

JULIO LOBOS ATENCIO, PETITIONER, VS. RODULFO J. ARIESGA, THE REGIONAL DIRECTOR OF THE COMMISSION ON AUDIT, REGIONAL OFFICE NO. VIII, CANDAHUG, PALO, LEYTE, RESPONDENTS,

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this Court is a Petition for Review[1] filed by petitioner Julio Lobos Atencio from the Decision[2] of the Office of the Ombudsman dated April 18, 2011 in OMB-V-A-10-0078-B and Order[3] dated August 25, 2011 in OMB-V-C-10-0063-B.

THE PARTIES

Petitioner Julio Lobos Atencio, is of legal age and a resident of University Town, University of Eastern Philippines, Catarman, Northern Samar and may be served with court processes thereon.

Respondent Rodolfo J. Ariesga, is the COA Regional Director and is the Executive Officer of the COA, Regional Office in Candahug, Palo, Leyte. He is impleaded in his nominal capacity for being the complainant in the cases filed against petitioner before the Office of the Ombudsman.[4]

The Office of the Ombudsman (OMB) is the Intervenor in the instant case and is the disciplinary authority which promulgated the assailed Decision and Order.[5]

THE ANTECEDENTS

Petitioner Julio L. Atencio was the former Cashier-IV designated as the Collecting and Disbursing Officer of the University of the Eastern Philippines (UEP), Catarman, Northern Samar.[6]

On July 20, 2004, the Audit Team assigned at the University composed of State Auditors Gregorio T. Agus, Jr. and Roma J. Gomba of the Commission on Audit (COA) conducted an examination of the cash and accounts under the custody of petitioner for the period of May 22, 2002 to July 20, 2004.[7]

As a result of the examination, the Audit Team found petitioner to have been short in his cash and account by P2,841,973.57. The total amount of cash shortage is composed of the following:

Undeposited Collections
(Collections from 29 trust funds,
income fund, and revolving fund) P144,570.85

Unliquidated Cash Advances/
Withdrawals
(Cash Advances from the General Fund

both from personal services (PS) and
Maintenance and Other Operating
Expenses (MOOE- P966,251.95)
Income Fund (P3,246.00) P2,636,006.16

Cash and Cash Items presented
during the audit but remained
undeposited/unliquidated nor
turned-over to the newly-designated
Collecting and Disbursing Officer P61,396.56[8]

The Audit disclosed that there were twenty-eight (28) withdrawals made from various trust funds which were not covered by Disbursement Vouchers (DVs) and the required supporting documents amounting to P2,882,630.50. The 28 withdrawals were not posted in the individual cashbook maintained by petitioner nor reported in his Monthly Report of Disbursements. Not being covered by the necessary DVs, the withdrawals did not pass through the Accounting Office or the Office of the President for approval.[9]

Upon verification of the withdrawal slips obtained, it was found out that fourteen (14) of which were signed by the President and the Petitioner. Twelve (12) were signed by the Vice-President for Administration and Business Affairs (VPABA). One (1) withdrawal slip was signed by the petitioner alone. Despite, bearing only petitioner's signature, the same was allowed by Land Bank of the Philippines for encashment. On the other hand, one (1) withdrawal slip with the amount of P4,070.00 for withdrawal from the ANEC trust fund is still in the custody of the Development Bank of the Philippines.

Having accomplished said withdrawals without the required DVs and supporting documents, the audit team concluded such acts to constitute improper/ illegal disbursements.[10]

On August 5, 2005, a meeting was arranged between the Audit Team and Petitioner. In the said meeting, the Audit Team discussed to petitioner as to how they were able to arrive at the balance of accountability both for collections and cash advances of petitioner as of July 20, 2004.

Thereafter, the Audit Team served to petitioner a Demand Letter requiring him to produce the missing funds. In response thereof, petitioner requested for a copy of the Statement of Accountability and the Summary of the Schedule of his Cash Advances and Liquidations for his review. The Audit Team acceded and gave petitioner until August 12, 2005 to review the same.[11]

On August 12, 2005, the second meeting between petitioner and the Audit Team took place. The Audit Team again discussed how the cash shortage was incurred. Thereafter, petitioner admitted to have solely perpetrated the withdrawals without the Disbursement Vouchers from the banks. In his statement however, he insisted that the signatures of the President and the VPABA as appearing in the withdrawal slips were genuine and true. The withdrawals were accomplished by recycling or reusing the file copies of the withdrawal slips in his possession which bore the signatures of the other signatories.

