

ROGER T. SANCHEZ, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND MARTHALINA B. PERALTA, RESPONDENTS.

Ponente: LOPEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/071e1f796a83/>

LOPEZ, J.:

Private respondent Marthalina B. Peralta (Peralta), Administrative Officer IV and designated Acting Sheriff of the National Labor Relations Commission, was found guilty of Gross Misconduct and Neglect of Duty by the Office of the Ombudsman, to wit:

WHEREFORE, respondent Sheriff MARTHALINA B. PERALTA is found GUILTY of Gross Misconduct and Neglect of Duty. The penalty of DISMISSAL from service is hereby imposed pursuant to Section 23(c) of Rule XIV, Book V of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other pertinent Civil Service laws.

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and Ombudsman Memorandum Circular No. 01, Series of 2006, The Chairman, National Labor Relations Commission (N[L]RC), is hereby directed to implement this Decision and to submit promptly a Compliance within (5) days from receipt indicating the OMB Case Number, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128 Quezon City.

Compliance is respectfully enjoined consistent with Section 15(3) of RA 6770 (Ombudsman Act of 1989).

SO ORDERED.[1]

On Peralta's motion for reconsideration, the Office of the Ombudsman modified the penalty, thus:

WHEREFORE, the Decision of this Office dated September 12, 2011 is hereby MODIFIED. The penalty of Dismissal from the service upon respondent Peralta is hereby reduced to ONE (1) YEAR SUSPENSION.[2]

In this petition for certiorari,[3] petitioner contends that the Office of the Ombudsman gravely erred in modifying the penalty imposed against Peralta. Petitioner argues that the penalty of dismissal is correct because there is substantial evidence of gross misconduct and neglect of duty. The imposed penalty is not oppressive, or harsh, and is necessary to discipline erring government employees.

We dismiss the petition for being the improper remedy.

Prefatorily, We stress that the proper remedy of the party aggrieved by the decisions or orders of the Office of the Ombudsman is determined by the nature of the case. If it is an administrative case, appeal should be taken to the Court of Appeals under Rule 43 of the Rules of Court. If it is a criminal case, the proper remedy is to file with the Supreme Court an original petition for certiorari under Rule 65.[4] *Dr. Ulysses A. Brito, et al. v. Office of the Deputy Ombudsman for Luzon*[5] instructed us that “[a]ppeals from decisions of the Office of the Ombudsman in administrative disciplinary cases, which are not final and unappealable, should be brought to the Court of Appeals under the provision of Rule 43.”

The cases which are not appealable are embodied in Section 27 of RA 6770 or The Ombudsman Act of 1989, thus:

xxx Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

The penalty imposed on Peralta is one (1) year suspension and is not covered by Section 27. Thus, appeal under Rule 43 is the appropriate remedy for the petitioner. Certiorari under Rule 65 will not lie since appeal under Rule 43 is adequate in the ordinary course of law.[6]

It is of record that the petitioner received the assailed Order of the Office of the Ombudsman on November 28, 2012,[7] thus, he had until December 13, 2012 within which to file an appeal via petition for review.[8] Petitioner did not file an appeal, instead, he filed on January 25, 2012 the instant petition for certiorari under Rule 65.

It is settled that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive. The remedy of certiorari cannot be resorted to as a substitute for the lost remedy of appeal, especially if such lapse was occasioned by petitioner's neglect or error in the choice of remedies.[9] While there are exceptions[10] to this rule, none exists in this case to warrant the allowance of a certiorari.

FOR THIS REASON, We DISMISS the petition.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 18-28. Decision dated September 12, 2011.

[2] Id., p.p. 47-53. Order dated July 12, 2012.

[3] Id., pp. 2-17.

[4] Amado G. Perez, et al. v. Office of the Ombudsman, et al., G.R. No. 131445, May 27, 2004.

[5] G.R. Nos. 167335 & 167337, July 10, 2007.

[6] Gonzales v. Rojas, et al., G.R. No. 145363, February 23, 2004

[7] Rollo, p. 2.

[8] Rule 43. SEC. 4. Period of Appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, xxx, or of the denial of petitioner's motion for new trial or reconsideration xxx. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review.

[9] Ma. Victoria Cano-Gutierrez v. Herminio A. Gutierrez, G.R. No. 138584, October 2, 2000.

[10] Irene Villamar-Sandoval v. Jose A. Cailipan, et al., G.R. No. 200727, March 4, 2013.

a) where public welfare and the advancement of public policy so dictate, and the broader interest of justice so require; b) where the orders complained of were found to be completely null and void; c) the appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.