

RODOLFO S. DE JESUS, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND REYNALDO M. TADIAR, RESPONDENTS.

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

This appeal by petition for review seeks the review and reversal of the decision dated January 23, 2001 rendered in OMB-0-00-0433,[1] disposing as follows:

WHEREFORE, PREMISES CONSIDERED, respondent RODOLFO DE JESUS, Deputy Administrator for Administrative Services, Local Water Utilities Administration (LWUA) Katipunan Avenue, Balara, Quezon City, is hereby found GUILTY of SIMPLE MISCONDUCT, for which the penalty of SUSPENSION FOR ONE MONTH is hereby imposed, pursuant to Section 27, Republic Act No. 6770, otherwise known as “The Ombudsman Act of 1989.

SO ORDERED.

The petitioner was the Deputy Administrator for Administrative Services of the Local Water Utilities Administration (LWUA), a specialized government lending corporation chartered under P. D. 198, as amended. He was concurrently the resident Ombudsman of LWUA.

On March 16, 2000, LWUA Administrator Prudencio Reyes issued Office Order No. 069.00 re-assigning the petitioner and 2 others to the office of the Administrator to act as a core group of a LWUA Task Force. Respondent Reynaldo Tadiar was designated to take over the petitioner’s place as officer-in-charge (OIC) pursuant to Office Order No. 0070.00 issued on the same day.

It appears that prior to said date, or on March 13, 2000, Office Order No. 076.00 was issued naming certain LWUA officers as check signatories. The petitioner was not included in the list.

On May 3, 2000, respondent Tadiar filed a complaint-affidavit in the Office of the Ombudsman,[2] charging the petitioner with grave misconduct, dishonesty and conduct prejudicial to the best interest of the service, specifying that:

- On March 22, 2000, the petitioner, without any authority and with evident bad faith and premeditation, accomplished and approved his own request for payment (RFP) to request the reimbursement of extraordinary and miscellaneous expenses (EME) for the month of March 2000, resulting in undue injury to the Government;
- To consummate his willful and felonious act, the petitioner likewise signed a disbursement voucher (DV) dated March 29, 2000 attesting to his receipt of LWUA Check No. 129224 in the amount of P15,000.00; and
- In furtherance of his felonious acts, the petitioner also signed a certification to the effect that as “Deputy Administrator, I have spent for the month of March 2000 the amount of PESOS: FIFTEEN THOUSAND ONLY (P15,000.00) for the meetings, seminars and conferences, official entertainment, public relations, and the like as authorized under COA Cir. No. 89-300 dated March 21, 1989.”

Required to answer, the petitioner countered, by an affidavit,[3] that he had the delegated authority to sign and

approve his RFP for his March 2000 EME reimbursement under LWUA Office Order No. 38.87 entitled: "Designation of Signatories for Various Documents," which specifically provided in its Clause C-2 that the approval of RFP and DV "shall remain to be vested to the counter-signatory of the respective checks;" that he was one of the counter-signing officers, as shown in the "Check Signatories" attached to LWUA Office Order No. 042.95 and Office Order No. 114.99; that under Office Order No. 186.91, he was delegated the authority to sign or authenticate payrolls, vouchers, requisition/purchase orders and "other documents relative to or in connection with overall or general administrative activities and/or functions;" that under Office Order No. 042.95, entitled "LWUA's New Disbursement Voucher (CV) Form: Designated Signatories and Related Guidelines", he, as Deputy Administrator, was delegated the authority to certify and approve DVs in regard to EMEs; that he was signing documents like those under question for several years already, without anyone, including Tadiar, ever assailing him formally or otherwise until he did so herein; that his exercise of said delegated approving authority was legal; and that his reassignment as ordered by the LWUA Administrator Reyes, who acted in bad faith, was not in order.

Despite the petitioner's motion requesting a formal investigation filed on August 1, 2000,[4] the Office of the Ombudsman directed the parties on September 8, 2000 to submit their respective memoranda, following which the case would be deemed submitted for resolution.

