

MARTIN C. ZAMAYLA, PETITIONER, VS. COMMISSION ON AUDIT, REGIONAL OFFICE X AND OFFICE OF OMBUDSMAN- MINDANAO, RESPONDENTS.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before us is a Petition for Review[1] under Rule 43 of the Rules of Court filed by petitioner to assail the January 2, 2006 Decision[2] of the Office of the Ombudsman-Mindanao, rendered in Case No. OMB-M-A-05-391-J for Dishonesty and Neglect of Duty. The assailed Decision decreed thus:

“WHEREFORE, All the foregoing premises considered, there being substantial evidence against respondent Martin C. Zamayla, he is hereby found guilty of Gross Neglect of Duty and Grave Misconduct. Accordingly, pursuant to Section 52.A.2 and 52.A.3, in relation to Section 58(a), both of Rule IV, of CSC Resolution No. 991936, providing for the Uniform Rules on Administrative Cases in the Civil Service, respondent Martin C. Zamayla, is hereby meted the penalty of DISMISSAL from Service, together with all its accessory penalties.

SO DECREED.”

Petitioner likewise assails its June 24, 2011 Order[3] denying his motion for reconsideration.

The Antecedents

The facts, as stated by the Office of the Ombudsman-Mindanao in its Decision, are as follows:

Martin Cabano Zamayla, Provincial Board Secretary of the Sangguniang Panlalawigan of Misamis Oriental, is administratively charged with Dishonesty and Neglect of Duty.

In a Joint Affidavit executed by State Auditor IV/Audit Team Leader Florentino N. Nueva and State Auditors III & I Flora M. Cusilit and Mary Ann I. Yu, the Commission on Audit Regional Office No. X (COA for brevity) informed that in the course of the audit of the outstanding cash advances of the Provincial Government of Misamis Oriental, herein petitioner, for the period of September 1997 to November 2003, was granted cash advances in the total amount of P277,700.00 but liquidated only the amount of P100.00, leaving a balance of P277,600.00 as of June 30, 2004. Per letter of demand issued by the COA in June 2004, petitioner was directed to settle the cash advances within thirty days from receipt thereof, but petitioner who received the demand letter on June 17, 2004, failed to do so.

In an Order dated October 13, 2005, petitioner was directed to file his counter-affidavit and other controverting evidence. On November 11, 2005, petitioner filed a Manifestation by Way of Motion for Extension of Time to File Counter-Affidavit within ten (10) days from November 6, 2005. The same was granted but petitioner failed to file his answer. Hence, an Order was issued submitting the case for decision on the basis of the evidence on record.

The issue brought before the Office of the Ombudsman was whether or not petitioner could be held

administratively liable for his deliberate failure or intentional refusal to liquidate the long outstanding cash advances drawn from the Provincial Government of Misamis Oriental.

On January 2, 2006, the Office of the Ombudsman rendered the assailed Decision holding herein petitioner liable for Gross Neglect of Duty and Grave Misconduct.

Petitioner's motion for reconsideration of the assailed Decision was further denied in its June 24, 2011 Order.

Hence, the instant Petition for Review under Rule 43 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.

ASSIGNMENT OF ERRORS

Petitioner comes before this Court with the following assignment of errors:

- The Ombudsman committed serious errors of law in imposing upon petitioner the penalty of dismissal from service considering that this is his first offense.

- The Ombudsman committed serious errors of law in ruling that petitioner was guilty of Gross Neglect of Duty and Grave Misconduct.

This Court's Ruling

The assigned errors shall be jointly discussed for being interrelated.

Petitioner contends that his act of failure to render account within the period provided for by law is not one of those acts categorized as gross neglect of duty. Accordingly, the evidence would point only to an act of failure to render account under Article 218 of the Revised Penal Code and the corresponding administrative liability is simple neglect of duty. He further avers that the penalty of dismissal from service is very harsh considering that he has been in the service for more than 30 years and considering that he has not been previously charged of an administrative offense prior to this case. Hence, petitioner claims that being a first time offender, he should be meted a penalty of suspension and not dismissal from service.

On the other hand, public respondent Office of the Ombudsman contends that petitioner's failure or intentional refusal to liquidate his long outstanding cash advances drawn from the Provincial Government of Misamis Oriental, constitutes Grave Misconduct and Gross Neglect of Duty.

The petition is bereft of merit.

Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[4]

A reading of the decision of the Office of the Ombudsman and a thorough examination of the records of this case show sufficient evidence to prove petitioner's administrative liability. In its decision, the Office of the Ombudsman cites the pieces of evidence that support its ruling. It discussed its findings thus:

"X x x

The complaint being administrative in nature, the quantum of proof necessary for a finding of guilt is only substantial, defined as such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion.

