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FIRST DIVISION

[G.R. No. 221848. August 30, 2016]

**FIELD INVESTIGATION OFFICE OF THE OFFICE OF THE OMBUDSMAN,
PETITIONER, VS. REY RUECA CASTILLO, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated July 24, 2015 and the Resolution^[3] dated November 10, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 137997, which modified the Decision^[4] dated September 17, 2014 in OMB-C-A-13-0255 and the Joint Order^[5] dated October 22, 2014 in OMB-C-C-13-0262 and OMB-C-A-13-0255 of the Office of the Ombudsman (OMB), and thereby found respondent Rey Rueca Castillo (respondent) administratively liable for Simple Misconduct.

The Facts

On November 14, 1999, a certain Fe Acacio-Tsuji (Tsuji) arrived at The Ninoy Aquino International Airport (NAIA) carrying a luggage with a small tin can containing various pieces of jewelry with a total appraised value of P1,184,010.00 (subject jewelry). For Tsuji's failure to declare the subject jewelry as required by customs laws, the same was confiscated and withheld in the In-Bond Room Section, Baggage Assistance Division (In-Bond Room Section) of the Bureau of Customs (BOC) at the NAIA, which issued a Held Baggage Receipt No. 18875 in Tsuji's favor.^[6]

The subject jewelry was then deposited to the Cashier's vault for appraisal and inventory. Thereafter, the In-Bond Room Section issued a Baggage Inventory Report (BIR) certifying that the subject jewelry was duly inventoried and appraised.^[7]

Almost five (5) years after the subject jewelry was confiscated, Tsuji was authorized to claim

the subject jewelry.^[8] On October 4, 2005, however, Tsuji discovered that the same can no longer be found at the In-Bond Room Section.^[9] A logbook entry dated November 18, 1999 showed that the subject jewelry was taken out of the In-Bond Room Section at 8:00p.m. of the said date,^[10] and given to Customs Cashier Judith Vigilia (Vigilia). The entry was signed by respondent, then Customs Security Guard II at the In-Bond Room Section, and Josephine De Rama Tiñana (Tiñana), Special Agent I of the Customs Police Division, as witnesses.^[11]

Thus, on August 13, 2013,^[12] petitioner Field Investigation Office (FIO) filed before the OMB a complaint^[13] charging respondent and Tiñana for (a) violation of Section 3 (e)^[14] of Republic Act No. (RA) 3019,^[15] as amended, docketed as OMB-C-C-13-0262,^[16] and (b) Grave Misconduct, docketed as OMB-C-A-13-0255,^[17] for the premature release of the subject jewelry without authority from any higher BOC official or. any court, thereby causing undue injury to Tsuji.^[18]

In their defense, respondent claimed^[19] that he only delivered the subject jewelry to Vigilia for safekeeping; while Tiñana denied having any hand in taking the subject jewelry, asserting that she only accompanied respondent in bringing the jewelry to Vigilia.^[20]

The OMB Ruling

In a Decision^[21] dated September 17, 2014 in OMB-C-A-13-0255, the OMB found substantial evidence to hold both respondent and Tiñana administratively liable for Grave Misconduct^[22] and, accordingly, dismissed them from government service with the corresponding accessory penalties, *i.e.*, forfeiture of retirement benefits, perpetual disqualification from holding public office, cancellation of civil service eligibility, and bar from taking civil service examinations.^[23]

The OMB held that (a) their act of delivering the inbonded tin can of jewelry to Vigilia was not among their duties; (b) they had no authority to release the same; and (c) they failed to justify or offer an explanation for their actions, in disregard of established rules pertaining to the release and custody of items stored in the In-Bond Room Section.^[24] On the other hand, the OMB, in a Resolution^[25] dated September 17, 2014 in OMB-C-C-13-0262, found probable cause to hold respondent and Tiñana liable for violation of Section 3 (e) of RA 3019, as amended and, accordingly, ordered the filing of an Information with the Regional Trial Court of Manila against them.^[26]

