraction as a mitigating circumstance, for that was largely prompted by fear of possible administrative sanctions.

15. ID.; ID.; ID.; WHEN THE AGGRAVATING AND MITIGATING CIRCUMSTANCES OFFSET EACH OTHER, THE MEDIUM OF THE PENALTY SHALL BE IMPOSED.— When the aggravating and mitigating circumstances offset each other, the medium of the penalty shall be imposed. In the present case, Sorianosos's length of service and the lesser offense of simple misconduct aggravated his administrative liability. That this is his first offense and that he received previous awards for his government service, on the other hand, should mitigate his administrative liability. Considering the equal number of mitigating and aggravating circumstances, we impose upon

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Sorianosos the medium of the imposable penalty for the graver offense of less serious dishonesty. Since that offense imposes a penalty of six (6) months and one (1) day to one year suspension, its medium penalty necessarily corresponds to a suspension of nine (9) months.

16. ID.; ID.; ID.; ADMONITION AND WARNING FOR BEING REMISS IN THE PERFORMANCE OF DUTIES DO NOT NECESSARILY EQUATE WITH ADMINISTRATIVE CONVICTION.— [T]he Committee on Security and Safety's previous admonition to Sorianosos cannot be considered a penalty. If at all, the admonition was meant as a reminder to Sorianosos to be diligent in the performance of his duties. Admonition and warning for being remiss in the performance of duties do not necessarily equate with administrative conviction.

17. ID.; ID.; COURT PERSONNEL; ADMINISTRATIVE CHARGES; FAILURE TO EXERCISE THE RESPONSIBILITY EXPECTED FROM AN EMPLOYEE RESULTING FROM EITHER CARELESSNESS OR INDIFFERENCE CONSTITUTES SIMPLE NEGLECT OF DUTY; PROPER PENALTY.— With respect to Catbagan, we agree with the Report that he failed to give due attention to the task expected of him as Food Committee Head.x x x. Simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In the present case, Catbagan fell short of the reasonable diligence required of him by failing to exercise due care and prudence in handling the fiscal and logistical requirements for the food during the excursion. Although Catbagan may have checked the meal stubs, distributed these to the attendees and ensured that the queue was orderly, those acts would not exculpate him from administrative liability. What is clear is that he failed to exercise the responsibility expected of him as Food Committee head, and passed it on to Regala. His indifference thereby demonstrates a lack of any sense of accountability in performing the tasks assigned to him. Under the Uniform Rules, simple neglect of duty, which is a less grave offense, is punishable by suspension of one (1) month and one (1) day to six (6) months. In view of Catbagan's length of service of fifteen (15) years, the penalty to be imposed upon him should be the minimum, that is, a one (1) month and (1) day suspension.

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18. ID.; ID.; THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, (RA NO. 6713); WORKING STANDARDS IN THE PUBLIC SERVICE; ACT OR OMISSION ON THE PART OF ALL THOSE INVOLVED IN THE PUBLIC SERVICE, WHICH WOULD VIOLATE THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISH OR EVEN JUST TEND TO DIMINISH THE FAITH OF THE PEOPLE IN THE GOVERNMENT CANNOT BE TOLERATED.— We cannot tolerate any act or omission on the part of all those involved in the public service, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the government. The respondents are reminded that ["the Constitution mandates that a public office is a public trust and public officers must at all times be accountable to the people; serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice; and lead modest lives. These constitutionally enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should] [be read and implemented as working standards by everyone in the public service."] We stress that Republic Act No. 6713, otherwise known as the "The Code of Conduct and Ethical Standards for Public Officials and Employees," enunciates, *inter alia*, the State policy of promoting a high standard of ethics and **utmost responsibility** in the public service. Section 4 (c) of the said Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety, and public interest." By their actuations, the respondents failed to live up to this standard.

D E C I S I O N

***PER CURIAM*:**

We resolve in this Decision the administrative case for dishonesty and misconduct against the respondent Reynaldo V. Dianco (*Dianco*); for simple dishonesty and simple misconduct against the respondent SG3 Joven O. Sorianosos (*Sorianosos*); and for simple neglect of duty against the respondent SG3 Abelardo P. Catbagan (*Catbagan*).

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The Factual Antecedents

Dianco was the former Chief of the Court of Appeals (*CA*) Security. Sorianosos and Catbagan, on the other hand, were among Dianco's subordinates.

On March 19, 2011, the respondents together with other members of the CA Security Group went on an excursion at the Village East Clubhouse in Cainta, Rizal. Catbagan was tasked to head the Food Committee while Sorianosos was assigned to head the Money Collection and Budget and Games Committee.

During the planning and in the morning of the actual excursion, Justice Normandie B. Pizarro (*Pizarro*), then Chairman of the Committee on Security and Safety, emphatically reminded the respondents to monitor the use of the funds. He also informed them of the subdivision's policy prohibiting the drinking of alcoholic beverages in the premises.

To make it easier to keep track of the transactions, each participant was given a meal stub worth Three Hundred Pesos (₱300.00) with the food payment to be based on the number of meal stubs surrendered to the food concessionaire.

