

**DIGAL, Eddie A.**

Re: Appeal; Reassignment

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### **RESOLUTION NO. 030284**

Eddie A. Digal, Project Manager A, National Irrigation Administration (NIA), Quezon City, appeals from the order dated September 3, 2001 of NIA Administrator Jesus Emmanuel M. Paras, reassigning him as Head, Special Action Team under the Administrator's Office. Prior to his reassignment, Digal was Project Manager of Bohol Irrigation Project Stage II (BHIP II), Ubay, Bohol. In a letter-request dated September 27, 2001, he sought reconsideration of the reassignment from Administrator Paras but the same was denied in a letter dated October 1, 2001.

In his appeal dated October 15, 2001, which was received by this Commission on October 25, 2001, Digal averred, as follows:

*"1. There was no proper investigation on the letter-complaint/petition for my relief as project manager of NIA-BHIP II thereby violating my constitutional right to due process.*

*"2. I am being reassigned to a non-existing Unit/Team and to a non-existing position. My reassignment would be tantamount to constructive dismissal. Besides, under Executive Order No. 100, no creation of new units or positions is allowed unless duly-approved/cleared by the DBM.*

*"3. My appointment is station-specific, i.e. as project manager of NIA-BHIP II, therefore, my reassignment/reappointment should also be station-specific."*

As culled from the records, Digal was appointed as Project Manager A, with a 'co-terminous with the project' status. His appointment dated December 18, 2000, provided a specific station which is the Bohol Irrigation Project Stage II in Ubay, Bohol. However, in a letter-request dated July 2001, Governor Erico B. Aumentado, Congressman Roberto C. Cajes, 2nd District, Bohol, and three other officials of some local government units in Bohol, requested the immediate relief of Digal, declaring him a *persona non grata* due to several allegations of misconduct and discourtesy. In a letter dated August 14, 2001, NIA Assistant Administrator Gabriel Q. Enriquez forwarded a copy of said letter-request to Digal and instructed him to submit his comment thereto. In a letter dated August 24, 2001, Digal answered all the points raised against him by the local officials of Bohol. In a Memorandum dated September 6, 2001, NIA Administrator Paras reassigned Digal as Head, Special

Action Team, under the Office of the Administrator effective October 1, 2001. Digal moved for a reconsideration of the reassignment but the same was denied by Administrator Paras in a letter dated October 1, 2001. Subsequently, on October 5, 2001, Digal filed Civil Case No. 0215 for Injunction, Damages, Attorney's Fees with Application for Temporary Restraining Order before Branch 52, Regional Trial Court, Talibon, Bohol. On October 15, 2001, Digal filed this instant appeal.

In an Order dated March 21, 2002, the Commission requested Administrator Paras to comment on said appeal. The administrator through counsel complied with said order in his Comment dated May 17, 2002, received by this Commission on May 22, 2002. Relevant portions of said comment read, as follows:

*"Reassignment is a management prerogative. Accordingly, this Honorable Commission may not interfere in the exercise thereof in the absence of any showing that there was grave abuse of discretion on the part of the head of the agency.*

*"In the instant case, complainant failed to establish the fact that the subject reassignment was done in bad faith or that there was abuse of discretion on the part of Administrator Paras or that it was effected not in the exigency of the service. It must be pointed out as shown in the series of communication x x x, that Mr. Digal was declared persona non grata by the Congressman of the 2<sup>nd</sup> District of Bohol where BHIP project is located, Governor of Bohol, Gov. Erico B. Aumentado, Mayor Manuel Alesna of Ubay, Bohol and Silvino Evangelista, of San Miguel, Bohol. Evidently, there is great conflict/hostility between Mr. Digal and the above mentioned local officials which naturally would affect directly and indirectly the effectiveness of Mr. Digal as Project Manager considering that the implementation of said project, Mr. Digal will necessarily be dealing with them and their constituents. Given the animosity between Mr. Digal and said local officials, it is safe to assume that Mr. Digal will not be that effective or efficient in the discharge of his functions. The better part of wisdom, therefor is to reassign Mr. Digal so that a new Project Manager may be assigned in his place in order not to jeopardize the project. x x x"*

*"Also, it is worthy to note that there was no diminution of rank, salary or status on the part of said reassignment; undoubtedly, neither the substantial right nor procedural requirement of the law has been violated in this case."*

The issues to be resolved in the instant appeal are, as follows:

- a. Whether the present appeal constitutes forum-shopping in light of the civil case filed by Digal.
- b. Whether the reassignment of Digal was valid.

Firstly, there must be a determination of the existence of forum-shopping considering that prior to filing of the appeal with this Commission, Digal first filed a civil case for injunction and damages before Branch 52 of the Regional Trial Court (RTC) at Talibon, Bohol. For clarity, forum shopping<sup>1</sup> is the act of a party against whom an adverse judgment has been

rendered in one forum, of seeking another or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The test<sup>2</sup> in determining the presence of forum shopping is whether in the two cases pending, there is identity of parties; rights or causes of action; and reliefs sought.

