CRUZ, Leonardo C.

Re: Conduct Grossly Prejudicial to the

Best Interest of the Service; Appeal

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RESOLUTION No. 040164

Leonardo C. Cruz, Principal Engineer, Local Water Utilities Administration (LWUA), and concurrently President of the LWUA Employees Association for Progress (LEAP), through counsel, appeals from the Order dated April 1, 2002 of the Civil Service Commission – National Capital Region (CSC-NCR) finding him guilty of Conduct Grossly Prejudicial to the Best Interest of the Service for which he was meted out the penalty of six (6) month suspension from the service; and from the Order dated July 31, 2002 of the CSC-NCR denying his motion for reconsideration.

The abovestated Order dated April 1, 2002 partly reads, as follows:

"This Office maintains that grievances and concerns of government employees should be resolved through dialogues and other means short of having any work interruption or work stoppage

that will not detriment public service.

"Consequently, the mass action held on August 29, 1996 which was lead (sic) by Cruz falls within the purview of the prohibition under CSC Resolution NO. 89-204. Hence, this Office finds Cruz administratively liable for leading a mass action at the LWUA premises during office hours.

"However, no sufficient evidence was presented to establish that the rule on posting of streamers and posters was violated. The streamers and posters that were referred to were merely brought to emphasize the matters discussed in the assembly but were not hang (sic) or posted in a permanent manner as contemplated by rule (sic).

"As to the allegation that Cruz harassed former members of the LWUA Employees Association for Progress (LEAP), no substantial evidence was presented to prove the same.

"Although the witnesses presented testified that they were confronted by Cruz when the latter learned that they resigned from the LEAP membership, it was but a necessary and natural reaction of an employees' association leader to ask his members of the cause of his/her resignation. The manner by which the confrontation was made, be it in (sic) intimidating or not, was not sufficient to consider it a harassment of the members. As their sworn statements would readily reveal, the witnesses were asked on (sic) the reason(s) for their resignation and not to dissuade them from their decisions. It should be noted that the persons confronted were former members of the employees' association who committed themselves to support the cause of the employees. The resignation, not of one but a number of its members, is a valid concern of the association's leader. Therefore, no substantial evidence was established to hold Cruz administratively liable for harassment.

"After a thorough evaluation and analysis of the evidence presented during the formal investigation, there is a substantial evidence to hold the respondent administratively liable for the Conduct Grossly Prejudicial to the Best Interest of the Service.

"WHEREFORE, Leonardo C. Cruz is hereby found administratively liable for Conduct

Grossly Prejudicial to the Best Interest of the Service. Accordingly, he is meted out the penalty of six months suspension."

The material allegations in the present appeal are, as follows:

"1. According to the 01 April 2002 Order, the basis for respondent's liability is that the assembly allegedly led by respondent resulted in a 'work stoppage or paralization of the agency's operations'. . .

x x x

"2. But the Honorable CSC-NCR, at the first instance, could and should have taken judicial notice of the rules availing in respondent's agency – the LWUA – or it could have considered the evidence when presented on reconsideration.

x x x

"3. Under LWUA Office Order No. 019-95 dated 31 January 1995…it appears that as of the date of the assembly in question, on 29 August 1996. LWUA allowed a flexible 15-minute 'Coffee Break' from between 10:00 to 10:30 a.m., for employees who reported for work at 8:00 a.m. and 8:30 a.m. respectively. The LWUA Office Order was issued pursuant to CSC Resolution No. 97-677 which allowed agencies to reschedule and shift work schedules of its employees.

"4. In other words, LWUA allowed a morning breaktime that begun at 10:00 a.m., the same time as the assembly took place…

x x x

"5. Since the employees were on an official 'coffee break' they could do as they please. It is axiomatic that employees on 'break time' are not expected to work. As the employees were not expected to be working – they were on break – how could their attendance at the brief assembly constitute a 'work stoppage' or 'paralization'?

> *"6. There is no evidence remotely tending to establish that any member of the public was inconvenienced by the LWUA employees' attendance at the assembly. Thus, any conclusion that the assembly unduly prejudiced the public is speculative and without basis.*

x x x

"8. That there was no work stoppage is confirmed by the fact that LWUA management, through Administrator Antonio R. De Vera, addressed the assembly…

x x x

Significantly, neither Order contravenes the finding that Administrator De Veyra (sic) was present. Surely his attendance must carry some weight to contravene the finding that there was a 'work stoppage' or 'paralization of agency operations.' At the very least, the Orders should have addressed the legal and practical effect of an agency head's attendance at such a gathering.

> *"9. But the fact that the LWUA Administrator saw fit to address the assembly underscores the impossibility of its being considered an 'illegal work stoppage.' In fact, that the LWUA Administrator came to speak to those assembled is in the best cooperative spirit of CSC Resolution No. 89-204… which exhorts management and employees to resolve any differences 'through peaceful modes of settling disputes xxx.'"*

It is not disputed that on August 29, 1996, several employees of LWUA assembled in front of the LWUA Building in Balara, Quezon City, where the flagpole is located. The *"assembly"* was held at about 10:00 a.m. and lasted for about 20 to 30 minutes. The *"assembly"* was held for the purpose of discussing the anniversary bonus, (The Water Crisis Act of 1996). Apparently, the LWUA employees assembled brought with them and displayed streamers containing their perceived grievances. Be it noted, however, that during the said *"assembly,"* LWUA Administrator Antonio de Vera addressed the LWUA employees to assembled.