Records show, however, that Dianco and Sorianosos, violated prohibition on the consumption of alcohol in the premises. There were also irregularities in the use of funds.

In particular, the food concessionaire's initial computation only amounted to ₱16,850.00, broken down as follows:

Stubs	=	Php 12,500.00
Snacks (siopao and mami for 87 persons at Php 50.00 each)	=	4,350.00
Total		**Php 16,850.00**

When the receipt was subsequently issued, the amount indicated in the bill suspiciously increased to ₱21,840.00, broken down as follows:

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Stubs	=	Php 16,850.00
Snacks	=	Php 4,550.00
Beverage	=	Php 440.00
Total		**Php 21,840.00**

An initial audit conducted after the excursion revealed that food expenses only amounted to ₱16,850.00. Moreover, the "snacks" valued at ₱4,550.00, and the "beverage" amounting to ₱440.00 should not have been billed separately as they were already included in the cost of the meal stubs previously distributed to the participants.[1]

Furthermore, only one clay pot was used in the *paluan ng palayok*, instead of two, contrary to the written insertions of Sorianosos in the computer-generated liquidation report,[2] which resulted in a padding of the expenses by ₱400.00. Likewise, the audit uncovered that the amount of ₱1,043.00 was included in Sorianosos' liquidation report to allow Dianco to recover the expense for buying the Fundador.[3]

During the preliminary investigation conducted by the Committee on Security and Safety Fact Finding Panel, Dianco and Sorianosos admitted that they violated the policy against the drinking of alcoholic beverages.[4] Dianco also confirmed that he charged the cost of the Fundador and the bottles of beer (*billed as "beverage" in the food concessionaire's receipt*) to the excursion funds.[5] **Dianco also expressed the possibility that he might have authorized the concessionaire to change the billed amount from ₱16,850.00 to ₱21,840.00 but cannot exactly remember what transpired as he was already drunk**.[6]

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[1] *Rollo,* pp. 48-50.

[2] *Id*. at 50 and 76.

[3] *Id* . at 50 and 80.

[4] *Id*. at 79-80.

[5] *Id*. at 85.

[6] *Id*. at 85-86.

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Sorianosos, on the other hand, claimed that he made written insertions in the computer-generated liquidation report **pursuant to the instructions of, and under pressure from**, **Dianco.**

On April 6, 2011, the Committee on Security and Safety relieved Dianco as Chief of CA Security without prejudice to any administrative charge that may be initiated against him by the CA Office of the Clerk of Court.[7] Catbagan and Sorianosos were likewise admonished for their actions.[8] Subsequently, on May 2, 2011, Dianco was assigned to the Property & Supply Management Division.[9]

On May 31, 2011, the CA Office of the Clerk of Court formally charged the respondents[10] and indicted Dianco for dishonesty for: (1) authorizing the written insertions in the computer-generated liquidation report; and (2) padding the food bill from ₱16,850.00 to ₱21,840.00.[11] Dianco was likewise charged with misconduct for: (1) violating the "no drinking" policy; and (2) instigating his peers to violate the "no drinking" policy.[12]

Sorianosos was charged with simple dishonesty for obeying the illegal instruction of Dianco. He was also charged with simple misconduct for drinking alcohol.[13] Catbagan, on the other hand, was indicted for simple neglect of duty for having failed to perform his duty as head of the Food Committee of the excursion.[14]

The respondents filed their answers separately. In his answer,[15] Dianco argued that the funds were private funds sourced from donors and the participants of the excursion. Dianco further

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[7] *Id*. at 44-45.

[8] *Id*.

[9] *Id*. at 439.

[10] *Id*. at 98-100.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 111-125.

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specified that the food expenses amounted to ₱18,050.00. Of the said amount, ₱14,550.00 was obtained from the funds given by Congresswoman Catalina Leonen-Pizarro.[16] Allegedly, Dianco paid the remaining balance of ₱4,000.00 out of his own pocket. He also averred that he could not be charged with dishonesty as the alleged offense happened outside the CA premises and while the participants were off duty.[17]

With regard to the misconduct charge, Dianco alleged that there was no established rule or policy, which prohibited CA employees from drinking alcohol outside the office premises.[18] Moreover, he claimed that the policy was only verbally communicated to them on the day of the excursion after the liquor had already been purchased.[19]

Sorianosos narrated that he only followed the instruction of Dianco to make written insertions in the computer-generated liquidation report, and thereby padded the expenses for the *paluan ng palayok* by ₱400.00.[20] He also denied any knowledge of the spurious receipts submitted by the respondent Dianco. Moreover, he insisted that he only partook of the liquor at the end of the excursion.[21]

Catbagan denied being negligent in handling the Food Committee.[22] He insisted that it was his superior, Acting Security Chief Regala (*Regala*), who transacted directly with the food concessionaire. He claimed that he did not bother to participate in the transactions out of respect for Regala.[23]

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[16] *Id*. at 112.

[17] *Id*. at 112, 116-117.

[18] *Id*. at 116-117.

[19] *Id*.

[20] *Id*. at 107-108.

[21] *Id*.

[22] *Id*. at 102-103.

