

AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE CIVIL SERVICE COMMISSION AND NAPOLEON M. MALBUN, RESPONDENTS.

G.R. No. 100599. April 08, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Al-Amanah Islamic Investment Bank of the Philippines, formerly Philippine Amanah Bank (PAB) accuses public respondent Civil Service Commission (CSC) of grave abuse of discretion in imposing the minimum penalty of suspension of one (1) year under CSC Memorandum Circular No. 8, s. 1970 on private respondent Napoleon M. Malbun, the Branch Manager of the bank in Cagayan de Oro City. The bank deemed the penalty incommensurate with the CSC's finding that the private respondent was guilty of a serious grave misconduct.

The facts of the case are not disputed. They are stated in the CSC's Resolution No. 90-1014, to wit:

"Respondent/Appellant Malbun was formally charged by the then PAB Acting President Farouk A. Carpizo for Neglect of Duty, Inefficiency and Incompetence arising from the alleged unauthorized and illegal encashment of commercial checks drawn against uncleared and unfunded deposits. Said checks were all deposited, through a series of several deposits, in the Savings Account of one Portri Gandarosa in the PAB, Cagayan de Oro Branch. The transactions under question covered the period from January 28, 1986 to September 5, 1986. The alleged deposits were allegedly approved by the former Cashier, Zenaida B. Sayson and all withdrawals were made and approved by the said branch accountant and approved by the Respondent/Appellant as Branch Manager. Be it noted, that during those times of the alleged commission of the said irregularities, Respondent/Appellant Malbun was then the Manager of the Cagayan de Oro Branch.

The then PAB Acting President created an Investigating Committee, which after due notice and hearing, submitted the following findings and recommendation, as follows:

‘There is no proof that respondent Malbun tolerated the anomalies nor is there any showing that he benefited directly or indirectly from the transactions to the detriment of the bank and therefore he is presumed to have acted in good faith. But for his failure to give a convincing proof that he exercised due care and diligence like a good father of a family in the performance of his duties, respondent Napoleon M. Malbun is hereby found guilty of NEGLIGENCE OF DUTY.

x x x x x x x x x x

Respondent joined the bank on April 16, 1974. Under the Civil Service Rules, Neglect of Duty is a light offense. Credited in his favor are three (3) mitigating circumstances (length of service, first offense and good faith) with no aggravating circumstances, hence, the imposable penalty would be the minimum for light offense. (Reprimand or fine or suspension from one to ten days in its minimum period.).’

Upon receipt of the report of the Investigating Committee, the same was referred by the then PAB Acting President to the Corporate Secretary, Atty. Ernesto Duran for comment and recommendation, who recommended that Respondent/Appellant Malbun should be charged of either Misconduct or Conduct Prejudicial to the Best Interest of the Bank; that nevertheless, even under the charge of Neglect of Duty for which he was found guilty by the Investigating Committee, a higher penalty is imposable under CSC Memorandum Circular No. 8, s. 1970; that Malbun must also be found guilty of violating the Central Bank's Manual of Regulations for Banks and other Financial Intermediaries; and that contrary to the findings of the Investigating Committee that there are no aggravating circumstances, abuse of confidence should be considered against him.

The then PAB Acting President submitted both the Report of the Investigating Committee and the recommendation of Atty. Duran to the PAB Board of Directors for appropriate action.

The PAB Board of Directors, in its Resolution No. 1714-K, dated March 7, 1989, resolved to approve the finding of the Investigating Committee that Respondent/Appellant Malbun is guilty of Neglect of Duty with an imposable penalty of 'Forced Resignation without prejudice to Reinstatement.'