The parties complied and submitted their memoranda.

In his memorandum, the petitioner averred that there was no evident bad faith or premeditation in his act of signing or approving the assailed documents; that he had the authority to sign, contrary to the claim of Tadiar; that the Civil Service Commission had ruled on the invalidity of his re-assignment, submitting a copy of CSC en banc Resolution No. 001729 dated July 26, 2000 as Annex 1, whereby LWUA Administrator Reyes was held to be not the appointing authority of the LWUA deputies; that the Administrator's power to supervise did not include the power to reassign his deputies; that the reassignment was tainted with bad faith; that a motive, other than the best interest of the service and good faith, had impelled Administrator Reyes to reassign his deputies; and that the reassignment of his deputies (petitioner included) was not in order.

On the other hand, respondent Tadiar, as the complainant, stated in his own memorandum that on March 22, 2000, the date when the petitioner had signed and approved his RFP, he had no authority to do so since on said date he (Tadiar) was then the officer-in-charge; that although the petitioner had filed a civil case against his re-assignment, he had not been able to restrain the office order on his re-assignment; and that Office Order No. 076.00 dated March 13, 2000 had revoked the authority of the petitioner to sign LUWA checks.

On January 23, 2001, the Ombudsman rendered his decision, finding the petitioner guilty of simple misconduct and meting him a penalty of 1-month suspension, *supra*. The Ombudsman adopted the following ratiocination of the graft investigator that was approved by the Director of the Administrative Adjudication Bureau and recommended for approval of the Ombudsman by Assistant Ombudsman Abelardo L. Aportadera, Jr., to wit:

The central issue in the present case is whether the claim for EME of respondent RODOLFO S. DE JESUS is tainted with any irregularity amounting to an administrative offense.

Perhaps, the most important concept in achieving internal control is an appropriate subdivision or separation of duties. Responsibilities should be assigned so that no one person or department handles a transaction completely from beginning to end. When duties are divided in this manner, the work of one employee serves to verify that of another and any errors which occur tend to be detected promptly. In this context, every organization should indicate clearly the persons or departments responsible for such functions as sales, purchasing, receiving incoming shipments, paying bills and maintaining accounting records. The lines of authority and responsibility can be shown and defined in an organizational chart (pp. 282-284, Financial

Accounting by Robert F. Meigs and Walter B. Meigs, 7[th] Edition). Key duties and functions such as authorization, custody and accounting shall be assigned to separate offices and individuals to eliminate opportunities to conceal errors and irregularities.

In the case at bar, we find no dishonesty on the part of herein respondent, as it appears that he may claim EME as an officer of the agency. However, sense of refinement or “delicadeza” dictates that certifying one’s own claim for expenses as necessary and lawful, notwithstanding its propriety or impropriety, is surely offensive to morality and the principle of abuse of rights. For every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith (Art. 19, New Civil Code). And a right though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality as in this case. Thus, when a right is exercised in a manner which does not conform with the norms enshrined in Article 19 as aforecited and resulted in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible (Globe Mackay Cable and Radio Corp. vs. CA, G.R. No. 81262, August 25, 1989; 176 SCRA 778).

It is important to stress at this point that under Section 50, Chapter 3, Title 2 of Commission on Audit Circular No. 91-368 (otherwise known as the Government Accounting and Auditing Manual), it is provided that: “Sec. 50 xxx.

a. To ensure that effective check and balance exist and to prevent any employee from perpetrating or concealing irregularities or illegal acts alone, no one person or department should be in complete control over a transaction.”