[23] *Id*.

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Before the conclusion of the formal investigation, the chairmanship of the Security and Safety Committee was transferred from CA Justice Pizarro to CA Justice Ricardo R. Rosario (*Rosario*).[24] Then on December 7, 2011, CA Justice Rosario, together with Associate Justice Romeo F. Barza, and Associate Justice Eliju A. Ybanez, requested Honorable CA Presiding Justice, Honorable Andres B. Reyes Jr. (*Reyes*), to refer the present case to the Committee on Ethics and Special Concerns since that committee has proper jurisdiction on the matter.[25]

On July 10, 2012, the Committee on Ethics and Special Concerns took cognizance of the present administrative case and instructed the CA Assistant Clerk of Court to immediately continue with the proceedings.[26] Pursuant to that resolution, the CA Assistant Clerk of Court immediately set the case for continuation of the formal investigation.[27]

On August 8, 2013, following the conclusion of the proceedings, the CA Assistant Clerk of Court submitted its Report[28] finding Dianco administratively liable for dishonesty and misconduct and recommending the penalty of six (6) months suspension against him.[29] In mitigating the recommendation to a six-month suspension, instead of dismissal, the CA Assistant Clerk of Court took note of Dianco's length of service, his admission, and humanitarian considerations.[30]

The CA Assistant Clerk of Court likewise found Sorianosos administratively liable for simple dishonesty and simple misconduct and recommended a penalty of 30-day suspension against him.[31]Again, in recommending the tempered penalty of 30-day

[24] *Id*. at 250-253

[25] *Id*.

[26] *Id*. at 276-278.

[27] *Id*.

[28] *Id*. at 2-3.

[29] *Id*.

[30] *Id*. at 31-32.

[31] *Id*. at 32.

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suspension, the CA Assistant Clerk of Court considered Sorianosos's length of service, his admission and apology, the fact that it was his first offense, his previous awards for government service, and humanitarian considerations.[32]

Catbagan was likewise found administratively liable for simple neglect of duty. Instead of recommending the imposable penalty of one (1) month and one (1) day to six (6) months suspension, the CA Assistant Clerk of Court imposed the penalty of reprimand in view of his admission, length of service, and the fact that it was his first offense.[33]

The Report[34] was later submitted to then CA Justice Reyes, through the Committee on Ethics and Special Concerns.[35] On October 31, 2013, and upon approving the Report,[36] CA Justice Reyes indorsed the present administrative case to this Court.[37] On January 16, 2014, this Court, through Court Administrator Jose Midas P. Marquez, required the respondents to file their Comment on the Report.[38]

In his Comment, the respondent Sorianosos claims that he had already served the penalty imposed upon him by the Committee on Security and Safety, which admonished him for his acts.[39] Meanwhile, Catbagan denies being negligent as head of the Food Committee because it was his superior, Chief Regala, who directly transacted with the food concessionaire.[40] He also insists that he performed his duties to the best of his ability

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[32] *Id*.

[33] *Id*.

[34] *Id*. at 2-34.

[35] *Id*. at 33-34.

[36] *Id*. at 34.

[37] *Id*. at 1.

[38] *Id*. at 389-391.

[39] *Id*. at 392-395.

[40] *Id*. at 396-399.

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under the circumstances.[41] For instance, he advanced from his own pocket amounts for the purchase of food for the excursion.[42] He also allegedly checked the meal stubs and distributed these to the attendees.[43]

Dianco, in his Comment,[44] claims that he should only be charged with simple dishonesty.[45] He also avers that he could not be charged with misconduct as the imputed acts are not related to his official duties.[46] Moreover, he claims he was denied due process since the Report only relied on the preliminary findings of the Committee on Security and Safety.[47] In addition, he narrates that he has served whatever penalty may be imposed under the circumstances in view of his transfer to the Property and Management Division on May 2, 2011.[48]

Our Ruling

Procedural Issue

Among all the respondents, only respondent Dianco raised procedural issues in the present administrative case. In particular, respondent Dianco averred that he was denied due process since the CA Assistant Clerk of Court largely relied upon the preliminary findings of the Committee on Safety and Security in making its recommendations in the Report.

We find no merit in his contention. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling

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[41] *Id*.

[42] *Id*.

[43] *Id*.

[44] *Id*. at 428-438.

[45] *Id*. at 430-432.

[46] *Id*. at 432-434.

[47] *Id*. at 434-435.

[48] *Id*. at 436-437.

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complained of. In *Department of Health v. Camposano,*[49] which restated the guidelines laid down in *Ang Tibay v. Court of Industrial Relations,*[50] we held that due process in administrative proceedings requires observance of the following cardinal principles: (1) the right to present one's case and submit supporting evidence must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) *the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.[51]

As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[52]

In the present case, Dianco cannot claim that he was deprived of due process. Records show that Dianco submitted to the jurisdiction of the CA Assistant Clerk of Court by participating in the proceedings before it. He was duly represented by counsel. He filed his answer[53] during the formal investigation and Comment on the Report upon the request of this Court.[54] He further submitted documentary evidence on his behalf. His active participation in every step of the investigation and this Court's

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[49] 496 Phil. 886 (2005).

