

PAULINO V. NERA, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

G.R. No. L-24957. August 03, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

We need not discuss the merits of this case for it is clear that the petitioner's appeal was filed out of time. It will therefore be dismissed on this ground.

The petitioner was retired on January 4, 1951, with the rank of lieutenant colonel in the Armed Forces of the Philippines. He applied for retirement gratuity under R.A. No. 340, otherwise known as the Armed Forces Retirement Act, but in the computation of the total amount due him, he was not credited with the sums of P12,324.41 and P983.01 which he claimed represented his longevity pay from January 4, 1951 to May 31, 1963, under R.A. No. 1134. His formal request for such differentials was denied by the representative of the General Auditing Office assigned to the General Headquarters, Armed Forces of the Philippines, in a memorandum dated June 18, 1963.[1] The reason for the denial was that R.A. No. 1134 took effect on July 1, 1954, and could not apply retroactively to the petitioner. Nera went directly to the General Auditing Office and requested reconsideration, which was denied on December 17, 1963 by the Deputy Auditor General,[2] who affirmed the memorandum of the AFP auditor. On January 4, 1964, the petitioner requested reconsideration of the Deputy Auditor General's ruling, reiterating his argument that, under R.A. No. 291, Section 846 of the Revised Administrative Code, and Section 95 of C.A. No. 1, otherwise known as the National Defense Act, he was entitled to the differentials sought.[3] This request was denied in a letter dated February 10, 1964, which Nera received on February 20, 1964.[4] Seventeen months later, on July 15, 1965, the petitioner, this time represented by counsel, requested reconsideration of the rulings of December 17, 1963, and February 10, 1964.[5] The request was also denied on August 2, 1965, on the ground that the decision sought to be reconsidered had already become final. [6] It also appears that Nera had earlier filed an appeal to the Office of the President, which apparently took no further action when it was informed by the General Auditing Office, upon referral of this matter to it, that the questioned decision was no longer appealable.[7]

Nera filed this petition for review with this Court on September 8, 1965, insisting that he was entitled to the disputed longevity pay and that his appeal was not filed out of time.

Article XI, Section 3, of the 1935 Constitution, which was in force when this petition was filed, provided as follows:

“Sec. 3. The decisions of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President whose action shall be final. When the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law.”

Implementing this rule, C.A. No. 327, Section 2, clearly declared:

"Sec. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing:

x x x

"(b) To the President of the Philippines; or

"(c) To the Supreme Court of the Philippines if the appellant is a private person or entity."

Rule 44, Section 1, of the Rules of Court also provided:

"SECTION 1. How appeal taken. - An appeal from a final award, order or decision of the Public Service Commission, the Patent Office, the Agricultural Inventions Board, the Court of Tax Appeals, and the General Auditing Office, shall be perfected by filing with said bodies a notice of appeal and with the Supreme Court twelve (12) copies of a petition for review of the award, order or ruling complained of, within a period of thirty (30) days from notice of such award, order or decision."

The letter of the Deputy Auditor General dated December 17, 1963, denying reconsideration was received by Nera on January 3, 1964.[8] The 30-day reglementary period of appeal was suspended the following day when he asked for reconsideration. This was denied by the Deputy Auditor General in a letter dated February 10, 1964, which Nera received from February 20, 1964.[9] The period started running on February 21, 1964 and ended thirty days later on March 22, 1964. The decision became final thereafter and so could no longer be appealed.

"Appellant, by his petition for mandamus is, in effect, appealing from the decision of the Auditor General denying his claim for gratuity. Such appeal should have been made to this court within 30 days from notice of the decision. As the law now stands, the decision of the Auditor General in cases affecting an executive department, bureau, or office of the Government may be appealed directly to the President whose action shall be final, while those where the aggrieved party is a private person or entity are appealable to the Supreme Court." [10]

"The failure of E.S. Baltao & Co., Inc. or its agent and assignee, the herein appellant, to appeal from the decision of the Auditor General within 30 days as required by the law, tends strongly to support that conformity by which E.S. Baltao & Co., Inc. had given to the settlement of his whole claim in the fixed sum of P15,785.10. Upon this other consideration, the final decision of the Auditor General has become a legal bar to the present action." [11]

"Failure to appeal the decision of the Auditor General within the 30-day period renders the decision final and is a bar to an action for its review." [12]

The petitioner claims, however, that the reglementary period should be counted from August 10, 1965, the date he received a copy of the resolution denying his motion for reconsideration of July 15, 1965. His reason is that it was only from the latter date that he started to be represented by counsel and so the legal proceedings should be considered to have begun only from that date. "The proceedings of the General Auditing Office are administrative in character," he says. "The right to be represented by counsel therefore is necessary and any proceeding conducted without the aid of counsel is void." [13]

This is a strange and novel argument, indeed. Under the petitioner's theory, even the rulings he sought to have reconsidered would have to be disregarded because they were rendered when he was acting on his own and therefore, as he contends, acting invalidly. In effect, following this logic, all proceedings where a person is not represented by counsel are null and void ab initio for violation of due process because he could not legally act by himself alone. Yet, magically, they become valid and may be reconsidered the moment and provided such person retains the services of a lawyer and starts acting through such counsel.