Respondent/Appellant Malbun appealed to the MSPB, which found out and ruled, as follows:

'After a careful and thorough evaluation of all the records of the case, this Board agrees with the findings of the Investigating Committee that there is no proof that respondent-appellant Malbun tolerated the anomalies nor is there any showing that he benefited directly or indirectly from the transactions to the detriment of the Bank and therefore is presumed to have acted in good faith. However, for his failure to exercise due care and diligence of a good father of a family in the performance of his duties and observance of his obligation, respondent Malbun is hereby found guilty of Neglect of Duty and is hereby meted the penalty of suspension for six (6) months notwithstanding the presence of mitigating circumstances of length of service considering that the Bank suffered loss of money. Loss or abuse of confidence cannot be considered as an aggravating circumstance being analogous to the other grave circumstances as contended by the Acting President of the Philippine Amanah Bank." (Rollo, pp. 35-37)

x x x x x x x x

"After a review of the facts and documents submitted pertaining to the instant appeal, the Commission finds Respondent/Appellant Malbun guilty not only of 'Gross Neglect of Duty,' which is a less grave offense under CSC Memorandum Circular No. 8, s. 1970 but also of 'Grave Misconduct and Conduct Prejudicial to the Best interest of the Service' which are grave offenses under the same Memorandum Circular. In this regard, as correctly alleged by the then PAB Acting President Carpizo in his 'Comment on Appellant's Appeal to the MSPB' dated July 26, 1989, thus:

'The appellant is fully aware that his previous position as Branch Manager of Cagayan de Oro is lodged with very high responsibility. The exercise of his responsibilities is not merely ministerial but laden with decision making. Out there, in his own branch, he is a little president whose actuation and decision must be endowed with great prudence and care lest incompetence and inefficiency will result into financial loss. x x x x x.

True, it is the Branch Cashier, Zenaida Sayson, that solely approved the series of withdrawals against unfunded deposits. But the appellant was fully aware that under the Bank's Manual on Signing Authority, a Branch Cashier is authorized to approve cash withdrawals up to P5,000.00 and beyond such amount the approval of the Branch Manager is required. x x x x x.

The series of unauthorized withdrawals made upon the sole authority of the Cashier ranges from a minimum withdrawn amount of P10,000.00 to a maximum amount of P86,500.00 blatantly beyond the authority of the

Cashier. And what was aggravating was the fact that it was committed thirteen (13) times under the very nose of the appellant from 28 January 1986 up to 05 September 1986. Yet due to the sheer incompetence, appellant even approved the series of accountant's blocking sheets containing and showing the unauthorized withdrawals made by the Branch Cashier. x x x x x.

x x x x x x x x

The argument of the appellant that the approval of the Accountant's blocking sheets does not mean approval of the irregular transactions is flimsy and incongruous with the Bank's Job Description Manual which provides that:

I. Basic Function of the Branch Manager

Assumes direct control, responsibility for and supervision over activities and business affairs of the Branch.

II. Responsibilities

Reviews daily transactions and results of operations; analyzes trends in deposit, withdrawals, clearing operations; cash position, fund transfers, loaning grants and collection.

From the foregoing, it is crystal clear therefore that the function and responsibilities of a Branch Manager is (sic) not merely ministerial but laden with decision-making and analysis of transactions and results of operation, particularly those involving money matters.

In the instant case, when the appellant was then a Branch Manager, he was expected and presumed to have read, reviewed and analyzed the contents of the Accountant's blocking sheets containing the anomalous transactions including the supporting proof sheets and withdrawal slips made on the unfunded deposits. But the appellant was remiss in observing even the ordinary care and prudence in the discharge of his function and responsibilities. How can he argue that his approval of the Accountant's blocking sheet does not mean he approved of the irregular transaction, when under the Bank's Job Description Manual, he is responsible and duty bound to review daily transactions and results of operations, analyze trends in deposit withdrawals, clearing operations, cash position, fund transfers, loan grants and collections which were all reflected, stated and contained in the Accountant's blocking sheets.

'By affixing his signature in the Accountant's blocking sheets which contain and carry the irregular transactions he is grossly incompetent and negligent in the observance and discharge of his duties and responsibilities spelled out in the Bank's Job Description Manual.'