[50] 69 Phil. 635 (1940).

[51] *Id*.

[52] *Umali v. Guingona, Jr.,* 365 Phil. 77 (2000); *Audion Electric Co., Inc. v. NLRC*, 367 Phil. 620 (2000).

[53] *Rollo*, pp. 111-125.

[54] *Id*. at 428-438.

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consideration of his arguments effectively removed any badge of procedural deficiency, if there was any, and satisfied the due process requirement.

Substantive Issues

I. Dishonesty as an Administrative Offense

In a long line of cases, dishonesty has been defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[55] Although dishonesty covers a broad spectrum of conduct, Civil Service Commission (*CSC*) Resolution No. 06-0538[56] set the criteria for determining the severity of dishonest acts.

CSC Resolution No. 06-0538 recognizes that dishonesty is a grave offense generally punishable by dismissal from service.[57] Nonetheless, some acts of dishonesty are not constitutive of offenses so grave that they warrant the ultimate penalty of dismissal.[58] Thus, the CSC issued parameters "in order to guide the disciplining authority in charging the proper offense" and in imposing the correct penalty.

The resolution classifies dishonesty into three acts: (1) serious, (2) less serious, and (3) simple.

Serious dishonesty is punishable by dismissal.[59] Less serious dishonesty is punishable by suspension for six (6) months and

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[55] *Corpuz v. Ramiterre*, Adm. Matter No. P-04-1779 (Formerly Adm. Matter No. 03-12-703 RTC) 476 SCRA 108, 121; *Office of the Court Administrator v. Ibay*, A.M. No. P-02-1649, November 29, 2002, 393 SCRA 212; and O*CAD v. Yan,* A.M. No. P-98-1281, April 27, 2005, 457 SCRA 389.

[56] As amended by CSC Resolution No. 06-1009. The amendment, however, only refers to a clerical error under Section 7.

[57] *Id*.

[58] *Id*.

[59] *Id*.

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one (1) day to one (1) year for the first offense and dismissal for the second offense.[60] Simple dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, six (6) months and one (1) day to one (1)year for the second offense, and dismissal for the third offense.[61]

Under Section 3 of CSC Resolution No. 06-0538, the presence of **any** of the following attendant circumstances in the commission of the dishonest act constitutes the offense of *serious dishonesty*:[62]

1. The dishonest act caused serious damage and grave prejudice to the government;

2. The respondent gravely abused his authority in order to commit the dishonest act;

3. Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which he is directly accountable; and respondent shows intent to commit material gain, graft and corruption;

4. The dishonest act exhibits moral depravity on the part of the respondent;

5. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

6. The dishonest act was committed several times or in various occasions;

7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

8. Other analogous circumstances. (Emphasis supplied)

Section 4 of CSC Resolution No. 06-0538 provides that the presence of **any** the following attendant circumstances in the

[60] *Id*.

[61] *Id*.

[62] *Id*.

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commission of the dishonest act constitutes *less serious dishonesty*:[63]

1. The dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification;

2. The respondent did not take advantage of his/her position in committing the dishonest act;

3. Other analogous circumstances.

On the other hand, the presence of **any** of the following attendant circumstances in the commission of the dishonest act constitutes the offense of *simple dishonesty*:[64]

1. The dishonest act did not cause damage or prejudice to the government.

2. The dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent.

3. In falsification of any official document, where the information falsified is not related to his/her employment.

4. That the dishonest act did not result in any gain or benefit to the offender.

5. Other analogous circumstances.

CSC Resolution No. 06-0538 thus reflects a departure from the Draconian treatment of dishonest conduct under the old Uniform Rules of Administrative Cases in Civil Service (*Uniform Rules*). The Uniform Rules did not contain any standard for classifying dishonesty, for which reason, this Court had ruled that a finding of dishonesty carries the indivisible penalty of dismissal.[65] The advent of CSC Resolution No. 06-0538, however,

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[63] Section 4.

[64] Section 5.

[65] Thus, in *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, we stated that dishonesty alone, because it is a grave offense, carries the extreme penalty of dismissal from the service. In the subsequent case of *Retired Employee, Municipal Trial*

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humanized the penalties for acts falling under the general category of dishonesty and categorized the conduct, depending upon its effect, the offender's position, the intent and moral depravity of the offender, and other analogous circumstances.[66]

II. Misconduct as an Administrative Offense

To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In the case of *Manuel v. Calimag, Jr.*,[67] we opined that:

> Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. **It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office** x x x. More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.

The misconduct, however, is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[68]

Court, Sibonga, Cebu v. Merlyn G. Manubag, A.M. No. P-10-2833, December 14, 2010, 638 SCRA 86, we held likewise held that dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service.

[66] This same treatment is reflected in the Revised Rules on Administrative Cases in the Civil Service, enacted on November 18, 2011.

[67] A.M. No. RTJ-99-1441, 367 Phil. 162 (1999).

[68] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633.