A perusal of the complaint filed before the RTC shows that Digal was seeking a permanent injunction against the implementation of his reassignment. In said civil case, Digal raises as contention that the reassignment was not only illegal but also unreasonable and oppressive which would lead to his illegal dismissal and seeks as relief, a permanent injunction against the same. Another main action of the case is his claim for moral and exemplary damages totaling to Three Million Pesos (P 3,000,000.00), citing as ground for damages that he suffered sleepless nights, social humiliation, besmirched reputation, serious anxiety and embarrassment due to the alleged oppressive acts of Administrator Paras. On the other hand, in the present appeal, Digal is praying for the annulment of the reassignment order dated September 3, 2001, contending that the same is invalid and without legal basis. Applying the test of forum shopping would show that although there is identity of parties, there is no identity of causes of action and reliefs sought. Nonetheless and while strictly speaking, there is no forum shopping herein, still there is the possibility that there may be two (2) different rulings in one of the issues which are to be resolved in both the administrative and the civil cases, i.e., its legality of the reassignment and so this appeal could be dismissed outright on said ground.

It is also important to point out that appeals on reassignment are within the jurisdiction of the Commission and not the RTC. Moreover, well-settled is the rule that a party must exhaust all administrative remedies before resorting to the courts<sup>3</sup>. A premature resort to the courts will result in the dismissal of the case<sup>4</sup>. In this case, the issue on the validity of the reassignment must first be brought before and resolved by this Commission before the same may be brought before the court and by the term "court" we refer to the Court of Appeals which has appellate jurisdiction over the decisions of the Commission.

Anent, we proceed to the second issue on whether the reassignment of Digal was valid. An examination of Digal's appointment shows that Digal was appointed as Project Manager A, Bohol Irrigation Project Stage II with a "co-terminous with the project" status. This fact is very much relevant in determining the validity of Digal's reassignment. Therefore, it is important to analyze the nature of co-terminous with the project employees.

Co-terminous appointments belong to the non-career service. The non-career service is distinguished from the career service as defined in **Sections 7 and 9, Chapter 2, Book V, Title I, Subtitle A of the Administrative Code of 1987 (Executive Order No. 292)** which read, as follows:

*"SEC. 7. Career Service – The career service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.*

*"SEC. 9. Non-Career Service – The non-career service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and tenure which is limited to a period specified by law, or which is co-terminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made." (Emphasis supplied)*

Specifically, **Section 9 of said Code** defines a 'co-terminous with the project' employee as one whose tenure is limited to the duration of a particular project for which purpose employment was made.

Furthermore, **Section 2 (d) Rule III of the Revised Omnibus Rules on Appointments and other Personnel Actions (CSC Memorandum Circular No. 40 s. 1998, as amended by CSC Memorandum Circular No. 15 s. 1999)** provides for the definition of co-terminous appointments, which reads, as follows:

*"Sec. 2. Employment Status in General*

*"d. Co-terminous – issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or of the head of the organizational unit where assigned; or co-existent with the incumbent; or limited by the duration of the project; or co-existent with the period for which an agency or office was created. Specifically, the categories of co-terminous appointments are:*

- `a. co-terminous with the appointing authority*
- `b. co-terminous with the head of the organizational unit where assigned,*
- `c. co-terminous with the incumbent,*
- `d. co-terminous with the project, and*
- `e. co-terminous with the life span of the agency.'*

*"Appointments of personnel under Foreign-assisted projects shall be issued and approved as co-terminous with the project, in which case, the name of the project and its completion date shall be indicated in the appointment."*

An examination of the above quoted provision shows that there are basically five categories of co-terminous appointees as enumerated in Section 2 (d) a to e. It is also explicit from the provision that those who belong to the first two (2) categories serve at the pleasure of the appointing authority and their services may be terminated at any time by the

appointing authority.

This now raises the question as to whether the same situation applies to the last three (3) categories of co-terminous appointments, particularly an appointment under 'co-terminous with the project' status. The question begging to be answered is: *Does a coterminous with the project employee enjoy security of tenure for the entire duration of the project?*

Firstly, it is important to reiterate that 'co-terminous with the project' appointees belong to the non-career service such that their entrance to the service is on bases other than those of the usual tests of merit and fitness utilized for the career service. They fall in the same category as other non-career appointees enumerated in **Section 9 of the Administrative Code of 1987**, to wit:

*"(1) Elective officials and their personal and confidential staff;*

*"(2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal and confidential staff(s);*

*"(3) Chairman and members of commissions and boards with fixed terms of office and their personal and confidential staff;*

*"(4) Contractual personnel or those whose employment in the government is in accordance to a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished with a specified period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and*

*"(5) Emergency and seasonal personnel."*

Well settled is the Constitutional mandate that *"No officer or employee of the civil service shall be removed or suspended except for cause provided by law"*<sup>5</sup>. However, it is submitted that while in general, civil service officers or employees may be removed only for cause, the mode of removal varies depending on the position being held by the employee. With respect to permanent employees of the career service, they may only be removed for cause and through administrative proceedings which includes the requisite formal charge, the conduct of a hearing and the imposition of the penalty of dismissal.

