

**TOLENTINO, Lorna M.**

Re: Complaint; Penalty

X ----- X

**RESOLUTION NO. 990124**

Lorna M. Tolentino, Clerk, Tarlac Water District (TWD), Tarlac, Tarlac, appeals from the decision of Edgardo B. Ilagan, General Manager, TWD, the pertinent portion of which reads as follows:

*Attached is a recommendation of Atty. Condrado C. Genilo, Jr. TWD legal counsel who conducted administrative hearings and investigation relative to the alleged offenses you committed on December 01, 1993 which has been concurred with by the undersigned.*

*"In view thereof, you are hereby informed that you are suspended for one year without pay effective February 21, 1994.*

*"You are likewise informed that you will be demoted in rank and salary two steps downward upon you return and you will be disqualified from occupying any position which handles funds (money or properties.*

*"You are also directed to refund to the District the amount of P3,057.60 within 2 days upon receipt of the decision of the case."*

The relevant portions of the recommendation of the legal counsel of TWD as mentioned above are likewise quoted as follows:

*"In May 1992, Ms. Tolentino accommodated Ms. Evelyn Reyes by encashing her (Reyes') personal check for P52,000.00 using therefor funds for the Tarlac Water District in her possession as Cashier. At that time, there was no rule or regulation prohibiting this practice. This check was dishonored for DAIF by one drawee bank when presented for*

*payment, so that, Ms. Reyes gave Ms. Tolentino other checks for the same amount but which were also dishonored. A check for P40,000.00 issued by Ms. Elizabeth Tolentino was also given to somehow cover the account, but its payment was stopped. Thereafter, Ms Reyes disappeared from Tarlac, so that, Ms Tolentino was resigned to her loss. But since she had no money to cover this shortage in her funds as Tarlac Water District Cashier, she employed means at cover-up to the extent of falsifying entries in her books and by conniving with the bookkeeper of Inter Bank, she even changed the year appearing in the dishonored checks from 1992-1993. Because of this cover-up this shortage was not discovered by the Commission on Audit Auditors when they examined her accounts in June 1993.*

*"When the discrepancies in her accounts was discovered and investigation undertaken, her accounts were balance. There was no shortage found therein. Ms. Tolentino explained that when she gave up the idea of recovering from Ms. Reyes, she tried to pay her loss little by little until the shortage was only P40,000.00. But when this matter was discovered, she immediately paid the missing amount by borrowing from her parents, that is she was not found to have any shortage. She, admitted that the Tarlac Water District lost the interest income due the P52,000.00 for about 1 1/2 years amounting to around P3,057,60..*

*"Ms. Tolentino admitted her mistake and pleads for understanding and liberality. She denies being motivated by material gain when she accepted the check of Ms Reyes, claiming that it was purely an accommodation, although she did not know Ms. Reyes very well*

*"From the foregoing it clearly appears that although Ms. Tolentino did not violate any rule or regulation in encashing the check of Ms. Reyes, she was still responsible therefor. Her failure to remit the needed amount to the Tarlac Water District immediately caused it to be damaged in the amount of P3,057.60 representing expected interest income therefor. This malfeasance of hers was aggravated by her cover-up to the extent of falsifying her records and conniving with a bank bookkeeper.*

*"This conduct of Ms. Tolentino should merit grave disapproval and the severest penalty, especially because she was holding a very sensitive position --- that of cashier who should be the epitome of honesty. Were her cover-up successful (which was for 1 1/2 years), she could have pocketed P52,000.00. However, her ready admission of her fault and plea for liberality may be taken in her favor, but should be borne in mind that this will be a precedent which could influence similar cases in the future."*

In her appeal, Tolentino averred as follows:

*"I am a permanent employee of the Tarlac Water District and have been employed in this office since 1984 to date*

*"As a result of an administrative case in which I was involved during my tenure as a Cashier of the Tarlac Water District some time in 1993, I was suspended for one (1) year without pay effective February 21, 1994 and was demoted two steps (both in rank and salary), based upon the recommendation of the TWD's legal counsel, Atty. Conrado Genilo, Jr. who heard my case, and /or the decision of the TWD General manager Mr. Edgardo B. Ilagan.*

*"Upon my return to work at the TWD Office after serving my penalty of one (1) year suspension without pay, I was designated as a "Clerk" and was assigned at the Operation and Maintenance Section of the TWD by virtue of an appointment issued to me dated February 23, 1995. My appointment paper did not, however, indicate the specific level or salary grade of the "Clerk" position I was assigned. More so, this position was even nowhere under level II of the old Position Classification Plan of the Tarlac Water District.*

*"When the Department of Budget and Management (DBM) - designed Position Allocation List for all water districts, PAL was adopted and fully implemented by the TWD, my position (Clerk) was specifically termed 'Maintenance Clerk', this position has a salary grade of 6 and is 10 steps lower than the position of Cashier (having a salary grade of 16), which I*