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As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[69] If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct.[70]

III. Dianco's Administrative Liability

In the present case, the records show that Dianco admitted to the dishonest act of padding the food bill in order to charge the cost of the Fundador (*₱1,043.00 as reflected in the computer-generated liquidation report*) and the bottles of beer (*as beverage*) on the excursion funds. The following are the statements of Dianco during the preliminary investigation:

J. Pizarro:	In this Exhibit B, you ordered Php440.00 worth of beverages? Mr. Dianco, you admit this?
C. Dianco:	Yes your Honor.
J. Pizarro	**These are in the form of beers which you ordered at you[r] instance?**
C. Dianco:	Yes your Honor.[71]

Dianco further testified:

J. Pizarro:	There is an entry here, Mr. Dianco, 'drinks'. Drinking is prohibited. Drinks care of Dianco Php1,043.00. There is a report that the drinks are your own drinks and you were charging it to the fund. *Ano masasabi mo dito*?
C. Dianco:	*Sir, nabili na [po] yang alak po na iyan bago po kayo mag order na bawal uminom. So nabili na [po] iyan, dinala ko na lang po.*

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[69] *Id.*

[70] *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013, 703 SCRA 1, citing *Santos v. Rasalan*, 544 Phil. 35 (2007); *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau,* G.R. No. 173121, April 3, 2013, 695 SCRA 35.

[71] *Rollo*, p. 79.

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J. Pizarro: *But did it not bother your sense of propriety, kung tama o hindi na icha-charge mo yung bawal na alak, tama ba iyon or mali*?

C. Dianco: *Mali po*.[72]

The fact that the liquor had already been purchased before the excursion does not exculpate Dianco from administrative liability. What appears clear is that Dianco **employed falsification and deception** in order to recover for himself a patently unauthorized expense.

Moreover the report of Ms. Lorelie G. Bibe (*Bibe*), the food concessionaire, reveals that Dianco **masterminded the padding of the food concessionaire's receipt**. In particular, Bibe stated:

10. After Mr. Regala and Mr. Dianco settled the payment with me, I called my husband and asked him to issue a receipt to Mr. Dianco.

x x x x x x x x x

b.) **Mr. Dian[c]o then enumerated to my husband what to put in the official receipt (Receipt No. 0275) from 'Gabby's Catering, the parent firm of my concession kiosk**.

c.) Mr. Dian[c]o gave the following details to be written on the receipt:

i. Stubs	Php 16,850.00
ii. Snacks	Php 4,550.00
iii. Beverage	Php 450.00
iv. The total was	Php 21,840.00

x x x x x x x x x[73]

Notably, Dianco never categorically denied the offense imputed against him by Bibe. In fact, he claims that **he <u>might have authorized</u> the concessionaire to change the billed amount from ₱16,850.00 to ₱21,840.00.**[74] His hazy memory

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[72] *Id*. at 80.

[73] *Id*. at 126-128.

[74] *Id*. at 85-86.

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of the events during the excursion, which he attributes to his intoxication, shows an utter lack of any sense of accountability and responsibility.

Notably, during the preliminary hearing and even thereafter, Dianco never denied Sorianosos's accusation that he instructed him to "fix" the entries in the computer-generated liquidation report (*i.e*. Sorianosos made it appear that two (2) clay pots were used in the *paluan ng palayok*, in order to pad the expense for that particular activity by ₱400.00).[75] Dianco's silence on this critical allegation is deemed an admission under Rule 130, Section 32 of the Revised Rules of Evidence.

Dianco, by these acts, clearly committed serious dishonesty. He **gravely abused his authority and moral ascendancy in order to commit the dishonest act by directing his subordinate to cooperate with his dishonest conduct**. Dianco further **orchestrated a series of falsifications to cover up his deception.** It should not also be lost on us that Dianco's acts do not only carry administrative repercussions, they also have criminal consequences (*i.e*., falsification of an official document punishable under the Revised Penal Code).

As the CA Security Chief who has been in service for twenty (20) years, Dianco should serve as an example to be followed in uplifting the standard of service of his fellow security personnel, not an instigator of unscrupulous schemes to circumvent administrative policies. To be sure, he cannot serve this purpose given the nature of the offense he committed and its potential penal consequences.

Although the respondent Dianco claims that the funds involved are not public in nature, that is not sufficient to exculpate him from any administrative liability for serious dishonesty. In *Remolona v. Civil Service Commission,*[76] we said:

[D]ishonesty, x x x need not be committed in the course of the performance of duty by the person charged. The rationale for the

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[75] *Id*. at 50-76.

[76] 414 Phil. 590 (2001).

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rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

Likewise, we find Dianco administratively liable for grave misconduct. In the present case, Dianco's acts run contrary to the policy of promoting a high standard of ethics in the public service. As the Report correctly pointed out, *the excursion of the members of the CA security group was a court-sponsored affair, one imbued with public interest. Foremost of which is to provide respite to our tired guards, up their morale and esprit de corps, and to develop a highly respected and efficient security group. Thus each officer had the duty to act in a proper, dignified and righteous and responsible manner*.[77]

The fact that Dianco initiated the drinking spree with a clear intent to violate the prohibition during the excursion was admitted by Dianco himself. In fact, **even prior to the excursion, Dianco already had too much to drink**. Although Dianco avers that there is no written policy against drinking, the absence of any general policy, by itself, **does not negate the fact that Dianco instigated a violation of a policy clearly established for that specific activity**. Dianco's and Sorianosos's admissions during the preliminary investigation proved that they were well aware of the prohibition.