The Audit Team attempted to secure the signature of petitioner on the Statement of Accountability of his Cash Advances and Collections and the Demand Letter. However, petitioner still refused to sign. In view of petitioner's refusal, the Audit Team secured the signatures of Atty. Marlonfritz B. Broto and Mr. Bryan Navarosa on the face of the documents to attest to petitioner's refusal to sign. As stated in the Demand Letter, the Audit Team likewise required petitioner to explain in writing within seventy-two (72) hours the shortage incurred. However, no compliance was made by petitioner.

On July 23, 2004, a turnover was made by petitioner to the newly-designated Collecting and Disbursing Officer, Ms. Ma. Leyda C. Barlaan. However, what were turned-over by petitioner were only “accountable forms without any money value, cash and cash items in his possession.”[12]

After the completion of the examination, the Audit Team made a follow-up with the University President as to whether or not petitioner has turned-over the cash and cash items in his possession. To this query, the University President replied in the negative.[13]

Such non-compliance by the petitioner caused the Audit Team to issue another Demand Letter to the former. However, despite receipt thereof, petitioner failed to heed to the same.[14]

A Cash Examination Report[15] dated June 29, 2006 was then submitted by Gregorio T. Agus, Jr. with the following recommendation:

1. Appropriate charges should be filed against Mr. Julio L. Atencio, Cashier-IV, for malversation and illegal use of public funds totaling P2,841,973.57 and illegal withdrawals of trust funds consisting of twenty-eight (28) withdrawals or a total of P2,882,630.50, as embodied in the Revised Penal Code (RPC).[16]

On the basis of such report, a complaint for Dishonesty was filed by respondent Ariesga against petitioner before the Office of the Ombudsman.

On April 18, 2011, the Office of the Ombudsman promulgated a Decision[17] with the following findings:

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As a result of the cash examination, the auditors found respondent to be short in his cash and account in the amount of TWO MILLION NINE HUNDRED SIXTY THOUSAND TWO HUNDRED SIXTY FOUR and 81/100 PESOS (P2,960.264.81) arrived at as follows:

Accountability:

Balance shown by Reports of Collections & Disbursements/ Cashbook on July 20, 2004, certified correct by respondent & verified by the auditors.

P 3,216,782.78

Credits to Accountability:

Cash and valid cash items produced by respondent & counted by the auditors

P 256,517.97

SHORTAGE

P 2,960,264.81

xxx[18]

From the above findings, the Office of the Ombudsman ruled:

WHEREFORE, finding substantial evidence that the administrative infraction of Serious Dishonesty was committed, Julio Lobos Atencio, Cashier IV, Collecting and Disbursing Officer of the University of Eastern Philippines of Catarman, Northern Samar, is hereby meted the penalty of DISMISSAL FROM THE PUBLIC SERVICE WITH FORFEITURE OF RETIREMENT BENEFITS, DISQUALIFICATION FROM REEMPLOYMENT IN THE GOVERNMENT SERVICE AND CANCELLATION OF RESPONDENTS' CIVIL SERVICE ELIGIBILITY. Xxx[19]

On the same date, the Office of the Ombudsman likewise issued a Resolution[20] finding probable cause that petitioner has committed the felony of Malversation of Public Funds under Article 217 of the Revised Penal Code.[21]

Hence, the OMB resolved:

In the light of the foregoing, let an information be filed with the Regional Trial Court of Catarman, Northern Samar, against herein respondent Julio Lobos Atencio, Cashier IV, Collecting and Disbursing Officer of the University of Eastern Philippines of Catarman, Northern Samar, for Malversation of Public Funds under Article 217 of the Revised Penal Code.[22]

From the dispositions of the OMB, petitioner filed a Joint Motion for Reconsideration. However, the same was denied in an Order[23] dated August 25, 2011.

Aggrieved, petitioner now elevates the instant case before Us.

Petitioner argues that the findings of the audit team as stated in the audit report are erroneous, irregular, and incomplete.[24] The audit report is incomplete as it failed to include documents that were not considered by the Ombudsman in its decision.[25] Petitioner centers on the disparity in the figures reached by the COA and the OMB representing the shortages incurred.[26] Petitioner adds, he was completely deprived of his right to go over his records in his office during the audit investigation.