Respondent and Tiñana jointly moved for reconsideration,^[27] claiming that the OMB failed to

appreciate in their favor (a) the marginal note in the logbook entry which reads: *“Turnover to In-Bond Section (fully sealed) (HBR 18875) INBOND RENEE DANDAN (with signature above the printed name) 10/5/2000 3.5 KG”* (Dandan’s marginal signature), and (b) a document stating that on October 5, 2000, or after they transferred the item to the Cashier Section on November 18, 1999, several sealed packages, including Tsuji’s tin can of jewelry, were turned over to the In-Bond Room Section.^[28]

In a Joint Order^[29] dated October 22, 2014 in OMB-C-C-13-0262 and OMB-C-A-13-0255, the OMB denied the motion for reconsideration,^[30] doubting the authenticity of Dandan’s marginal signature, which was not identified as one of the signatures appearing on the logbook entry dated November 18, 1999 presented to^[31] Customs Operations Officer III/Examiner Emilen Balatbat who inventoried the subject jewelry.^[32] The OMB further pointed out that respondent and Tiñana were penalized for having delivered the sealed tin can of jewelry stored in the In-Bond Room Section to Vigilia, despite their knowledge that it was not their duty to do so, and they have no authority to release inbonded articles. Moreover, no justification was given for their actions. Finally, it ruled that the fact that the BOC indemnified Tsuji for the loss of her jewelry does not exculpate them from liability.^[33]

Aggrieved, respondent appealed^[34] to the CA.

The CA Ruling

In a Decision^[35] dated July 24, 2015, the CA modified the OMB decision and found respondent administratively liable, instead, for Simple Misconduct, a less grave offense punishable with suspension of one (1) month and one (1) day to six (6) months for the first offense.^[36] While it sustained the OMB’s findings that respondent committed an act of misconduct, it found that the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules that characterize the offense as Grave Misconduct were not shown to be present.^[37] Considering that there were no attending mitigating or aggravating circumstances in this case, the CA imposed upon respondent the medium penalty of suspension of three (3) months without pay.^[38]

The FIO moved for reconsideration,^[39] which was, however, denied in a Resolution^[40] dated November 10, 2015; hence, this petition.

The Issue Before This Court

The primordial issue for the Court's resolution is whether or not respondent should be held administratively liable for Grave Misconduct, instead of Simple Misconduct as found by the CA.

The Court's Ruling

The petition is meritorious.

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.^[41] In this case, except as to the legal conclusion on what administrative offense was committed by respondent, the OMB and the CA are one in finding that respondent committed a misconduct when he (a) delivered the inbonded tin can of jewelry to Vigilia, knowing fully well that it was not his duty nor was he authorized to do so; and (b) failed to justify or offer an explanation for his action.

Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.^[42] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.^[43] It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.^[44]

There are two (2) types of misconduct, namely: grave misconduct, with which respondent was charged, and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.^[45] Without any of these elements, the transgression of an established rule is properly characterized merely as simple misconduct.^[46]

In the present case, the CA ruled that respondent was guilty only of Simple Misconduct because the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules that characterize the offense as Grave Misconduct were lacking.

The Court disagrees.

Contrary to the CA's finding, respondent acted in flagrant disregard of established rules when he transferred the subject jewelries from the In-Bond Room to the Cashier Section without any authority.

In *Imperial, Jr. v. Government Service Insurance System*,^[47] the Court elucidated the instances where flagrant disregard of rules obtains, thus:

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and **when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**^[48] (Emphasis supplied)

Thus, in *Re: Letter of Judge Lorenza Bordios Paculdo, Municipal Trial Court, Br. 1, San Pedro, Laguna on the Administrative Lapses Committed by Nelia P. Rosales*,^[49] the Court ruled that an employee's act of arrogating unto herself responsibilities that were clearly beyond her given duties as a utility worker constitutes grave misconduct.^[50] On the other hand, in *Ampil v. Office of the Ombudsman*,^[51] the Court found the respondent Register of Deeds guilty of grave misconduct and ordered his dismissal from service when he erroneously issued Condominium Certificates of Title without following the established rules on land registration.^[52]