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[77] *Rollo*, p. 27.

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In particular, during the preliminary investigation of the Security and Safety Committee Fact Finding Committee, Dianco stated the following:

J. Pizarro:	x x x The rules of the subdivions are: 1) no drinking, and x x x Maliwanag sa inyo na walang inuman. Ang tanoong ko diyan, bakit kayo uminom? You were all observed to be drunk. x x x x
J. Pizarro:	*Ikaw Sorianosos, uminom ka*?
SG Sorianosos:	*Opo, sir. Uminom po ako*.
J. Pizarro:	*Bakit ka uminom*?
SG Sorianosos:	*Nadala po ako sa kasiyahan, sir*.
x x x	x x x x x x
J. Pizarro:	*Ikaw, Mr. Dianco, parang ikaw ang naging pasimuno*. There was a report that before the bus took off, you already wanted to drink? You were under the influence of heavy liquor. People noticed you. What can you say about that?
Chief Dianco:	**Yes sir, that was my mistake**.[78] (Emphasis supplied)

We note that public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence, and skill.[79] They must enter public service with utmost devotion and dedication to duty[80] and endeavor to discourage any perception of impunity. In instigating the violation of the "no alcohol" policy, Dianco placed the CA in a bad light and compromised the image of public service and public servants.

Thus, we find Dianco guilty of serious dishonesty and grave misconduct, which are enough to warrant his dismissal from service. Although Dianco pleads the existence of circumstances

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[78] *Id*. at 79.

[79] Sec. 4 (A) (b) of R.A. No. 6713.

[80] *Id.*

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to mitigate his liability, these circumstances do not apply to the offenses of serious dishonesty and grave misconduct since both are punishable with dismissal for the first offense, a penalty with no minimum, medium or maximum periods.[81]

The penalty of dismissal from the service likewise carries with it the forfeiture of Dianco's retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. As we held in the case of of *Ramos v. Mayor:*[82]

> Under Section 52 (A)(1) and (A)(6), Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service" (Resolution No. 99-1936 dated August 31, 1999), respondent's act of making untruthful declarations in his PDS renders him administratively liable for falsification of public document and dishonesty which are classified as grave offenses and, thus, warrant the corresponding penalty of dismissal from the service even if either of them is respondent's first offense. Section 58 of Rule IV thereof states that **the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service,** unless otherwise provided in the decision.

Neither can Dianco claim that his reassignment on May 2, 2011, amounted to a penalty. Where the appointment does not

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[81] Section 54 of the URACC states that: Manner of Imposition. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a.) The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b.) The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c.) The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d.) Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances.

[82] A.M. No. P-05-1998, October 24, 2008, 570 SCRA 22, 30-31.

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indicate a specific station, an employee may be transferred or reassigned provided the transfer affects no substantial change in title, rank and salary.[83] As we aptly held in *Orcino v. CSC*:[84]

> x x x [T]he rule that outlaws unconsented transfers as anathema to **security of tenure applies only to an officer who is appointed — not merely assigned to a particular station**. Such a rule does not prescribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency. The use of approved techniques or methods in personnel management to harness the abilities of employees to promote optimum public service cannot be objected to. **Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him, or to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to Section 32 of the Civil Service Act**.

In the present case, Dianco's ressignment did not amount to any substantial change in title, rank, and salary. Although he suggests that his reassignment was done in bad faith, he failed to substantiate his allegations with supporting evidence. Dianco must be reminded that the burden of proving bad faith rests on the one alleging it. As *Culili v. Eastern Telecommunications, Inc*. teaches us,[85] "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same."

IV. Sorianosos's Administrative Liability

We believe that Sorianosos committed a dishonest act by "fixing" the entries in the computer-printed liquidation report. Nonetheless, we do not believe that a finding of serious dishonesty on his part is justifiable under the circumstances, considering the amount involved and that he merely acted under the compulsion of a superior officer. The fact that Sorianosos

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[83] *Bongbong v. Parado,*G.R. No. L-30361, June 28, 1974, 57 SCRA 623.

[84] G.R. No. 92869, October 18, 1990, 190 SCRA 815.

[85] G.R. No. 165381, February 9, 2011, 642 SCRA 338.