Petitioner intimates, the state auditors who conducted the investigation were tainted with partiality. Atencio avers, the audit team was motivated to pin petitioner in order free themselves of liabilities incurred by them through cash advances.[27]

Petitioner likewise disclosed, cash advances had been a long-standing practice in the University where superior officers could easily obtain money from the cashier through the use of bills or “vales” without any prompt payment or liquidation. Petitioner asserts, he could not at his level put an end to such practice for he could not refuse the request of his superiors.[28] Atencio asserts, had the rules been observed strictly, he could have been completely exonerated or at least meted with a lower penalty considering there is no evidence that he was materially enriched.

Hence, petitioner prays for the following reliefs:

- 1) Pending resolution of this instant petition, that a Temporary Restraining Order be issued reinstating petitioner to his former office; and 2.) To hold in abeyance the filing of the information relative to the criminal aspect of the case;
- 3.) Finally, that the assailed twin Decisions of the Office of the Ombudsman dated April 18, 2011 in OMB-V-A-10-0078-B and Order[29] dated August 25, 2011 in OMB-V-C-10-0063-B be reversed.[30]

On August 7, 2012, this Court received from the Office of the Ombudsman an Omnibus Motion to Intervene and to admit attached Comment-in-Intervention.[31] In the said Motion, the OMB prayed for its office to be allowed to actively participate in the proceedings in the instant case.[32]

Responding to the Petition, the OMB raised the impropriety of raising the criminal action against petitioner in the instant proceedings. The OMB argued, appeals from the Decisions of the Office of the Ombudsman in criminal actions must be brought to the Supreme Court under Rule 65 and not to the Court of Appeals under Rule 43. The instant petition is not the proper remedy in the issues involving the Resolution dated April 18, 2011 and Order dated August 25, 2011 of the Office of the Ombudsman-Visayas in OMB-V-C-10-0063-B for violation of Article 217 of the Revised Penal Code.[33]

The OMB further argued, contrary to the claim of petitioner, it did not merely rely on the resolution of the criminal complaint against petitioner in OMB-V-C-10-0063-B. Rather, it made an independent judgment in resolving OMB-V-C-10-0063-B and stands by its finding that petitioner incurred a shortage in his cash and account by P2,960,264.81 instead of P2,841,973.57 as provided in the COA Audit Report.[34]

The OMB cites, the Supreme Court has declared that the findings in a COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of Ombudsman in its determination of probable cause.[35] Moreover, the evidence on record is substantially sufficient to establish his administrative liability for Serious Dishonesty.[36]

With regard to the prayer for a Temporary Restraining Order, the OMB asseverates, there is no legal basis for the issuance thereof. Petitioner failed to present evidence that he suffered and is suffering a great and irreparable injury when the assailed decision is implemented.[37]

From the foregoing assertions, the OMB prays for the instant Petition to be dismissed for lack of merit and to affirm in toto the assailed decision, order and resolution.[38]

On March 15, 2013, We resolved to grant the OMB's Omnibus Motion to Intervene and to Admit the attached Comment-in-Intervention. Likewise, We admitted the attached Comment-in-Intervention filed and noted that no Comment was filed by respondent Ariesga. Finally, We denied petitioner's prayer for the issuance of a Temporary Restraining Order.[39]

ISSUE

The issue for this Court's resolution is whether or not the Office of the Ombudsman-Visayas erred in issuing the Decision[40] dated April 18, 2011 in OMB-V-A-10-0078-B and Order[41] dated August 25, 2011 in OMB-V-C-10-0063-B.

THE COURT'S RULING

Dishonesty is defined as the “disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity.”[42] It must be stressed that dishonesty is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. Its immense debilitating effect on the government service cannot be overemphasized.[43] If a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a

certain influence and power which renders the victims of his grave misconduct, oppression, and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.[44]

After an examination of the factual milieu and the records of the instant case, We are convinced that, indeed, Serious Dishonesty was committed by petitioner.

As Cashier IV designated as the Collecting and Disbursing Officer of the University, petitioner is entrusted with public funds. By his failure to properly explain the shortages of the funds in his custody, petitioner transgressed the trust reposed in him as cashier and disbursement officer of the University. Petitioner's dishonesty is manifest in his untrustworthiness and lack of integrity in the custody of public funds. Such characteristics are patent in the acts committed.