Be it noted that the Investigating Committee, the PAB Board of Directors and the MSPB are one in their findings that Respondent/Appellant Malbun is guilty of 'Neglect of Duty.' However, based on the facts and circumstances of the instant case vis-a-vis CSC Memorandum Circular No. 8, s. 1970, which does not penalize 'Neglect of Duty' but 'Gross Neglect of Duty' as a less grave offense, respondent/appellant Malbun should have been charged and found guilty of 'Gross Neglect of Duty.' Nevertheless, considering that he is now found guilty of the said offense by this Commission based on the aforesaid allegations, he should also be penalized for 'Serious/Grave Misconduct' and 'Conduct Prejudicial to the interest of the Banking System.' The Supreme Court in the case of *Oyao v. Pabatao* (78 SCRA 93) ruled that a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer is a Serious Misconduct. A Serious or Grave Misconduct is a grave offense under the said CSC Memorandum Circular No. 8, s. 1970. Be that as it may, considering the existence of the two (2) mitigating circumstances of length of service in the government service and first offense and the aggravating circumstance of abuse of confidence, the minimum of the penalty for grave offense under CSC Memorandum Circular No. 8, s. 1970 of suspension of one (1) year is imposable." (Rollo, pp. 38-40)

The petitioner bank filed a motion for reconsideration of the aforesaid resolution stating therein that the

circumstance of prior conviction of the private respondent in 1979 for “neglect of duty as charged and upon suspension from the service for four (4) months effective upon receipt of this approval, xxx” (Rollo, p. 11) should be considered in determining the proper penalty (which should be dismissal) to be imposed on the private respondent.

The CSC, however, refused to consider this "prior conviction" of the private respondent on the ground that this is not a newly discovered evidence and that the petitioner in its exercise of reasonable diligence could have discovered and produced the document during the hearing conducted or could have presented the same in its appeal to the Merit Systems Protection Board (MSPB) as well as in the Commission.

In a resolution dated November 14, 1991, we gave due course to the petition.

The petition is impressed with merit.

Section 695 of the Revised Administrative Code of 1917 provides that a civil service subordinate officer or employee, may for neglect of duty or violation of reasonable office regulations x x x be removed from the service. Moreover, Memorandum Circular No. 8, Series of 1970 of the Civil Service Commission (Guidelines in the Application of Penalties) provides the penalties for grave offenses, to wit:

- "1. Transfer or demotion in rank or salary from two to three grades or suspension for one year in its minimum period.
2. Forced resignation without prejudice to reinstatement to forced resignation with prejudice to reinstatement in its medium period.
3. Dismissal in its maximum period."

The following are considered mitigating circumstances:

- "1. Physical illness
2. Good faith
3. Length of service in the government.
4. Analogous circumstances."

The Civil Service Commission considered as mitigating circumstances: (1) length of service, and (2) first offense. The CSC also considered abuse of confidence as aggravating circumstance.

The records show that the private respondent joined the bank on April 16, 1974. He committed the offense in 1986. Hence, there is no dispute that length of service in the government can be considered a mitigating circumstance in his favor.

However, we do not agree that the mitigating circumstance of first offense can be considered in favor of the private respondent.

It is to be noted that the private respondent was found guilty of approving a series of accountant's blocking sheets containing and showing thirteen (13) transgressions of the branch cashier wherein the latter approved unauthorized withdrawal against unfunded deposits ranging from P10,000.00 to P86,570.00 which are beyond the P5,000.00 limit that a branch cashier is authorized to approve as regards cash withdrawals to the detriment of the petitioner bank. In fact, the petitioner bank lost P597,450.05 as a result of these unauthorized withdrawals. Under these circumstances, we cannot categorize the private respondent's grave misconduct as first offense. The private respondent committed thirteen (13) offenses at different times. The private respondent's repeated transgressions,

standing alone, warrant dismissal. Thus, we ruled in the case of *Philippine National Bank v. Intermediate Appellate Court* (187 SCRA 757 [1990]):

"The Court of Appeals reduced the penalty from dismissal to suspension for six (6) months without pay by reason of mitigating circumstances--good faith and disparity between the penalties imposed on the respondent and on other implicated offenders. While it may indeed be questionable that other persons were not as severely punished, (unfortunately they are beyond the court's reach), petitioner's repeated violations (92 times), standing alone, merit dismissal. In *Policarpio v. Fajardo* (Adm. Matter No. P-312, 78 SCRA 210), gross misconduct in office by a sheriff was punished by dismissal from the service with forfeiture of all benefits. This was reiterated in *Abdulwahid v. Reyes* (Adm. Matter No P-902 & 926, Jan. 31, 1978; *Antonio v. Diaz*, Adm. Matter No. P-1568, 94 SCRA 890), where a deputy sheriff found guilty of serious misconduct in office was likewise dismissed. Good faith cannot be appreciated in favor of private respondent considering the repeated violations." (at p. 762)