On account of the foregoing, Rodolfo S. de Jesus, Deputy Administrator for Administrative Services, LWUA, filed a complaint against Cruz with the Commission, alleging, among others, the following:

"4. <u>The first offense was committed as follows:</u>

> *"4.2 I heard the respondent attacking/criticizing among others, the alleged unfounded refusal of LWUA Management to give salary increase to its employees based on the full implementation of the Salary Standardization Law, as well as the plan of LWUA to relocate some of its employees handling engineering and institutional development services to Cebu City and other regional centers.*
>
> *x x x*
>
> *"4.4 The mass action led by the herein respondent ended at 10:30 a.m. From 10:00 a.m. to 10:30 a.m., therefore, there was work stoppage in LWUA, the declared purpose of which was to secure changes in the terms and conditions of the employment of the LWUAns.*

"4.5 By leading the mass action and acting as the speaker thereof during such illegal activity, the respondent flagrantly and maliciously violated CSC rules and regulations against strikes and work stoppage, …

x x x

"5. <u>As to the second offense, the same was committed, as follows:</u>

"5.1 On the date and at the time the aforesaid concerted activity was going on, there was a streamer hanging very near the flagpole facing the LWUA office lobby, which streamer is several meters in length and about a meter wide.

x x x

"5.3 Even the LWUA flagpole was not spared by the rallyists. Attached thereto was a streamer of smaller size reading: 'Sahod itaas ayon sa Water Crisis Act!' The larger streamer carried the following statements: 'No to relocation! Privatization ng Eng'g function tungo sa mass layoff! Mga Consultant LWUA ay gatasan! Anniversary bonus ibigay agad! Full implementation ng SSL 2 nasaan na! Salary increase ayon sa WCA RIP na ba! Extension ng emergency power ni Heneral para ano?'

"5.4 As the leader and spokesman of the LWUA employees who participated in the August 29 concerted action, the respondent must be held principally liable for any violations committed against CSC rules and regulations…

x x x

"6. <u>Lastly the third offense was committed as follows:</u>

"6.2 Acting as such LEAP Chairman, the respondent on October 13, 1994 harassed some LWUA rank and file employees belonging to the Administrative Svcs. who filed their respective resignation letters as LEAP members . . ."

Finding a *prima facie* case against Cruz, the Commission, through **CSC Resolution No. 98-0214 dated February 3, 1998,** formally charged him with Conduct Grossly Prejudicial to the Best Interest of the Service. Said Resolution partly reads, as follows:

"The foregoing facts and circumstances indicate that Cruz acted improperly and unlawfully and transgressed established rules by violating Resolution No. 89-204 dated 21 March 1989 (Policy Directions on Public Sector Unionism), Memorandum Circular No. 6, s. 1987 (Strike by Government Employees) and Memorandum Circular No. 33, s. 1994 (Rules to Govern Posting and Hanging Posters, Placards, Streamers and Other Similar Materials). Considering that these acts constitute Conduct Grossly Prejudicial to the Best Interest of the Service, Leonardo C. Cruz should be charged with said offense.

"WHEREFORE, Leonardo C. Cruz is hereby formally charged with Conduct Grossly Prejudicial to the Best Interest of the Service. Accordingly, he is given five (5) days from receipt hereof to submit to the Civil Service Commission-National Capital Region (CSC-NCR) a written answer under oath, together with the affidavits of his witnesses and documentary evidence, if any, to refute the charges…

"The CSC-NCR is directed to conduct the formal investigation and submit its report and recommendation to the Commission within five (5) days from its termination."

As such, the CSC-NCR conducted the formal investigation of the case against Cruz. Although the CSC-NCR was directed only to conduct the formal investigation and, thereafter, submit its report and recommendation to the Commission within five (5) days from the completion thereof, the CSC-NCR proceeded to decide the case pursuant to the provisions of the Uniform Rules on Administrative Cases in the Civil Service which took effect on September 25, 1999. Thus, the CSC-NCR promulgated the Order dated April 1, 2002, finding Cruz guilty of the offense of Conduct Grossly Prejudicial to the Best Interest of the Service for which he was imposed the penalty of six (6) months suspension from the service. Cruz moved for a reconsideration but the same was denied in an Order dated July 31, 2002.

Hence, the present appeal where the main issue to be resolved is whether there is any legal basis to find Cruz guilty of the offense of Conduct Grossly Prejudicial to the Best Interest of the Service.