From the records, during the August 5, 2005 meeting, petitioner has admitted to having solely perpetrated the withdrawals and has even detailed how the same was accomplished. He even claimed to have been spiritually relieved of his wrongful act after having confessed the same to a priest.[45]

However, in the present petition, Atencio protests the Audit Report from which the complaint was based. Petitioner insists that the COA report submitted is erroneous, irregular and incomplete. He indicts the Audit Team of exhibiting bias and partiality in the conduct of the examination. In doing so, petitioner has exposed the alleged long-standing practice of superiors officers of conveniently obtaining money from the cashier through the use of bills or "vales".

In an attempt to deflect liability to other University Personnel, petitioner has admitted to facilitating such transactions interposing that he could not possibly refuse their requests as his designation and position was at their mercy. Petitioner hopes for mitigation of his liability by asserting that he was not gainfully enriched by such acts.[46]

We are unconvinced.

In *Meneses v. Sandiganbayan*[47], the Supreme Court declared the granting of "vales" to be contrary to law:

The grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by the law. To tolerate such practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds. (Underscoring Original)

There is no law or regulation allowing accountable officers to extend loans to anyone against "vales" or chits given in exchange by the borrowers. On the other hand, the General Auditing Office (now the Commission on Audit) time and again, through repeated office memoranda and rulings had warned against the acceptance of "vales" or chits by any disbursing officer because such transactions are really forms of loans (Memorandum Circular No. 570, June 24, 1968, General Auditing Office).

The alleged acquiescence of petitioner's superior, even if true, is not a valid defense. As *Ilogon v. Sandiganbayan*[48] teaches:

The fact that petitioner did not personally use the missing funds is not a valid defense and will not exculpate him from his criminal liability. And as aptly found by respondent Sandiganbayan, "the fact that (the) immediate superiors of the accused (petitioner herein) have acquiesced to the practice of giving out cash advances for convenience did not legalize the disbursements".[29] (Underscoring Original)

From the foregoing, petitioner's bid to mitigate his liability must fail. Without even considering the shortages discovered, Atencio's voluntary admission of having disbursed public funds without following the standard procedure imposed for disbursements clearly reflects of petitioner's untrustworthiness and lack of integrity. Being

entrusted with the custody of public funds, petitioner is expected to hold himself accountable to the public.

In *Belleza vs. Commission on Audit*,^[49] the Supreme Court ruled, to hold an accountable officer guilty of Dishonesty, “No evidence of personal misappropriation of the missing funds x x x is needed x x x that there was shortage of funds and (the officer’s) failure to satisfactorily explain the same would suffice.”

In the case at bar, the records disclose that upon the demand to produce the shortages discovered, petitioner failed to present the same. In that instance alone, petitioner may already be held liable for dishonesty. As such, the declaration by petitioner that he was not materially enriched by the transactions does not warrant an extenuation of his liability.

Moreover, contrary to petitioner's assertions that he was deprived of an opportunity to examine the records during the audit investigation, the records disclose that petitioner was given ample time to review the Statement of Accountability and the Summary of the Schedule of his Cash Advances and Liquidations. Petitioner was also extended several opportunities to produce the shortages discovered. However, despite the demands made, petitioner never bothered to heed the same.

As part of petitioner's assignment of errors, Atencio brings this Court's attention to the conflicting figures representing the shortages reached by the COA and the OMB. Petitioner posits, the Audit Report of the COA from which the assailed Decision is based is erroneous. Petitioner asks, if evidence for the complainant is inconsistent, how can it be a basis of a correct decision?

The disparity in the findings of the COA and the OMB as to the exact total of the shortages may not be taken to discredit the assailed Decision of the Office of the Ombudsman. In a plethora of cases, the Supreme Court has consistently upheld the independence of the Office of Ombudsman in pursuing an investigation pursuant to its mandate as the protector of the people. In *Cabrera v. Marcelo*^[50], the Supreme Court discussed:

Petitioners cannot fault the Ombudsman for relying on the COA Audit Report, notwithstanding that it had not yet attained finality. The initial basis for the Ombudsman's investigation was not the COA Audit Report, but the complaints filed by Casanova. While the allegations in the complaint happened to be similar with those contained in the COA Audit Report, the Ombudsman could very well conduct an independent investigation based on the complaints for the purpose of whether criminal charges should be filed against the petitioners. The Ombudsman is reposed with broad investigatory powers in the pursuit and of its constitutional mandate as protector of the people and investigator of complaints filed against public officials. It is even empowered to request from any government agency such as the COA, the information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents.

