

**LUCINDA MONDEJAR DELA CRUZ, PUBLIC SCHOOL TEACHER,
BLISS, BANGA, SOUTH COTABATO AND/OR LIBERTAD NATIONAL
HIGH SCHOOL, BARANGAY LIBERTAD, SURALLAH, SOUTH
COTABATO, PETITIONER, VS...**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Petition for Review under Rule 43 of the Revised Rules of Court, with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), seeking to set aside the April 15, 2011 Order [1] of the Office of the Ombudsman Mindanao in Case No. OMB-P-A-08-0437-E affirming the Decision of the Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO), Quezon City, finding Lucinda Mondejar Dela Cruz guilty of less serious dishonesty and upgrading the penalty of 6-month suspension without pay to 1-year suspension without pay.

The Facts of the Case

On February 13, 2007, Rhoda Felongco (herein respondent) filed a complaint for Misconduct[2] against Lucinda Mondejar Dela Cruz (herein petitioner), School Principal of Libertad National Highschool (LINHS, for brevity) in Surallah, South Cotabato before the OMB-MOLEO, Quezon City.[3]

In her Affidavit, complainant Felongco alleged that sometime in August 2006, Dela Cruz requested from the officials of Barangay Libertad, Surallah, South Cotabato for financial aid in support of her school projects. In Resolution No. 37, Series of 2006, the Sangguniang Barangay authorized the release of P10,000.00 as financial aid to LINHS and named Dela Cruz as “recipient/beneficiary”. On September 11, 2006, LINHS purchased on credit electrical and lighting fixtures from Lintag Hardware. Although initially hesitant, Lintag Hardware allowed Dela Cruz to purchase the items on credit on the basis of the latter's representation that it would be shouldered by Barangay Libertad. On September 13, 2009, Lintag Hardware delivered the purchased items worth P13,663.00 to LINHS. The next day, Dela Cruz wrote the Barangay Captain of Libertad asking for financial assistance for the repair of the school's electrical facilities. On September 18, 2006, Dela Cruz received from the Barangay Treasurer a Landbank Check in the amount of P10,000.00. However, instead of paying Lintag Hardware, Dela Cruz negotiated the check at KCC Shopping Center, Inc. Store in Koronadal City in exchange for cash and goods leaving the items purchased from Lintag Hardware unpaid.[4]

In her Counter-Affidavit, Dela Cruz admitted having encashed the check at KCC Shopping Center but claimed that the amount covered by the check was already paid to carpenters who made repairs in the school. She argued that since the Barangay Resolution giving financial assistance did not state that it was intended solely for the payment of the items purchased from Lintag Hardware, she reimbursed herself for the advanced payments she made for the school repairs. To buttress her claim, she submitted an Affidavit executed by Arturo Bonifacio who attested that he performed carpentry works in the school for which he was paid by her a total of P4,500.00. She also submitted a Note handwritten by Raylin Mercurio who acknowledged the receipt of P5,500.00 from her as

payment for services rendered to LINHS.[5]

On June 25, 2010, the OMB-MOLEO issued its Decision the fallo of which reads -

WHEREFORE, there being substantial evidence, respondent LUCINDA MONDEJAR DELA CRUZ is hereby found GUILTY of Less Serious Dishonesty and is accordingly METED OUT the penalty of SIX (6) MONTHS AND ONE (1) DAY SUSPENSION FROM THE SERVICE WITHOUT PAY with a STERN WARNING that the commission of the same or a similar act shall be dealt with more severely.

Let the Secretary, Department of Education, be furnished with a copy of this Decision for proper implementation.[6]

On February 22, 2011, Dela Cruz filed her verified motion for reconsideration of the June 25, 2010 Decision claiming, among others, that there was a violation of the equal protection clause of the Constitution when her case was treated under the OMB-MOLEO despite the fact that she was a public school teacher.[7]

Meantime, in an Indorsement dated February 28, 2011, the OMB-MOLEO referred the case to the Ombudsman Mindanao pursuant to Office Order No. 278, Series of 2010.[8]

On April 15, 2011, the Ombudsman Mindanao issued the assailed Order denying the motion for reconsideration of the June 25, 2010 Decision, thus-

WHEREFORE, premises considered, respondent's Motion for Reconsideration is DENIED. OMB-MOLEO's Decision suspending the respondent from the service for six (6) months without pay is upgraded to suspension of one (1) year from the service without pay.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (Admin. Order No. 07) as amended, provides:

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An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Moreover, Memorandum Circular No. 01, Series of 2006 dated 11 April 2006 of the Tanodbayan reads:

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Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Accordingly, HON. ARMIN A. LUISTRO, Secretary of the Department of Education or any person officially acting as head of the said department, is hereby directed to IMMEDIATELY implement the penalty imposed against LUCINDA MONDEJAR DELA CRUZ with a request to promptly submit to this Office, within ten (10) days from receipt hereof, a Compliance Report, indicating the subject OMB case number.