The right to the assistance of counsel is not indispensable to due process unless required by the Constitution or a law. Exception is made in the charter only during the custodial investigation of a person suspected of a crime, who may not waive his right to counsel except in writing and in the presence of counsel, [14] and during the trial of the accused, who has the right "to be heard by himself and counsel," [15] either retained by him or provided for him by the government at its expense. These guarantees are embodied in the Constitution, along with the other rights of the person facing criminal prosecution, because of the odds he must contend with to defend his liberty (and before even his life) against the awesome authority of the State.

In other proceedings, however, the need for the assistance of counsel is not as urgent nor is it deemed essential to their validity. There is nothing in the Constitution that says a party in a non-criminal proceeding is entitled to be represented by counsel and that without such representation he will not be bound by such proceedings. The assistance of lawyers. While desirable, is not indispensable. The legal profession was not engrafted in the due process clause such that without the participation of its members the safeguard is deemed ignored or violated. The ordinary citizen is not that helpless that he cannot validly act at all except only with a lawyer at his side.

In the case at bar, the petitioner acted for and by himself quite ably, arguing knowledgeably on what he considered the applicable laws to justify his claim. A reading of this 11-page request for reconsideration dated January 4, 1964, [16] which he filed with the Auditor General clearly shows that it was not prepared by an ignorant person who did not know what he was talking about and was groping around, as it were, in the maze of the law. On the contrary, he appeared to be well-versed on the topic of longevity pay for members of the Armed Forces as he cited and analyzed (in the manner of the lawyer) a number of legal provisions on the subject, among them Section 2 of R.A. No. 340, Section 10 of R.A. No. 2680, Section 846 of the Revised Administrative Code, Sections 22 and 95 of C.A. No. 1, R.A. No. 1134, R.A. No. 3449, and even Opinion No. 169, s. 1954, of the Secretary of Justice. This letter does not appear to have come from a person who was being denied due process because he was not at the time represented by counsel and was unable to protect his own interests. In fact, without detracting from the efforts of the lawyer he later retained to represent him, the latter's letter to the Auditor General dated July 15, 1965, [17] was based on the petitioner's earlier exhaustively argued request for reconsideration.

The Court notes that prior to the filing of this petition for review, and possibly even before making his request for reconsideration dated July 15, 1965, Nera appealed the ruling of the Deputy Auditor General to the Office of the President. The record does not show what happened to the appeal after the Office of the President, upon its inquiry, was informed by the General Auditing Office that its decision had already become final and was no longer appealable. At any rate, such appeal was the wrong remedy as at the time it was made, the petitioner had

already retired and had become a private citizen. So we held in *Espino v. Gimenez*,^[18] where the appellant had retired from the National Power Corporation, and affirmed in *Rosario v. Chairman of the Commission on Audit*^[19] where the claimant was a former employee of the National Library, in keeping with a long line of earlier decisions on that same question.^[20]

Whatever the merits of the petitioner's stance, we cannot consider them now because he has not appealed to this Court on time. *Vigilantibus sed non dormientibus jura subveniunt*.^[21]

ACCORDINGLY, the petition is DISMISSED, with costs against the petitioner. It is so ordered.

Narvasa (Chairman), Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[*] Deceased, substituted by his daughter, Teresita B. Nera.

[1] Auditor Sostenes M. Babasa.

[2] Deputy Auditor General Jesus Iriarte.

[3] Annex "C," Rollo, pp. 14-24.

[4] Annex "1," Rollo, p. 46.

[5] Annex "E," Rollo, p. 26.

[6] Annex "F," Rollo, p. 35.

[7] Ibid.

[8] Annex "C," Rollo, p. 14.

[9] Annex "D," Rollo, p. 25.

[10] *Lacson vs. Auditor General*, 107 Phil. 921.

[11] *Mañgonon v. Republic*, 114 Phil. 604.

[12] *Casibang v. Philippine Tobacco Administration*, 128 SCRA 87.

[13] Brief for the Petitioner, p. 18; Rollo, p. 53.

[14] 1987 Constitution, Article III, Section 12(1).

[15] Ibid., Section 14(2).

[16] Annex "C," Rollo, pp. 14-24.

[17] Annex "E," Rollo, pp. 26-34.

[18] 10 SCRA 757.

[19] 63 SCRA 515.

[20] *Dimaano v. Auditor General*, 3 SCRA 811; *Madrid v. Auditor General*, 108 Phil. 578; *Lacson v. Auditor General*, 107 Phil. 945; *Valencia v. Auditor General*, 107 Phil. 128; *Recio v. Auditor General*, 105 Phil. 508; *Bautista v. Auditor General*, 104 Phil. 428; *Peralta v. Auditor General*, 100 Phil. 1051; *Espejo v. Auditor General*, 97 Phil. 216.

[21] “The laws aid the vigilant, not those who slumber on their rights.”

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