It should be borne in mind that the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable. In *Ramos v. Aquino*, the Court ruled that the fact that petitioners' accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation. Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA, but from the independent determination of the Ombudsman. (Emphasis Original)

While the instant case involves the administrative liability of petitioner, the same principles espoused above may be applied. A finding of a criminal or administrative liability by a public officer by the Office of the Ombudsman is not dependent on the finding of facts of a separate agency such as the Commission on Audit. Possessing of powers independent of any fact-finding agency, the Office of the Ombudsman is charged to form its own conclusions from the conduct of its investigation.

The fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. Section 27[51] of the Ombudsman Act is unequivocal: Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive.xxx[52]

Substantial evidence is that which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as required in an ordinary civil case, or evidence beyond reasonable doubt as required in criminal cases, it should be enough for a reasonable mind to support a conclusion.[53]

All things considered, We find that substantial evidence has been established and duly determined for the the administrative liability of petitioner Atencio. Hence, no error may be attributed with the Office of the Ombudsman in issuing the assailed Order and Decision.

Under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (“Omnibus Rules”), Dishonesty is classified as a grave offense punishable by dismissal from service on the first offense. Section 9, Rule XIV of the Omnibus Rules also provides that the penalty of dismissal from service carries with it the cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in the government service. Neither restitution of the missing funds nor the fact of recent designation as an accountable officer serves to prevent the imposition of this penalty.[54]

No less than the constitution emphasizes that “Public office is public trust”.[55] On account of petitioner's failure to discharge such the trust reposed on him, We hold that the penalty of dismissal may not be considered a severe punishment.

WHEREFORE, the Petition for Review is hereby DENIED for lack of merit. The Decision[56] of the Office of the Ombudsman dated April 18, 2011 in OMB-V-A-10-0078-B and Order[57] dated August 25, 2011 in OMB-V-C-10-0063-B are AFFIRMED IN TOTO.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Rollo, page 3.

[2] Ibid, page 22.

[3] Id., page 20.

[4] Id., page 4.

[5] Id., page 167.

[6] Id., page 32.

[7] Id.

[8] Id., page 33.

[9] Id.

- [10] Id., pages 33-34.
- [11] Id., page 34.
- [12] Id., page 35.
- [13] Id.
- [14] Id., page 36.
- [15] Id., page 154.
- [16] Id., page 154.
- [17] Id., page 22.
- [18] Id., pages 22-23.
- [19] Id., page 25.
- [20] Id., page 27.
- [21] Id., pages 29-30.
- [22] Id., page 30.
- [23] Id., page 17.
- [24] Id., page 6.
- [25] Id., page 10.
- [26] Id., page 7.
- [27] Id., page 11.
- [28] Id., page 11.
- [29] Id., page 20.
- [30] Id., pages 13-14.
- [31] Id., page 89.
- [32] Id., page 94.
- [33] Id., page 106.
- [34] Id., page 111.
- [35] Id., page 114.
- [36] Id., page 118.
- [37] Id., pages 120-121.
- [38] Id., pages 130-131.
- [39] Id., pages 227-230.
- [40] Ibid, page 22.

[41] Id., page 20.

[42] Black's Law Dictionary, 6th Ed. (1990).

[43] Bacsasar v. Civil Service Commission, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 792.

[44] Remolona v. Civil Service Commission, 414 Phil. 590, 598 (2001).

[45] Id., page 35.

[46] Id., page 11.

[47] 232 SCRA 441 (1994).

[48] 218 SCRA 766 (1993).

[49] 428 Phil. 76, 81 (2002).

[50] G.R. Nos. 157419-20, December 13, 2004, 446 SCRA 207.

[51] Section 27 of Republic Act No. 6770 (The Ombudsman Act) -Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory. x x x Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. xxx

[52] Honorable Ombudsman Simeon Marcelo vs. Leopoldo F. Bungubung, G.R. No. 175201, April 23, 2008.

[53] Honorable Ombudsman Simeon Marcelo vs. Leopoldo F. Bungubung, G.R. No. 175201, April 23, 2008.

[54] Office of the Ombudsman vs. Court of Appeals, G.R. No. 167844, November 22, 2006.

[55] Section 1, Article XI, Constitution.

[56] Ibid, page 22.

[57] Id., page 20.

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