Thus, it is evident that the respondent’s act of certifying and approving his own claim contravenes the above-quoted provision. As respondent herein is a high ranking officer and a part of the management of the agency concerned, reason dictates that it is improper, if not morally wrong, for him to have his own claim be certified as necessary and lawful, not to mention that the same act violates the principle of internal control, as mandated by Government Accounting and Auditing Standards. This is because one’s characteristic of management fraud is that it uses its position of trust and authority to override the system of internal control and to enrich itself at the expense of the organization or agency (p. 292, Financial Accounting by Robert F. Meigs and Walter B. Weigs, 7[th] Edition).

Not only that. As correctly cited by herein complainant, respondent had already been relieved by the LWUA Administrator as Deputy Administrator for Administrative Services and excluded as a signatory to LWUA transactions when the latter processed the claim, subject of this case, pursuant to Office Order Nos. 069 and 076 dated March 16, 2000 and March 13, 2000, respectively. And although we are not unaware of the respondent’s questioning of the legality of said Orders before the Civil Service Commission, the same must be upheld to be an official duty regularly performed [Sec. 3(m), Rule 131, Revised Rules on Evidence) and, therefore, valid and subsisting absent a final ruling on the contrary to be rendered by a higher tribunal of competent jurisdiction.

For these reasons, we find herein respondent DE JESUS guilty only of Simple Misconduct, an offense deemed included in the charge of Dishonesty, following the principle that the lesser offense is deemed included in the larger offense. (Sec. 5, Rule 120, Rules on Criminal Procedure; People vs. Calaguas [CA], 62, O.G. 880; U.S. vs. Nery, 4 Phil. 159; People vs. Castillo, 76 Phil. 72; People vs. Toting, 91 SCRA 382).[5]

The petitioner sought reconsideration,[6] citing; 4 grounds, namely: (a) That Art. 19, Civil Code, was misconstrued and misapplied, (b) That the decision was contrary to earlier Ombudsman decisions on similar issues, (c) That the decision was not supported by the facts; and (d) That he had newly discovered evidence.

In the meanwhile, the petitioner was ordered to serve the 1-month suspension starting February 19, 2001 pending resolution of his motion for reconsideration, because under the amended Sec. 7, Rule III, Administrative Order

No. 7, the decision of the Ombudsman in administrative cases was final and unappealable in case the penalty was suspension of not more than 1 month.[7]

On February 21, 2001, upon the petitioner's filing of the urgent motion dated February 19, 2001 for the lifting of the execution order and motion to inhibit Director Mary Susan S. Guillermo, his motion for reconsideration was referred to the Office of the Legal Affairs (OLA) for study and recommendation.

After re-evaluation of the facts and documents on record, OLA submitted its memorandum dated February 27, 2001,[8] to wit:

WHEREFORE, premises considered, it is respectfully recommended that the AAB Decision dated 23 January 2001 be reconsidered and set aside and that the above-captioned case be dismissed.

Ombudsman Desierto disapproved the recommendation, however, per his marginal notes on the memorandum reading: "The motion is denied. The AAB decision is hereby reiterated and/or affirmed anew." [9]

Hence, this appeal, wherein the petitioner submits that:

I.

PUBLIC RESPONDENT GROSSLY ERRED IN THE CONSTRUCTION AND APPLICATION OF ART. 19 OF THE NEW CIVIL CODE

II.

PUBLIC RESPONDENT GROSSLY ERRED IN NOT APPLYING ITS EARLIER DECISIONS ON SIMILAR ISSUES

III.

ASSAILED DECISION NOT SUPPORTED BY FACTS AND EVIDENCE ON RECORD

IV.

PUBLIC RESPONDENT GROSSLY ERRED IN NOT TAKING INTO ACCOUNT NEWLY DISCOVERED EVIDENCE

V.

PUBLIC RESPONDENT GROSSLY ERRED IN DECLARING THE ASSAILED DECISION FINAL AND UNAPPEALABLE

VI.