Compliance is respectfully enjoined consistent with Sec. 3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) and Sec.15(3) of R.A. No. 6770 (Ombudsman Act of 1989).

SO ORDERED.[9]

In this recourse, petitioner Lucinda Mondejar Dela Cruz raises the following allegations:

- The Ombudsman erred in placing the petitioner under the military ombudsman;
- The Ombudsman erred in resolving the verified motion for reconsideration beyond the five (5) day period required by its rules;
- The Ombudsman erred in not holding in abeyance the suspension of the petitioner considering the referral of the military ombudsman to the regular ombudsman; and
- The Ombudsman erred in convicting the petitioner. [10]

In its February 14, 2012 Resolution, this Court denied petitioner's application for the issuance of TRO and/or WPI.[11]

On March 21, 2012, the Office of the Ombudsman, through counsel, filed an omnibus motion to intervene and to admit its memorandum.[12] In its August 10, 2012 Resolution, this Court granted the motion to intervene and admitted the memorandum-in-intervention.[13]

The Ruling of the Court

The issues in this case are as follows:

- Whether the Ombudsman erred in placing the petitioner under the OMB-MOLEO and if such error occurred, whether the Ombudsman also erred in not holding in abeyance the suspension of the petitioner;
- Whether the Ombudsman erred in resolving the verified motion for reconsideration beyond the five (5) day period required by its rules;
- Whether or not the Ombudsman erred in convicting the petitioner.[14]

As to the first issue, petitioner asserts that the Ombudsman erred in placing her case under the OMB-MOLEO, a “military ombudsman” despite the fact that she is a public school teacher. She posits that her constitutional right of equal protection was violated.

This Court is not convinced.

Petitioner's case was initially heard by the OMB-MOLEO pursuant to the Memorandum of Agreement between the Department of Education (DepEd) and the Office of the Ombudsman, otherwise known as "Task Force for Sama-samang Paglaban sa katiwalian (TF-SAPAK) para sa Kabataan" and the Office Order No. 70, dated 30 June 2006 of the Ombudsman, which reads:

Pursuant to the Memorandum of Agreement between the Department of Education and Office of the Ombudsman, RE: "SAPAK para sa Kabataan" and Office Order No. 49, Series of 2006, effective immediately, cases involving alleged graft and corruption and other irregularities in the Department of Education shall be forwarded to the Records Section, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, 3rd Floor, Office of the Ombudsman, Agham Road, Quezon City. (Page 1 of said Annex "H").^[15]

Such delegation of power by the Office of the Ombudsman to the OMB-MOLEO is authorized under Section 15 (10) of Republic Act No. 6770, otherwise known as the "Ombudsman Act of 1989" which provides that the Office of the Ombudsman shall have the power to delegate to the deputies or its investigators or representative such authority or duty as shall be necessary for the effective exercise of its powers.

Indubitably, there can be no violation of the right to equal protection since the case of petitioner falls squarely within the delegated power of the OMB-MOLEO.

Petitioner avers that the cited TF-SAPAK Memorandum of Agreement only speaks of forwarding record to the OMB-MOLEO and did not in anyway authorize the hearing of cases involving a public school teacher. She further adds that such memorandum of agreement cannot override the intention of the Constitution to separately treat military officers citing Section 5, Article XI of the Constitution which states that "a separate Deputy for the military establishment may likewise be appointed". She also argues that the OMB-MOLEO, a "military ombudsman" even recognized this infirmity by referring the case to the Ombudsman Mindanao, a "regular ombudsman", thus, the OMB-MOLEO's Decision suspending the petitioner should have been held in abeyance.

Again, this Court is not persuaded.

The TF-SAPAK Memorandum of Agreement did not only speak of forwarding "record", but rather, "cases involving alleged graft and corruption and other irregularities in the Department of Education".¹⁶ Besides, it would be absurd if only the records of the cases were forwarded to the OMB-MOLEO without authorizing it to hear the cases. Also, the parties could have expressly stated that only the records shall be forwarded if such was their intention.

