

DROPPING FROM THE ROLLS, CHRISTOPHER BERNARD N. IBANGGA, REGIONAL TRIAL COURT, BR. 132, MAKATI CITY

A.M. NO. 04-10-589-RTC. February 11, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In a letter[1] to the Office of the Court Administrator (OCA) dated 30 July 2004, the Hon. Rommel O. Baybay, Presiding Judge of the Regional Trial Court (RTC), Branch 132, Makati City, requested that his Court Legal Researcher II, Christopher Bernard N. Ibangga, be dropped from the rolls. Ibangga obtained an “UNSATISFACTORY” performance rating with a total point score of 13 for the rating period from 1 January to 30 June 2004.[2]

In support of the said request and attached thereto was a Notice[3] dated 01 July 2004 sent by Branch Clerk of Court Mariano B. Tomas and noted by Judge Baybay informing Ibangga of his performance rating and citing the following reasons therefore:

- You have been very slow in doing the works assigned to you.
- Your works have been unsatisfactorily done due to poor English grammar and composition.
- Against the advice of the Honorable Rommel O. Baybay, Presiding Judge of this branch, you just ceased reporting for work starting 6 April 2004 and came back only on 31 May 2004 after receiving a copy of the 1[st] (E)ndorsement dated 28 May 2004 of the Office of Administrative Services, Supreme Court, Manila, stating, among others, that your temporary appointment has been changed to permanent effective 7 April 2004 pursuant to the Honorable Court’s approval on 13 May 2004.
- You have not demonstrated any willingness to help your officemates who are saddled with voluminous work, in whatever manner you can.

Also attached to Judge Baybay’s request was a letter[4] dated 9 July 2004 from Ibangga to Judge Sixto Marella, Jr., Executive Judge of the Makati City RTC requesting a transfer to another office citing a difference in opinion with Judge Baybay. In the said letter, Ibangga claims that Judge Baybay made it known that he was not inclined to recommend Ibangga’s change of status to permanent. Ibangga claims this was because Judge Baybay wanted a certain “John,” who served as his legal researcher while still a judge of the Metropolitan Trial Court (MeTC), to take the position. We note that this allegation was not refuted by Judge Baybay. Ibangga further stated that on 5 April 2004, Judge Baybay told him to start looking for another job. This prompted Ibangga, a working student and the breadwinner of his family, to leave the court and seek employment elsewhere. Ibangga claims Judge Baybay used this incident to file an administrative case against him.

Finally, in the same letter, Ibangga avers that when he received notice from the OCA on 26 May 2004 that he was given a permanent appointment, he reported for work but found himself deprived of a work station, and any work assignments.

Meanwhile, on 21 July 2004, Judge Baybay filed an Affidavit-Complaint[5] for Gross Insubordination and Absence Without Leave (from 6 April 2004 to 28 May 2004) against Mr. Ibangga, which is the subject of another OCA investigation docketed as OCA IPI No. 04-1974-P. A copy of this Affidavit-Complaint was also attached to the request.

The OCA report[6] indicated that Mr. Ibangga's appointment as Court Legal Researcher II in the RTC, Branch 132, Makati City, on 8 April 2003 was temporary in nature. His status was changed to permanent effective 7 April 2004. Under Civil Service rules, the first six months of service following a permanent appointment shall be probationary in nature, and the probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period.[7]

The OCA further reported that Ibangga filed a protest questioning his "Unsatisfactory" rating. However, upon due deliberation, the OCA Performance Evaluation Review Committee (PERC) in its Resolution dated 05 October 2004, resolved to dismiss the protest for lack of merit and retain the "Unsatisfactory" rating given to Ibangga for the period for the first half of 2004.

The OCA thus recommended that Ibangga be dropped from the rolls for obtaining an "Unsatisfactory" performance rating during his probationary period without prejudice to the outcome of OCA IPI No. 04-1974-P, and that his position as Court Legal Researcher II in the RTC, Branch 132, Makati City, be declared vacant. "However, his separation from the service shall not result in the forfeiture of any benefits he may be entitled to under existing laws nor disqualifying him from reemployment in the government."

This Court will not ordinarily disturb findings of fact of administrative agencies like the OCA. It is axiomatic that in their exercise of adjudicative functions, they are not bound by strict rules of evidence and of procedure. When confronted with conflicting versions of factual matters, it is for them in the exercise of discretion to determine which party deserves credence on the basis of evidence received.[8]

However, as the landmark case of *Ang Tibay v. Court of Industrial Relations*[9] has pointed out, there are "cardinal primary rights which must be respected" in such proceedings. Not the least among them are those which refer to the evidence required to support a decision. Thus:

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support [the] decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." . . .

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [10]

Readily apparent from the thin records of this case is that there is very little to substantiate the allegations in Judge Baybay's complaint save for the OCA's two-page report and recommendation. Indeed, aside from the said report, the records contain only Judge Baybay's letter-request and its accompanying annexes. Nothing is heard from Mr. Ibangga except indirectly, in his letter to Judge Marella requesting a transfer, which, as stated earlier, was attached by Judge Baybay to his letter-request.

We are well aware that the deliberation by the OCA PERC which resolved to retain the "unsatisfactory" rating is accorded a prima facie presumption of regularity. However, even in administrative proceedings, there remains a

quantum of proof necessary before this Court can reasonably accept a conclusion – especially one that would lead to the deprivation of one’s livelihood.