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initially **prepared the computer-generated liquidation report, without any intercalations, demonstrates an absence of bad faith and that he had no prior intent to commit any dishonest conduct.** By error of judgment, Sorianosos was persuaded by his superior, Dianco, to commit a dishonest act. As Sorianosos aptly stated:

J. Pizarro:	*Bakit mo sinulat na dalawang (2) palayok tapos may plus Php 400.00 pa*? Is this your initial?
SG Sorianosos:	Yes sir.
J. Pizarro:	You have to explain now. You admitted earlier that you did this for some reason. You tell your story now.
x x x	x x x x x x
SG Sorianosos:	*Nuong ginawa ko [po] iyang report na iyan, regarding po sa dalawang palayok, nun natapos ko na po yun report na ion at ng pipirmahan nap o kay Chief Dianco, nakita po niya ang suma total ko diyan kung magkano natira sa akin*.
x x x	x x x x x x
J. Pizarro:	*Bakit mo ginawa*?
SG Sorianosos:	***Sumunod lang po ako sa hepe ko, Mr. Reynald V. Dianco***."[86]

We, however, cannot agree with the Report that Sorianosos only committed simple dishonesty with respect to this aspect of the case, as **the gravity of the dishonest act involves criminal consequences**. For this reason, we believe that Sorianosos should be held administratively liable for less serious dishonesty, which carries with it the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense.

We concur, however, with the Report's finding that Sorianosos is administratively liable for simple misconduct with respect to

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[86] *Rollo*, pp. 41-42.

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the violation against the use of alcoholic beverages. This offense carries an imposable penalty of suspension of one (1) month and one (1) day to six (6) months. Sorianosos partook of the liquor despite the prohibition against its consumption within the premises. There is no evidence to show that there is a clear intent to violate any established rule on Sorianosos's part.

Considering that Sorianosos is administratively liable for two offenses, the penalty to be imposed should be corresponding to the most serious charge or count and the rest of the offenses may be considered aggravating circumstances.[87] Since the most serious offense of which Sorianosos is found guilty is less serious dishonesty, the offense of simple misconduct should be considered as an aggravating circumstance, which warrants the maximum penalty of one (1) year suspension.

The Report, however, considered other mitigating circumstances in Sorianosos's favor. In particular, the Report noted (1) Sorianosos's length of service; (2) his admission and apology; (3) the fact that it is his first offense; (4) his previous awards for government service; and (5) humanitarian considerations. We, however, refuse to accept such generous interpretation on the part of the CA Assistant Clerk of Court.

Mitigating, aggravating or alternative circumstances in the imposition of administrative penalties must only be considered when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty.[88] In appreciating the presence of mitigating, aggravating or alternative circumstances in a given case, two constitutional principles come into play which the Court is tasked to balance.[89] The first is public accountability, which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only

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[87] Section 55, Uniform Rules.

[88] *Duque v. Veloso*, G.R. No. 196201, June 19, 2012, 673 SCRA 676.

[89] *Id*.

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individuals who possess good moral character, integrity, and competence are employed in the government service.[90]

The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating, or alternative circumstances by the disciplining body:

> Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances*. – In the determination of the penalties imposed, mitigating, aggravating and *alternative circumstances* attendant to the commission of the offense shall be considered.
>
> The following circumstances shall be appreciated:
>
> a. Physical illness
> b. Good faith
> c. Taking undue advantage of official position
> d. Taking undue advantage of subordinate
> e. Undue disclosure of confidential information
> f. Use of government property in the commission of the offense
> g. Habituality
> h. Offense is committed during office hours and within the premises of the office or building
> i. Employment of fraudulent means to commit or conceal the offense
> j. Length of service in the government
> k. Education, or
> l. Other analogous circumstances (emphasis ours)

Although Sorianosos has been in the service for twenty (20) years, that may not be considered as a mitigating circumstance in his favor. Length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case. It is usually considered as an aggravating circumstance when the offense committed is **serious or grave**[91] or if length of service is a factor that facilitates the commission of the offense.[92]

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[90] *Id*.

[91] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593.

[92] *Id*.

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In the present case, the offense of less serious dishonesty is considered as a grave offense;[93] for which reason, Sorianosos's length of service should be considered as an aggravating circumstance.

Nonetheless, Section 53 allows analogous circumstances to be considered as mitigating. In *Civil Service Commission v. Belagan,*[94] we considered the respondent's unblemished record in the pas and numerous awards a mitigating. Similarly, in *Vidallon-Magtolis v. Salud,*[95] we likewise mitigated respondent's administrative liability as he had not been previously charged or administratively sanctioned. In *De Guzman, Jr. v. Mendoza,* [96] we refrained from meting out the penalty of suspension for one year without pay because it was Mendoza's first offense. Also in *Buntag v. Paña,*[97] we affirmed the reduction of the penalty considering that it was the respondent's first infraction.

In the present case, we consider as mitigating the fact that this is Sorianosos's first offense and that he had previously received awards in the performance of his duties. However, we cannot use humanitarian considerations to mitigate administrative liability for this is a subjective standard that should be applied only with utmost care in adjudication. Judicial prudence, at the very least, requires that the Court avoid identifying itself with the use of subjective standards, as it is guided by the rule of law, not by the peculiar dictates of individual conscience.[98] Similarly, we cannot consider Sorianosos's acknowledgment of the infraction as a mitigating circumstance, for that was largely prompted by fear of possible administrative sanctions.

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[93] Rule 10, Sec. 46 B(1), Uniform Rules.

[94] G.R. No. 132164, October 19, 2004, 440 SCRA 578, 601.

[95] A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439, 469-470.

[96] A.M. No. P-03-1693, March 17, 2005, 453 SCRA 545, 574.