Moreover, the TF SAPAK Memorandum of Agreement did not override the Constitution particularly Section 5, Article XI thereof. The case of *Acop v. Office of the Ombudsman*,^[17] is instructive on this matter-

In view of Section 6, Article XVI of the Constitution and the law implementing it, R.A. No. 6975, the petitioners, who are officers of the Philippine National Police (PNP), are civilian personnel of the Government. It is thus suggested that the Deputy Ombudsman for Military Affairs does not have jurisdiction over them, for by the description of his office, his authority is or must be confined to the military. At first blush, the suggestion seems logical.

The proposal to have a separate Deputy Ombudsman for the military establishment came by way of an amendment by Commissioner Blas Ople. This was introduced during the period of individual amendments at the time the Commission deliberated on the proposed Article on Accountability of Public Officers. Commissioner Ople's original idea was to authorize the Ombudsman to designate the said deputy; however, the amendment to the amendment introduced by this writer, who was then a member of the Commission, was to authorize the President to appoint the said deputy. xxx

The approved amendment is now found in Section 5, Article XI of the Constitution, which reads:

Sec. 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

The deliberations on the Deputy for the military establishment do not yield conclusive evidence that such deputy is prohibited from performing other functions or duties affecting non-military personnel. On the contrary, a review of the relevant Constitutional provisions reveals otherwise.

As previously established, the Ombudsman "may exercise such other powers or perform such functions or duties" as Congress may prescribe through legislation. Therefore, nothing can prevent Congress from giving the Ombudsman supervision and control over the Ombudsman's deputies, one being the deputy for the military establishment. In this light, Section 11 of R.A. No. 6770 provides:

SECTION 11. Structural Organization. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said Office

While Section 31 thereof declares:

SECTION 31. Designation of Investigators and Prosecutors. — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

Accordingly, the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs.[18]

Similarly, the Ombudsman may refer "cases involving alleged graft and corruption and other irregularities in the Department of Education" for investigation by the OMB-MOLEO. In any case, after submitting herself to the proceedings before the OMB-MOLEO and actively participating therein, petitioner is estopped from assailing its jurisdiction, merely because the latter rendered an adverse decision.[19]

Petitioner's claim that the OMB-MOLEO recognized the alleged infirmity when it referred the case to the Ombudsman Mindanao in an Indorsement dated February 28, 2011 is at most, specious. The legal basis for such referral can be gleaned in the April 15, 2011 Order of the Office of the Ombudsman Mindanao, thus-

"[U]pon abolition of the TF-SAPAK para sa Kabataan" per Office Order No. 278, Series of 2010 of the Office of the Ombudsman, this case was referred to this Area Office for appropriate action, inasmuch as the acts complained of were allegedly committed by a government employee in Mindanao. It is on this premise that the Motion for Reconsideration filed by respondent (petitioner herein) on the OMB-MOLEO's Decision dated 25 June 2010, suspending the respondent from the service for six (6) months and one (1) day, be resolved by this Area Office.[20]

Consequently, the Ombudsman Mindanao did not err in not holding in abeyance the implementation of the order of suspension. It correctly cited Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (Administrative order No. 07) as amended which provides that "an appeal shall not stop the decision from being executory" and "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course"; and Memorandum Circular No. 01, Series of 2006 dated 11 April 2006 of the Tanodbayan which reads, "only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolution." [21]

As to the second issue, petitioner insists that the Ombudsman Mindanao erred in resolving her verified motion for reconsideration of the OMB-MOLEO's June 25, 2010 Decision beyond the five (5)-day period as required by Section 8 of the Ombudsman Administrative Order No. 17, to wit:

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

In this case, the hearing officer mentioned in the above provision refers to the OMB-MOLEO which heard and decided the case. Thus, the 5-day period stated therein does not apply to the Ombudsman Mindanao, where the case was transferred, since a reasonable period of time is needed to send the records of the case and to read and study the entire records of the case for the first time. From the Indorsement dated February 28, 2011 referring the case to the Ombudsman Mindanao, this Court finds that the resolution of petitioner's motion for reconsideration on April 15, 2011 is still within a reasonable period considering the surrounding circumstances. This finding is in consonance with the enshrined policy that the ends of justice be served over technical objections.

As to the third and last issue, the petitioner alleges that the Ombudsman Mindanao erred in finding Lucinda Mondejar Dela Cruz guilty of less serious dishonesty and simple misconduct, and imposing upon her the penalty of 1-year suspension without pay.