Be it noted that Cruz was found guilty by the CSC-NCR of the offense of Conduct Grossly Prejudicial to the Best Interest of the Service for having allegedly led an assembly or mass action by the employees of the LWUA that allegedly resulted in *"work interruption or work stoppage"* in violation of the provision of **CSC Memorandum Circular No. 6, s. 1987,** to wit:

> *"In view thereof, and prior to the enactment by Congress of applicable laws concerning strike by government officials and employees, and considering that there are existing laws which prohibit government officials and employees from resorting to strike, the Commission enjoins under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass actions which will result in temporary stoppage or disruption of public service. To allow otherwise would be to undermine or prejudice the government system."*

It is explicit from the aforecited provision that what is prohibited by the Civil Service Law and rules is the staging of concerted activities or mass action by government employees resulting in temporary stoppage and disruption of rendition of service to the public. In **Bangalisan, et al. vs. CA, et al., 276 SCRA 619,** the Supreme Court explained what concerted activity or mass action is prohibited, to wit:

> *"It is an undisputed fact that there was a work stoppage and that petitioners' purpose was to realize their demands by withholding their services. The fact that the conventional term 'strike' was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.*
>
> *"The ability to strike is not essential to the right of association. In the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose."*

Hence, to judiciously resolve the present case, it is imperative to determine whether the *"assembly"* held by the LWUA employees, and led by Cruz on August 29, 1996, from 10:00 a.m. to 10:30 a.m., resulted in work stoppage or disruption in the rendition of service to the public. Otherwise stated, it must be determined whether the LWUA employees under the leadership of Cruz, withheld their services, on said date and time, to pressure LWUA management to grant their demands.

In his appeal, Cruz does not deny that he led the "*assembly"* or gathering held by several LWUA employees from 10:00 a.m. to 10:30 a.m. on August 29, 1996. He, however, maintains that such action by the LWUA employees neither caused any work stoppage nor did it result in the paralization of the operations of LWUA. Cruz also claims that their action never prejudiced the public. He strongly asserts that the employees who joined the said *"assembly"* held from about 10:00 a.m. to 10:30 a.m. are considered to be having their breaktime or the so called *"coffee break."*

Interestingly, complainant De Jesus himself admitted that the *"mass action"* of the LWUA employees led by Cruz lasted only from 10:00 a.m. to 10:30 a.m. As such, it would appear that the LWUA employees who participated in the said *"assembly"* or *"mass action"* were out from their respective places of work for only about 30 minutes. This so short a period of time is too inconsequential to be considered as having caused an effective work stoppage or disruption of work that could have prejudiced the public.

The Commission takes cognizance of the fact that in almost all government offices, employees thereat are entitled to a breaktime or the so-called *"coffee break"* for about 15 minutes in the morning and another 15 minutes in the afternoon, or for a total of 30 minutes each working day. In the case of **Beradio vs. CA, 103 SCRA 567**, Beradio was convicted on four counts of the crime of falsification of public or official documents for making it appear in her Daily Time Records that on several dates she was present in her office when in truth and in fact she had been appearing as counsel to certain parties in cases under litigation before the regular courts. On appeal before the High Tribunal, the latter acquitted Beradio in this wise:

> *"…We are definitely inclined to the view that the alleged false entries made in the time records on the specified dates contained in the information do not constitute falsification for having been made with no malice or deliberate intent. Noteworthy is the fact that petitioner consistently did not dispute, but admitted in all candor her appearances in six (6) different ways…all in 1973 before the Court of First Instance, Branch XIV, Rosales, Pangasinan, in the aforementioned cases, claiming that she did not reflect these absences in her daily time records because they were for a few minute-duration, the longest was on March 15, 1973 being for forty-five (45) minutes; that they could be absorbed within the allowed coffee breaks of 30 minutes in the morning and in the afternoon;*

x x x

"If petitioner filled up her daily time record for the six days in question making it appear that she attended her office from 8:00 a.m. to 12:00 noon and from 1:00 to 5:00 p.m., there is more than color of truth in the entry made. It is not shown that she did not report first to her office as Election Registrar of Rosales, Pangasinan, before going to the courtroom just two (2) meters away. Petitioner thus likened her appearance to going out for the usual coffee breaks …"

But what is more important to consider is the fact that then LWUA Administrator De Vera addressed the employees gathered near the flagpole. This being so, such a gathering can be considered as a *"general assembly"* where a dialogue was held between the rank-and-file employees and the LWUA management to thresh out whatever grievances the former may be harboring against the latter due to some miscommunication between the two. And there is no better time to hold this dialogue other than during office hours. It is, thus, evident that neither Cruz nor even the LWUA employees can be held liable for attending or holding the said *"assembly"* or *"mass action."*

WHEREFORE, the appeal of Leonardo C. Cruz is hereby **GRANTED.** Accordingly, the Orders dated April 1, 2002 and July 31, 2002 of the Civil Service Commission – National Capital Region are **REVERSED** and **SET ASIDE.** Leonardo C. Cruz is exonerated of the charge of Conduct Grossly Prejudicial to the Best Interest of the Service.

Quezon City, February 19, 2004

(SGD.)

KARINACONSTANTINO-DAVID

Chairman

(SGD.)

J. WALDEMAR V. VALMORES

Commissioner

(VACANT)

Commissioner

Attested by:

(SGD.)

REBECCA A. FERNANDEZ

Director IV

Commission Secretariat and Liaison Office