In the same vein, it was not respondent's duty as Customs Security Guard II of the In-Bond Room Section, nor does he have the authority, to remove or release the sealed tin can of jewelry from the In-Bond Room Section to Customs Cashier Vigilia. Other than his self-serving and uncorroborated claim that he did so for "safekeeping" purposes, he was not able to establish sufficient justification for his actions. Even if he had reasonable ground to believe that the subject jewelry was in danger of being lost in the In-Bond Room Section, he still needed to secure (a) the necessary clearance/authorization from the official custodian thereof or a higher BOC official having supervision over such officer before he can transfer

the subject jewelry to another location, and strictly in accordance with such officer's/official's instructions, and/or (b) comply with existing laws^[53] and rules^[54] for the removal of seized items before releasing the same to any person. Instead, he merely stated that he, together with a witness, viz., Tiñana, brought the subject jewelry to the BOC cashier who received the same,^[55] conveniently omitting any mention of how he got possession of the subject jewelry, or that his actions were upon the prompting of any BOC officer/official. These, despite his express admission^[56] that the transfer of inbonded articles was not within his duties. Thus, the Court finds that he acted not with mere overzealousness but committed a usurpation of function that does not pertain to his position, or an *ultra vires* act.^[57]

Verily, this Court has repeatedly emphasized the time-honored rule that a “[p]ublic office is a public trust [and] [p]ublic officers and employees 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.”^[58] This high constitutional standard of conduct is not intended to be mere rhetoric, and should not be taken lightly considering that those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service.^[59]

Based on the confluence of events as afore-discussed, respondent failed to measure up to the standards of conduct prescribed for his position. As an accountable employee charged with the safeguarding of seized items in the In-Bond Room Section, he was expected to exercise utmost responsibility and fidelity in the discharge of that duty, and to ensure that they would only be transferred to another location and/or released to authorized persons, and pursuant to proper authority issued by the official custodian thereof, a higher BOC official, or upon court order. However, he disregarded even the most basic established procedural requirement of prior authorization from a higher BOC official before removing the subject jewelry from the custody of the In-Bond Room Section, which paved the way for its loss, and the consequent damage to the owner of the subject jewelry, Tsuji, and in the process, eroded the public's trust in the BOC as enforcer of the Philippines' tariff and customs laws, and all other laws, rules and regulations relating to the tariff and customs administration.^[60]

Accordingly, the Court finds respondent guilty of Grave Misconduct which is classified as a grave offense punishable by dismissal even for first time offenders,^[61] with all the accessory penalties.^[62] By jurisprudence, the Court has additionally imposed the forfeiture of all other benefits, except accrued leave credits, salaries and allowances earned up to the time of

dismissal.^[63]

WHEREFORE, the petition is **GRANTED**. The Decision dated July 24, 2015 and the Resolution dated November 10, 2015 of the Court of Appeals in CA-G.R. SP No. 137997 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 17, 2014 in OMB-C-A-13-0255 and the Joint Order dated October 22, 2014 in OMB-C-C-13-0262 and OMB-C-A-13-0255 of the Office of the Ombudsman finding respondent Rey Rueca Castillo guilty of Grave Misconduct, and ordering his dismissal with the corresponding accessory penalties are **REINSTATED**.

SO ORDERED.

Sereno, C. J., (Chairperson), Leonardo-De Castro, Bersamin, and Caguioa, JJ., concur.

^[1] *Rollo*, pp. 12-21.

^[2] *Id.* at 27-35. Penned by Associate Justice Stephen C. Cruz with Associate Justices Rosmari D. Carandang and Jose C. Reyes, Jr. concurring.

^[3] *Id.* at 36-37.

^[4] *Id.* at 62-67. Approved by Over all Deputy Ombudsman Melchor Arthur H. Carandang.

^[5] *Id.* at 68-73 (some pages are inadvertently misarranged).

^[6] *Id.* at 27-28.

^[7] *Id.* at 28.