With regard to the non-career service, elective officials and chairman and members of Commissions and Boards enjoy security of tenure during their respective fixed terms and they may be removed only in accordance with the modes of removal provided by law such as impeachment, expulsion, recall or dismissal through administrative proceedings as the case may be. With respect to the other non-career positions, they may be removed through a different way.

To illustrate, the removal of a permanent career employee entails the conduct of administrative proceedings and the imposition of the penalty of dismissal. However, with respect to non-career employees such as confidential, contractual, casual, emergency or seasonal personnel, the cause and mode of removal are different from permanent employees. Personal and confidential employees serve at the pleasure of the appointing authority such that they may be automatically removed for loss of trust and confidence. Contractual, casual, emergency or seasonal personnel may be removed when their services are no longer needed or for unsatisfactory performance. In these cases, the removal is automatic and the same does not require the conduct of administrative proceedings.

It is to be noted that co-terminous employees fall in the same league as contractual, casual, seasonal or emergency personnel such that they are tenurial employees with no fixed term. This is the declaration of the Supreme Court in the case of **Chua vs. Civil Service Commission, (G.R. No. 88979, February 7, 1992, 206 SCRA 65)** where it had occasion to rule, as follows:

*"What substantial differences exist, if any, between casual, emergency, seasonal, project, co-terminous or contractual personnel? All are tenurial employees with no fixed term, non-career and temporary."*  
(Emphasis supplied)

Therefore, like contractual, casual or emergency personnel, co-terminous with the project employees do not have security of tenure like career employees. Although the Administrative Code limits their tenure to the *"duration of the project"*, this is construed to mean that the same is only the maximum period of their appointment such that when the project is completed they cease to be government employees and their appointments are extinguished by operation of law.

Moreover, to allow co-terminous with the project appointees to enjoy security of tenure for the duration of the project would possibly put them on equal footing as permanent career employees since there also exists the possibility that a project may last for a good number of years, and it is in the appointee's best interest to even delay the project in order to prolong his/her period of employment.

With the nature of co-terminous with the project employees clarified, we proceed to the instant appeal. Records show that Administrator Paras reassigned Digal to another position due to the existing conflict and animosity between the latter and Bohol Governor Aumentado and other local officials of said province where the project is located. According to Administrator Paras, this would greatly affect Digal's efficiency and effectiveness in the implementation of the project. However, instead of terminating his services, Administrator Paras instead reassigned him to another position. At this juncture, we find that the reassignment to be in order and done in the interest of public service.

Furthermore, since Digal occupies a third-level position, it is worthy to mention the ruling of this Commission in **CSC Resolution No. 01-1872 dated December 6, 2001** which provides, as follows:

*"Nevertheless, because of the distinct nature of the CES position, which is highly dependent on*

managerial and technical skills, appointing authorities are given enough discretion to appoint people on whom they have confidence and who they believe will be able to perform the expected duties and responsibilities. This is to differentiate the situation from the first and second level employees of the civil service where performance and eligibility are the basic factors for appointments. The sensitivity of the nature of work in the third level gives the appointing authorities the opportunity to exercise that power so as to protect the sensitivity of their own positions."

From the foregoing, we hold that the act of Administrator Paras in reassigning Digal is valid.

Moreover, **Section 6(a) Rule III of the Revised Omnibus Rules on Appointments and other Personnel Actions (CSC Memorandum Circular No. 40, s. 1998)** allows the reassignment of employees, provided that the same does not involve a reduction in rank, status or salary. Relevant portions of the said provision read, as follows:

"Sec. 6. xxx

*"a. Reassignment – movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. If reassignment is without the consent of the employee being reassigned it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal."*

It is important to point out that the above rule provides that in cases where the reassignment was without the consent of the employee, the same shall be allowed only for one year. It must be emphasized that this rule was primarily for the protection of the security of tenure of employees. Since we hold that Digal has no security of tenure with respect to his position as Project Manager of BHIP II, the said one-year limitation does not apply to him.

**WHEREFORE**, premises considered, the appeal of Eddie A. Digal is hereby **DISMISSED** for lack of merit. Accordingly, the order of reassignment dated September 3,2001 of National Irrigation Administration Administrator Jesus Emmanuel M. Paras **STANDS**.

Quezon City, MAR 05 2003

(Original Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

(Original Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

(Original Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Original Signed)  
**ARIEL G. RONQUILLO**  
Director III

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NDC 01-1179/Digal

<sup>1</sup>Ortigas vs. Velasco, 234 SCRA 455 (1994) as noted in Herrera, Oscar, Comments on the 1997 Rules of Civil Procedure, 1997 Edition

<sup>2</sup>Herrera, Oscar ., Comments on the 1997 Rules of Civil Procedure, 1997 Edition

<sup>3</sup>SSS Employees Association vs. Bathan-Velasco, 313 SCRA 250

<sup>4</sup>Ibid.

<sup>5</sup>Section 2 (3), Article 9-B, 1987 Constitution