Records show that for the period September 22, 1997 to November 11, 2003, respondent was granted the following cash advances[5]:

09-22-97

V#3202

Ck # 217898

Office Supplies

P5,000.00

04-04-98

1273

892318

Office Supplies

15,000.00

04-16-98

1382

301706

Miscellaneous Expenses

35,000.00

12-12-98

4108

124955

Registration Fee

99,098.00

11-29-99

4048

125979

TEV, Cebu

14,250.00

03-05-01

0766

8696066

TEV

4,200.00

08-05-02

0177

9920399

TEV, Davao

5,340.00

10-29-02

0012

751797

Spareparts

66,330.00

07-18-03

2791

13829922

TEV, Manila

16,241.00

11-11-03

4006

15604638

TEV, Manila

17,241.00

TOTAL**P 277,700.00**

Out of the total amount of P277,700.00, respondent liquidated the amount of P100.00, leaving a balance of P277,600.00 as of June 30, 2004.

Under Section 89 and 128 of PD 1445, as implemented by COA Circular No. 97-002 dated February 10, 1997, respondent is duty bound to liquidate or settle his accounts within twenty (20) days after the end of each year when he drew the cash advances. However, twenty days after December 31, 1997, he failed to liquidate the cash advance of P5,000.00 drawn on September 22, 1997. Again, twenty days after the end of the year 1998, he failed to liquidate the cash advance totaling P149,098.00 which he drew on April 4 and 16, 1998 and

December 12, 1998.

Records further show that after the end of the year 1999, respondent again failed to liquidate the cash advance of P14,250.00 drawn on November 29, 1999. Again, twenty days after December 31, 2001 and 2002, respondent failed to liquidate the cash advances amounting to P75,870.00 which he drew in 2001 and 2002. The same is true with the cash advances of P16,241.00 and P17,241.00 drawn by respondent on July 18 and November 11, 2003. The two cash advances were not liquidated, including all the cash advances drawn in the years 1997 to 2002. When COA conducted an audit, it made a demand in June 2004[6] which respondent received on June 17, 2004, for the latter to settle his accounts within thirty days from receipt thereof, by way of submitting the necessary supporting documents, and to refund any excess amount if any, or to submit a written explanation for his failure to do so. But despite the lapse of a considerable period of time, respondent failed to account for the amount or settle the same. He also failed to explain why he could not account for the funds after the lapse of more or less eight years.

Having been entrusted and had received money belonging to the government, respondent is duty bound to account for said funds. However, respondent miserably failed or had deliberately refused to do so, not only in one occasion, but in several occasions. This constitutes willful and intentional neglect of duty. X x x

In the instant case, respondent's neglect of duty is gross in character which as defined is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences.

With the foregoing, it is clear that respondent's flagrant and palpable neglect to account for the funds also constitute misconduct in office. X x x

In the instant case, respondent's acts constitute grave misconduct because there is a persistent disregard of existing laws, particularly Section 89 and 128 of PD 1445, as implemented by COA Circular No. 97-002 dated February 10, 1997, and of Articles 217 and 218 of the RPC. In the case of *Tenza vs. Espinelli*[7], the Supreme Court ruled:

"Misconduct warranting removal from office of an officer, must have direct relation to and connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office".

As to the charge of Dishonesty, the same has to be dismissed. While respondent's act constitute (sic) Malversation under Article 217 of the Revised Penal Code, the same was premised on the undisputed legal presumption that he misappropriated public funds entrusted and received by him to his own personal use and benefit due to his failure to account for the funds despite the lapse of a considerable period of time and even after demand was made by the Commission on Audit."

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[8] It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

The Supreme Court defined misconduct as an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official.[9] As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.[10]

As a general rule, factual findings of administrative bodies are accorded great respect by this Court. We do not see

any reason to depart from this policy.

We agree with the conclusions of the Office of the Ombudsman that there was sufficient evidence to support the finding of administrative liability on the part of petitioner. It has been substantially established that petitioner was not able to fully liquidate the cash advances amounting to P277,700.00. The petitioner failed to present any evidence to counter the aforesaid positive and unequivocal declarations of the Office of the Ombudsman and as such, his guilt has been adequately shown.

The Office of the Ombudsman invariably found petitioner guilty of gross neglect of duty and grave misconduct. The Court affirms this finding following the salutary rule that factual findings of administrative bodies are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial. The gauge of substantial evidence is satisfied where there is reasonable ground to believe that petitioner is guilty of misconduct, even if the evidence might not be overwhelming. Here, there is substantial evidence to support the Ombudsman's finding that petitioner is guilty of the offense charged against him. Absent a clear showing of grave abuse of discretion, the findings of the Ombudsman, when supported by substantial evidence, are conclusive and shall not be disturbed by the Court.[11]

An examination of the records persuasively shows that the Office of the Ombudsman correctly held petitioner guilty of gross neglect of duty, a grave offense punishable by dismissal even for the first offense.[12] In the matter that is now before us, petitioner evidently neglected to efficiently and effectively discharge his functions and responsibilities. Petitioner was guilty of gross neglect in not performing the act expected of him under the circumstances. He could not feign ignorance of the Government's current efforts to control or prevent corruption in the public service, but he chose to be passive despite clear demands by the Commission on Audit to settle his accounts within thirty days from receipt of the demand letter, by way of submitting the necessary supporting documents, and to refund any excess amount if any, or to submit a written explanation for his failure to do so. Despite the lapse of a considerable period of time, petitioner failed to account for the amount or settle the same and no explanation was given why he could not account for the funds after the lapse of more or less eight years.