PUBLIC RESPONDENT GROSSLY ERRED IN DISAPPROVING THE RECOMMENDATION OF THE OFFICE OF THE LEGAL AFFAIRS

The Office of the Solicitor General (OSG), through its comment filed on June 18, 2001,[10] submits that the Ombudsman's decision was already final and unappealable under Sec. 7, Rule III of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman); that, accordingly, the suspension of 1 month could no longer be reviewed; that the petitioner had no right to appeal, which was not a natural right nor part of due process but merely a statutory privilege, to be exercised only in the manner and in accordance with the provision of law as has been held in many decisions of the Supreme Court; that the legality of the petitioner's re-assignment was not in issue herein; hence, contrary to the petitioner's claim, CSC Resolution No. 001729 (that ruled out the validity of his re-assignment) was not newly-discovered evidence that could alter the outcome of his case; and that the

assailed decision was in accord with law and supported by substantial evidence.

The OSG further submits that even on the merits, the petition could not stand considering that the Ombudsman correctly regarded the petitioner's act of certifying and approving his own claim for EMEs as a violation of regulations; that the Ombudsman cited COA Circular No. 91-368 (The Government Accounting and Auditing Manual or GAAM), specifically Chap. 3, Sec. 50; that the petitioner's authority to approve EMEs did not cover approving his own claim because his powers were limited and qualified by said COA Circular No. 91-368 (GAAM) to the effect that no person or department should be in complete control over a transaction in order to prevent any employee from perpetuating or concealing irregularities alone; that, therefore, that the petitioner could not be the claimant of the EMEs and at the same time be the person to certify and approve the EMEs, such being contrary to the check-and-balance ensured by the pertinent existing circular is thereby violated; that the petitioner's insistence that the Ombudsman's decision contradicted the earlier rulings of the Ombudsman involving similar issues deserved scant consideration; that the records showed that when he accomplished the documents in question, the petitioner had already been relieved of his duties as Deputy Administrator and had been excluded as a signatory of LWUA transactions, leaving him without authority to sign the documents that incidentally referred to his own claim of EMEs; and that, at any rate, the issue of his fitness to be in office had already been laid to rest when he was dismissed from the service by reason of misconduct in office, per LWUA Board Resolution No. 061 dated March 28, 2001.

Respondent Tadiar also submitted his comment on the petition.

We do not give due course to the petition for review.

Sec. 7, Rule III of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman), relevantly 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. xxx

The Office of the Ombudsman undoubtedly had the authority to promulgate its rules of procedure for the effective exercise or performance of its power, functions and duties by virtue of Sec. 18, Republic Act 6770.[11]

Considering that the rule declares that a decision imposing suspension of not more than 1 month, among others, is "final, executory and unappealable," our review authority cannot be exercised. The petitioner was bound by the aforecited rule for it is axiomatic that the remedy of appeal is neither a natural right nor a part of due process, but is merely a statutory privilege, to be exercised only in the manner and in accordance with the provision of the law establishing the right of appeal.[12]

Consequently, the urging of the petitioner that the decision was unfounded and unwarranted cannot be passed upon by us. The rejection of this recourse is, therefore, the only correct thing to do in the premises.

WHEREFORE, the PETITION FOR REVIEW is DENIED DUE COURSE and this appeal is DISMISSED.

SO ORDERED.

Villarama, Jr., and Arevalo-Zenarosa, JJ., concur.

[1] Annex A, petition.

[2] Annex D, petition.

[3] Annex E, petition.

[4] Annex H, petition.

[5] Annex A, petition; rollo, at pp. 31-34.

[6] Annex C, petition.

[7] Annex N, petition.

[8] Annex B, petition.

[9] Last page of Annex B, petition; rollo, p. 38.

[10] Rollo, pp. 331-344.

[11] The Ombudsman Act of 1989.

[12] *Alba v. Nitorreda*, 254 SCRA 753 (1996); *Villanueva v. Court of Appeals*, 205 SCRA 537, 544 (1992); *Tiatco v. Civil Service Commission*, 216 SCRA 749 (1992); *Mendez v. Civil Service Commission*, 204 SCRA 965 (1991).

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