^[8] Department of Finance Undersecretary Ma. Gracia M. Pulido-Tan ordered the items to be released on April 27, 2004; see *id.* at 58.

^[9] *Id.* at 28 and 63.

^[10] See *CA rollo*, p. 26.

^[11] See *rollo*, pp. 28 and 57.

^[12] See *id.* at 28 and 62.

^[13] Dated February 5, 2013. Id. at 52-61.

^[14] Section 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

^[15] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

^[16] See *rollo*, p. 68.

^[17] Id.

^[18] See *id.* at 57-60.

^[19] See respondents Counter-Affidavit dated September 26, 2013; *CA rollo*, pp. 31-34.

^[20] See *rollo*, p. 28.

^[21] Id. at 62-67.

^[22] See *id.* at 64.

^[23] Id. at 66.

^[24] Id. at 65.

^[25] *CA rollo*, pp. 43-47.

^[26] See *id.* at 46-47.

[27] See Joint Motion for Reconsideration and Decision in OMB-C-C-13-0260 and OMB-C-A-13-0255 both Dated September 17, 2014 dated October 17, 2014; *id.* at 48-53.

[28] See *id.* at 49-52. See also *rollo*, pp. 68-69.

[29] *Rollo*, pp. 68-73.

[30] *Id.* at 73.

[31] See *id.* at 70-71.

[32] *Id.* at 28.

[33] See *id.* at 73.

[34] See Petition dated November 13, 2014; CA *rollo*, pp. 3-20.

[35] *Rollo*, pp. 27-35.

[36] See *id.* at 33-34.

[37] See *id.* at 31-33.

[38] See *id.* at 34.

[39] See motion for reconsideration dated August 27, 2015; *id.* at 38-43.

[40] *Id.* at 36-37.

[41] See *Cabalit v. Commission on Audit-Region VII*, 679 Phil. 138, 157-158 (2012).

[42] See *Ombudsman v. Magno*, 592 Phil. 636, 658 (2008).

[43] *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013).

[44] *Amit v. Commission on Audit, et al.*, 699 Phil. 9, 26 (2012).

[45] *Ganzon v. Arlos*, *supra* note 43.

[46] See *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

[47] *Id.*

^[48] Id. at 297.

^[49] 569 Phil. 346 (2008).

^[50] See id. at 353.

^[51] 715 Phil. 733 (2013).

^[52] See id. at 769.

^[53] Under Section 2505 of the Tariff and Customs Code of the Philippines (TCC), the seized item may be released to the person in whose baggage the same was found upon payment of all duties, taxes and other charges due thereon, thus:

Section 2505. Failure to Declare Baggage. - Whenever any dutiable article is found in the baggage of any person arriving within the Philippines which is not included in the baggage declaration, such article shall be seized and **the person in whose baggage it is found may obtain release of such article, if not imported contrary to any law upon payment of treble the appraised value of such article plus all duties, taxes and other charges due thereon unless it shall be established to the satisfaction of the Collector that the failure to mention or declare said dutiable article was without fraud.**

Nothing in this section shall preclude the bringing of criminal action against the offender. (Emphasis supplied)

^[54] A confiscated baggage can only be removed from its storage place upon instruction of a higher BOC official, or if there is court order or other legal purpose like inspection; see *rollo*, pp. 18 and 59.

^[55] See CA *rollo*, p. 33.

^[56] See id.

^[57] See *Re: Letter of Judge Lorenza Bordios Paculdo, Municipal Trial Court, Br. 1, San Pedro, Laguna on the Administrative Lapses Committed by Nelia P. Rosales*, *supra* note 49, at 351.

^[58] Section 1, Article XI of the 1987 Constitution

^[59] *Amit v. Commission on Audit*, supra note 44, at 25.

^[60] See Section 602 (j) of the TCC.

^[61] See Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which took effect on December 6, 2011.

^[62] Section 52 (a), Rule 10 of the RRACCS provides:

Section 52. *Administrative Disabilities Inherent in Certain Penalties.* -

- a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

^[63] See *OCA v. Castillo*, 695 Phil. 128, 141 (2012).

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