The flagrant and culpable refusal or unwillingness of petitioner to perform his official duties denoted gross neglect of duty. The actions he took were inadequate, and could even be probably seen as a conscious way to mask a deliberate and intentional refusal to perform the duties that his position required. He had no justification for failing to liquidate the amounts. This Court notes that petitioner's failure to account for the cash advances occurred in several occasions. No other conclusion can be discerned under the circumstances but that petitioner willfully and intentionally neglected his duty. In this connection, the Court observes that gross neglect of duty includes want of even slight care. Petitioner's omission and indifference were definitely more than want of slight care, but were tantamount to a willful intent to violate the law or to disregard the established rules, which only strengthened and confirmed his guilt of gross negligence.

We further find petitioner guilty of grave misconduct. Petitioner's failure to liquidate the several cash advances in several occasions manifests a clear intent to violate the law or flagrant disregard of established rule. By his actuations, he violated the policy of the State to promote a high standard of ethics in the public service. Public 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.[13] Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service.

Under the Civil Service Law and its implementing rules, grave misconduct is punishable by dismissal from service. Specifically, Section 22, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative

Code of 1987 provides:

Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of acts on the government service.

The following are grave offenses with its corresponding penalties:

xxx

(c) Grave Misconduct
1[st] Offense – Dismissal

xxx.

Moreover, Section 52 A(2 & 3) of the Uniform Rules on Administrative Cases in the Civil Service, classifies gross neglect of duty and grave misconduct as grave offenses with the penalty of dismissal from service for the first offense, thus:

Section 52 – Classification of offenses – Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity or effects on the government service.

A. The following are grave offenses with their corresponding penalties:

X x x
2. Gross Neglect of Duty
1[st] offense – Dismissal

3. Grave Misconduct
1[st] offense - Dismissal

It must be stressed that grave misconduct has always been and should remain anathema in the civil service. It inevitably reflects on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[14]

We affirm all the other findings of the Office of the Ombudsman. The documentary evidence contained in the records constitutes substantial evidence to prove the administrative liability of petitioner, as discussed by the Ombudsman.

As to petitioner's prayer for the issuance of a Temporary Restraining Order or a Writ of Preliminary Injunction, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman,[15] as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

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 such officer. (emphasis supplied)

The Supreme Court, in *Buencamino v. Court of Appeals*,^[16] upheld the resolution of the CA denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the CA did not commit grave of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Petitioner cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

SEC. 12. Effect of appeal ? The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman.^[17] Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989^[18] also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.^[19]

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12,^[20] Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.^[21] Hence, the prayer for the issuance of a Temporary Restraining Order or Writ of Preliminary Injunction must be denied.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED. The assailed January 2, 2006 Decision of the Office of the Ombudsman in Case No. OMB-M-A-05-391-J is hereby AFFIRMED.

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.

Camello, J., Ch., and Inting, JJ., concur.

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- [1] Rollo, pp. 6-20.
- [2] Annex “A” of the Petition, Id., pp. 21-26.
- [3] Annex “B” of the Petition, Id., pp. 27-34.
- [4] Velasquez v. Hernandez, G.R. No. 150732, August 31, 2004.
- [5] Record, p. 003-004; 008-090.
- [6] Record, p.089.
- [7] A.M. No. P-2095, October 23, 1981.
- [8] Brucal v. Desierto, G.R. No. 152188, July 8, 2005.
- [9] Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005.
- [10] Id.
- [11] Basuel v. Fact-Finding and Intelligence Bureau, G.R. No. 143664, June 30, 2006.
- [12] Rule IV, Section 52 (A) of the Uniform Rules of Administrative Cases in the Civil Service.
- [13] 1987 Constitution, Article XI, Section 1.
- [14] Civil Service Commission v. Cortez, G.R. No. 155732, June 3, 2004.
- [15] Administrative Order No. 7, dated April 10, 1990.
- [16] G.R. No. 175895, April 12, 2007.
- [17] Section 3, Rule V, Rules of Procedure of the Office of the Ombudsman.

[18] R.A. 6770.

- [19] Office of the Ombudsman v. Samaniego, G.R. No. 175573, October 5, 2010.
- [20] SEC. 12. Effect of appeal. – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.
- [21] Supra. at Note No. 15.

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