[97] G.R. No. 145564, March 24, 2006, 485 SCRA 302.

[98] *Dumduma v. CSC,* 674 Phil. 257 (2011), see concurring and dissenting opinion, J. Brion.

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When the aggravating and mitigating circumstances offset each other, the medium of the penalty shall be imposed.[99] In the present case, Sorianosos's length of service and the lesser offense of simple misconduct aggravated his administrative liability. That this is his first offense and that he received previous awards for his government service, on the other hand, should mitigate his administrative liability.

Considering the equal number of mitigating and aggravating circumstances, we impose upon Sorianosos the medium of the imposable penalty for the graver offense of less serious dishonesty. Since that offense imposes a penalty of six (6) months and one (1) day to one year suspension, its medium penalty necessarily corresponds to a suspension of nine (9) months.

Lastly, the Committee on Security and Safety's previous admonition to Sorianosos cannot be considered a penalty. If at all, the admonition was meant as a reminder to Sorianosos to be diligent in the performance of his duties. Admonition and warning for being remiss in the performance of duties do not necessarily equate with administrative conviction.

V. Catbagan's administrative liability

With respect to Catbagan, we agree with the Report that he failed to give due attention to the task expected of him as Food Committee Head. As testified by Catbagan himself:

SG Catbagan:	*Sir since ang participation ko lang po ang pag-serve ng stubs wala napo akong kinalaman diyan*?
J. Pizarro:	Of course, you were in charge of the food committee, some of these problems may not have happened if you were more active, do you agree?
SG Catbagan:	Yes sir.

[99] Section 54, Uniform Rules.

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J. Pizarro: Why did you allow people like Ricky Dianco and Sorianosos to be principally in charge, when you should have been the one in charge xxx?

SG Catbagan: *Sorry po sir, kung di ko nakayanan. Sorry po, sir.*[100]

Simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[101] In the present case, Catbagan fell short of the reasonable diligence required of him by failing to exercise due care and prudence in handling the fiscal and logistical requirements for the food during the excursion.

Although Catbagan may have checked the meal stubs, distributed these to the attendees and ensured that the queue was orderly, those acts would not exculpate him from administrative liability. What is clear is that he failed to exercise the responsibility expected of him as Food Committee head, and passed it on to Regala. His indifference thereby demonstrates a lack of any sense of accountability in performing the tasks assigned to him.

Under the Uniform Rules, simple neglect of duty, which is a less grave offense, is punishable by suspension of one (1) month and one (1) day to six (6) months. In view of Catbagan's length of service of fifteen (15) years, the penalty to be imposed upon him should be the minimum, that is, a one (1) month and (1) day suspension.

Final Note

We cannot tolerate any act or omission on the part of all those involved in the public service, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the government.

The respondents are reminded that ["the Constitution mandates that a public office is a public trust and public officers must at

[100] *Rollo*, p. 81.

[101] *Galero v. Court of Appeals*, G.R. No. 151121, July 21, 2008, 559 SCRA 11.

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all times be accountable to the people; serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice; and lead modest lives. These constitutionally enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should] [be read and implemented as working standards by everyone in the public service."][102]

We stress that Republic Act No. 6713, otherwise known as the "The Code of Conduct and Ethical Standards for Public Officials and Employees," enunciates, *inter alia*, the State policy of promoting a high standard of ethics and **utmost responsibility** in the public service.[103] Section 4 (c) of the said Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety, and public interest." By their actuations, the respondents failed to live up to this standard.

WHEREFORE, premises considered, the respondent Reynaldo V. Dianco is found **GUILTY** of Serious Dishonesty and Grave Misconduct. He is **DISMISSED** from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.

The respondent Joven O. Sorianosos is found **GUILTY** of Less Serious Dishonesty and Simple Misconduct. he is hereby **SUSPENDED** from the service without pay for a period of nine (9) months, with the stern warning that a repetition of the same or similar acts will warrant a more severe penalty.

The respondent Abelardo P. Catbagan is found **GUILTY** of Simple neglect of Duty. he is hereby **SUSPENDED** from the service without pay for a period of one (1) month and one

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[102] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado, etc., and NWSA*, 108 Phil. 283, 289 (1960).

[103] Emphasis supplied.

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(1) day, with the stern warning that a repetition of the same or similar acts will warrant a more severe penalty.

SO ORDERED.

Sereno, C.J. , Carpio, Leonardo-de castro, Brion, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

Velasco, Jr., no part due to relationship to a party.

Peralta and *Leonen, JJ*., on official leave.

EN BANC

[A.M. No. P-09-2705. June 16, 2015]

EDMAR D. GARCISO, *complainant, vs.* **ARVIN A. OCA, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, CEBU CITY,** *respondent.*

[A.M. No. P-09-2737. June 16, 2015]

JUDGE ENRIQUETA L. BELARMINO, *complainant, vs.* **ARVIN A. OCA, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 1, CEBU CITY,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE EMPLOYEE'S ACT OF SOLICITING AND ACCEPTING MONEY IN EXCHANGE FOR ASISTANCE HE COULD EXTEND IN CAUSING THE WITHDRAWAL OR