Petitioner reiterates that she cannot be held administratively liable because although the subject public fund of P10,000 was not spent for the repair of school's electrical facilities for which the money was specifically intended to be used, she was justified in using it instead to reimburse herself for her prior expense in paying carpenters for the "construction made on walls and ceiling" of the school, adding the conclusion that the public fund was thereby spent for a public purpose.

The law requires that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[22]

There is substantial evidence herein to prove petitioner guilty of the administrative offense of Less Serious Dishonesty and Simple Misconduct. Dishonesty is defined as "the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray an intent to violate the truth." [23] On the other hand, Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple. [24]

The following facts are undisputed: 1) petitioner sought from Barangay Libertad financial assistance for the school's Electrical Facilities; 2) petitioner purchased on credit electrical and lighting fixtures from Lintag Hardware and although initially hesitant, it allowed the purchase on credit on the basis of the petitioner's representation that it would be shouldered by Barangay Libertad; 3) petitioner received from Barangay Libertad a check worth P10,000 and negotiated it at KCC Shopping Center, Koronadal City in exchange for cash; and 4) petitioner used the cash to reimburse herself for the money spent to carpenters who made some repairs of the school's walls and ceiling leaving the items purchased from Lintag Hardware unpaid.

Moreover, the Ombudsman Mindanao's finding that the repairs of the walls and ceiling are not supported by essential documents, such as Program of Works, and Inspection and Acceptance Report,[25] casts doubt to the regularity of her act of reimbursing herself for such expense. This irregularity is even bolstered by the fact that Lintag Hardware, from whom the electrical and lighting fixtures were purchased, was never paid.

Based on the foregoing, this Court agrees with the Ombudsman Mindanao that petitioner's acts of

misrepresentation and wrongful reimbursement constitute Less Serious Dishonesty and Simple Misconduct.

Accordingly, pursuant to Section 50 of the Revised Uniform Rules on Administrative Cases in the Civil Service, the penalty to be imposed should be the penalty for the more serious offense, or in this case, the penalty for Less Serious Dishonesty, and the offense for Simple Misconduct shall be considered as an aggravating circumstance.

Less Serious Serious Dishonesty is punishable by suspension without pay from six (6) months and one (1) day to one (1) year for the first offense. [26] Since the offense for Simple Misconduct is considered as an aggravating circumstance, there being no mitigating circumstance, the Ombudsman Mindanao correctly imposed the maximum penalty for Less Serious Dishonesty which is 1-year suspension without pay.[27]

Furthermore, the presumption of regularity in the performance of the Ombudsman's official duty and the rule that the findings of administrative agencies, which have acquired expertise in the specific matters entrusted to their jurisdiction, are accorded not only respect but even finality if supported by substantial evidence [28] impel this Court to respect and even consider final the assailed April 15, 2011 Order of the Ombudsman Mindanao.

Hence, this Court discerns no error, let alone, grave abuse of discretion on the part of the Ombudsman Mindanao in finding Lucinda Mondejar Dela Cruz guilty of Less Serious Dishonesty and Simple Misconduct, and imposing upon her the penalty of 1-year suspension without pay.

WHEREFORE, the Petition is DISMISSED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Ch., and Badelles, JJ., concur.

[1] Rollo, pp. 72-80.

[2] Id., p. 78.

[3] Id., p. 82.

[4] Ibid.

[5] Id., p. 83.

[6] Id., p. 84.

[7] Id., pp. 32-39.

[8] Id., p. 42.

[9] Id., pp. 79-80.

[10] Id., pp. 11, 16, 19 and 21

[11] Id., pp. 134-137.

[12] Id., pp. 141-147.

[13] Id., pp. 191-194.

[14] Supra at note 10

[15] Id., p. 105.

[16] Ibid

[17] 318 Phil 673.

[18] Ibid.

[19] Philrock, Inc. v. Construction Industry Arbitration Commission., et. al., G.R. No. 132848-49, June 26, 2001.

[20] Rollo, p. 73.

[21] Id., p. 79.

[22] Hadji-Sirad v. Civil Service Commission, G.R. No. 182267, August 28, 2009.

[23] Section 1 of the Civil Service Commission.

[24] Civil Service Commission v. Ledesma, G.R. 154521, July 30, 2005.

[25] Rollo, p. 75.

[26] Section 46 B(1) and 51(c) of the Revised Uniform Rules on Administrative Cases in the Civil Service.

[27] Section 49, Ibid.

[28] FORMANTES v. DUNCAN PHARMACEUTICALS, PHILS., INC., G.R. No. 170661, December 04, 2009.

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