Even if we were to accept the OCA finding that nothing irregular attended the rating of Ibangga as “unsatisfactory,” still, for humanitarian reasons,[11] we find it too harsh to sustain its recommendation to dismiss him from the service for being “slow” in performing the work assigned to him, and because his works were “unsatisfactory” as a result of his poor English, and for not demonstrating “any willingness to help his officemates in whatever manner he could.”[12] At the very least, such broad, subjective statements should have been substantiated by specific instances of his alleged deficiencies.

Ibangga, the breadwinner of his family, is a working student – a manifestation of his sincere desire to improve his lot.[13] Moreover, we are not unaware of the pressures attendant to being a self-supporting student in his final year in law school. Thus, we believe that a suspension for six months without pay is appropriate. It is hoped that this incident will serve as a learning experience for him, as an aspiring member of the bench and bar, to strive always for the highest standards in the performance of ones duties.

ALL THE FOREGOING CONSIDERED, Christopher Bernard N. Ibangga is **SUSPENDED** from office without salary and other benefits for six (6) months, with the **STERN WARNING** that one more transgression will merit dismissal from the service.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga and Garcia, JJ., concur.

[1] Rollo, p. 4.

[2] Rollo, pp. 15-16.

[3] Rollo, p. 6.

[4] Rollo, pp. 7-10.

[5] Rollo, pp. 11-14.

[6] Subject Matter for Agenda, Rollo, p. 1.

[7] Section 4(a), Rule III of CSC Mem. Circ. No. 15, series of 1999.

[8] *Gelmart Industries (Phils) Inc. v. Leogardo, Jr.*, G.R. No. 70544, 5 November 1987, 155 SCRA 403, citing *Halili v. Floro*, 90 Phil. 245 (1951); *Estate of Florencio Buan v. Pampanga Bus Co. and La Mallorca*, 99 Phil. 373 (1956); *Luzon Brokerage Co. v. Luzon Labor Union*, 117 Phil. 118 (1963).

[9] 69 Phil. 635 (1940).

[10] *Id.* at 642.

[11] In *Geocadin v. Hon. Remigio Peña*, (A.M. No. 1092-MJ, 30 October 1981, 108 SCRA 519), a judge found guilty of knowingly rendering manifestly unjust orders, partiality, and drunkenness. The Supreme Court agreed that respondent committed acts unbefitting an occupant of a judicial office but in view of his serious illness which prevented him from presenting evidence other than his comment/answer to the complaint, the constitutional presumption of innocence in his favor and the investigator's recommendation of benignity, respondent judge was

merely reprimanded and made to suffer the forfeiture of 3 months of his salary, to be deducted from whatever retirement benefits he may be entitled to under existing laws.

In *In re: Delayed Remittance of Collections of Teresita Lydia Odtuhan* (A.M. No. 02-10-598-RTC, 11 February 2003, 397 SCRA 222), a court legal researcher of RTC Pasay City was found guilty of serious misconduct in office for failing to remit a P12,705 fund collection to the proper custodian until after a lapse of about three years and only after several demands or directives from the clerks of court and from the OCA. For humanitarian reasons, the Court found dismissal from the service to be too harsh considering that Odtuhan subsequently remitted the entire amount and she was afflicted with ovarian cancer, and imposed upon her a FINE of P10,000, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

In *Sarenas-Ochagabia v. Atty. Balmes Ocampos* (A.C. No. 4401, 29 January 2004), a lawyer failed to file an appellants' brief, and the necessary Manifestation and Motion with the Court of Appeals. The Court noted that for the said offense, it had imposed penalties ranging from reprimand, warning with fine, suspension and, in aggravated cases, disbarment. Owing to his advanced age, the Court imposed the penalty of suspension for 3 months with a warning that a repetition thereof will be dealt with more severely.

In *Re: Misappropriation of the Judiciary Fund Collections By Ms. Juliet C. Banag* (A.M. No. P-02-1641, 20 January 2004) the clerk of Court of MTC Plaridel, Bulacan was found to be in delay in the remittance of her cash collections in hundreds of thousands of pesos constituting gross neglect of duty under the Civil Service Law and the Omnibus Rules implementing it. However, in determining the applicable penalty in this case, the Court took into consideration the lack of bad faith and the fact that she fully remitted all her collections and that she has no outstanding accountabilities. Because of these attendant circumstances, and for humanitarian considerations, the Court merely imposed a fine of P20,000.00 and a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

In *Re: Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semester of 2002 by the Following Employees of this Court: Gerardo H. Alumbro, et. al.* (A.M. No. 00-06-09-SC, 16 March 2004), Susan Belando, Human Resource Management Assistant of the Employees Welfare and Benefit Division, Office of the Court Administrator was found to be habitually tardy for the third time. A strict application of the rules would have justified her dismissal from the service. Instead, for humanitarian reasons, she was meted the penalty of only suspension for thirty (30) days with a warning that she will be dismissed from the service if she will commit the same offense in the future. She then incurred habitual tardiness for the fourth time. However, again, for humanitarian reasons, the Court found a suspension for three (3) months without pay to be appropriate.

Renato Labay, Utility Worker II, Medical and Dental Services and Albert Semilla, Clerk III, Office of the Chief Attorney this Court, were found to be habitually tardy for the second time and were suspended and warned. In the instant case, they committed tardiness for the third time and, therefore, they should be dismissed from the service. Again, for humanitarian reasons and as recommended by Atty. Candelaria, the Court meted instead a penalty of suspension for ten (10) days without pay, with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

[12] Judge Baybay's allegation that Ibangga ceased reporting for work from 6 April 2004 to 31 May 2004, is the subject of a separate OCA investigation, OCA IPI No. 04-1974-P.

[13] *Supra*, *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed by SC Employees.*

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