*handled previously.*

*"It is to be noted that the decision of the TWD General Manager was demotion in rank and salary for two steps only, which decision was even questionable because the recommendation of the Legal Counsel was demotion 'two steps downward' only and did not specify demotion both in rank and salary.*

*"Because of this outcome of my present position and salary at the TWD Office, I thus believe that the decision of the TWD Management's decision on my demotion/position designation may be given due consideration."*

Requested to comment on the appeal, Ilagan alleged as follows:

*"The Memorandum dated February 28, 1994, suspended Mrs. Tolentino for one year effective February 21, 1994, and demoted her in rank and salary by two steps. It should be noted that Mrs. Tolentino was found guilty on two counts, which were:*

*'a. Offense no. 6 Loss of damage to, unauthorized use, or willful destruction of district property, records or information. Included discrepancies in each and accounting for district property and failure to safeguard district property.*

*'b. Offense no. 8 b. Fraud, falsification , exaggeration or concealment of material facts in connection with matters under official investigation.'*

*"The Civil Service Law and Rules provides:*

*'In meting out punishment, the same penalties shall be imposed for similar offenses and only one penalty shall be imposed in each case. (Chapter 7, Sec 45 Letter d.)*

*'Since Mrs. Tolentino committed two offenses, the imposition of her of two*

*penalties was proper.*

*`2. The penalties imposed on Mrs. Tolentino were accepted by her since Tolentino were accepted by her since Feb. 1994. She had finished her one year suspension and upon her return to service, had been occupying a rank two steps lower than her previous position and had been receiving the corresponding salary. She is, therefore, deemed to be estopped from questioning the said penalties three years thereafter. The following jurisprudence is enlightening.*

*`Public Policy and sound practice demand that at the risk of occasional errors, judgements of courts should become final at some definite date fixed by law. (Calalang vs. Register of Deeds of Quezon City, 231 SCRA 88).*

*`3 It should be recommended that in 1994, there was no circular or memorandum from the Central Office informing the undersigned that the Civil Service law & Rules were (sic) to be followed. This is the reason why imposed on Mrs. Tolentino, which, the undersigned believe are too light, considering the gravity of her offenses. It is, therefore, recommended that this case be re-opened as to the imposition of penalties and the correct penalties and the correct penalty be imposed on her."*

Records reveal that on February 28, 1984, Ilagan suspended Tolentino from the service for one (1) year effective February 21, 1994 for having been found guilty of various offenses relating to her performance as the previous cashier of the TWD.

Aside from the suspension, Tolentino was also meted out the penalty of demotion in rank and salary "two steps downward" and was directed to refund P3,057.60.

After serving her suspension of one (1) year, Tolentino reported for work at the TWD and assured the

position of Clerk by virtue of a new appointment issued by Ilagan on February 23, 1995 duly attested by Civil Service Field Office (CSFO), Tarlac. Her new appointment which was clearly a demotion, was in pursuance of the decision of General Manager Ilagan. Tolentino is now appealing on the additional penalty of demotion imposed upon her.

The issue to be resolved in the instant case is whether or not the penalties meted out to the Appellant were appropriately imposed.

After reviewing the records of the instant case, the Commission finds the appeal impressed with merit.

The imposition of suspension, demotion and order to refund the amount of P3,057.60 for the two (2) offenses Appellant was found guilty of finds no legal support. Section 17, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) provides as follows:

*SEC. 17. If the respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances."*

The imposition, therefore, of the penalty of demotion in addition to suspension, was excessive and violative of the Rules.

The allegation of General Manager Ilagan in his comment that there was no circular or memorandum from the "Central Office" informing him that the Civil Service Law and Rules shall be applied deserves scant consideration. His ignorance of the law cannot excuse him especially when it greatly affects the substantive right of the Appellant. As early as 1991, the Supreme Court, in the case of Davao Water District vs. Civil Service Commission (201 SCRA 593), already declared that Local Water Districts, as government-owned and controlled corporations, with original charters, are covered by the Civil Service law and rules. Following said pronouncement, therefore, it is imperative that in imposing the appropriate penalty on Tolentino, the Omnibus Civil Service Rules and Regulation implementing Book V, Title I, Subtitle A of Executive Order 292 or the Administrative Code of 1987 should have been applied,

considering that the instant case was decided after the said Supreme decision.

**WHEREFORE**, the appeal of Lorna M. Tolentino is hereby found meritorious. The penalties imposed in the appealed decision is hereby modified. Accordingly, the penalty of demotion is hereby declared null and void. TWD General Manager Edgardo B. Ilagan is hereby ordered to reinstate Lorna M. Tolentino to her former position as Cashier or to a comparable position. CSRO No. III is hereby directed to monitor the implementation of this Resolution

Quezon City, JAN 12, 1999

(Signed)

**THELMA P. GAMINDE**

Chairman

(Signed)

**CORAZON ALMA G. DE LEON**

Commissioner

(O.B.)

**JOSE F. ERESTAIN, JR.**

Commissioner

Attested by:

(Signed)

# ARIEL G. RONQUILLO

Director III

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