Moreover, we agree with the petitioner that "prior conviction" should have been considered by the Commission in imposing the proper penalty on the private respondent although it was presented only in the petitioner's motion for reconsideration/motion for new trial.

It is true that the document showing the private respondent's prior conviction in 1979 is not a newly discovered evidence but "forgotten evidence" considering that the same already existed or was available before or during the trial which was known and obtainable by the petitioner bank and could have been presented were it not for the oversight or forgetfulness of the petitioner (Tumang v. Court of Appeals, 172 SCRA 328 [1989]), and therefore, applying rigid technical rules, such document is not admissible as evidence against the private respondent. However, administrative agencies like the Civil Service Commission exercising quasi-judicial functions are free from the rigidity of certain procedural requirements. (*Esquig v. Civil Service Commission*, 188 SCRA 166 [1990]) We rule that in the case of the document showing prior conviction of the private respondent, such should have been admitted considering that it is a public document and within the judicial notice of the Commission. Section 12(4) of Chapter 3, Book VII of the Revised Administrative Code of 1987 provides:

"Sec. 12. Rules of Evidence. -

In a contested case:

(1) x x

(2) x x

(3) x x

(4) the agency may take judicial notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed." (Official Gazette, Vol. 83, No. 39, p. 171)

The Commission is the central personnel agency of the government. It is the repository of all government appointments as well as all records of final decisions in administrative cases against government employees. Hence, it is deemed to have judicial notice of such prior conviction of the private respondent. What the Commission should have done, therefore, was to notify the private respondent to rebut such document. At any rate, the records reveal that the document showing prior conviction of the private respondent is indisputable. Necessarily, even if we consider the private respondent's repeated violations as one offense, the admission of this document would readily reveal that this is not his first offense.

But the Commission also applied CSC Memorandum Circular No. 6, Series of 1991, to wit:

"x x x [I]n the appreciation of any mitigating circumstances in favor of the respondent in an administrative case and/or aggravating circumstances against him, the same must be invoked or pleaded by the proper party, otherwise the said circumstances shall not be considered in the determination of the proper penalty to be imposed against the respondent concerned." (Rollo, pp. 56-57)

to the instant case. The Commission held that the Memorandum Circular should be applied retroactively insofar as it benefits the respondent but it would not be applied to increase the penalty imposable to the private respondent otherwise this will be tantamount to violating the prohibition on ex-post facto law as the Memorandum was issued after the commission of the offense.

The records show that the Circular was filed with the University of the Philippines Law Center only on May 17, 1991. Section 4, Chapter 2, Book VII of the Revised Administrative Code of 1987 provides that "x x each rule shall become effective fifteen (15) days from the date of filing x x x." The Commission issued its resolution on March 21, 1991. Verily, the Commission erred in applying the said circular insofar as it benefited the private respondent. The Memorandum Circular was not yet in effect at the time. The well-entrenched principle is that "a statute operates prospectively only and not retroactively, unless the legislative intent the contrary is made manifest either by the express terms of the statute or by necessary implication." (Nilo v. Court of Appeals, 128 SCRA 519 [1984] cited in Puzon v. Abellera, 169 SCRA 789 [1989]). We rule that the same principle is applicable to administrative rules and regulations issued by the government agencies in their duty to implement laws. The Memorandum Circular does not indicate that it should be applied retroactively, hence the general rule that a statute operates prospectively must be followed.

With the foregoing considerations, the only remaining mitigating circumstance in favor of the private respondent is length of service. This is, however, offset by the aggravating circumstance of abuse of confidence found by the Commission. Under these circumstances, we rule that the proper penalty for the repeated offenses committed by the private respondent against the beneficial interest of the petitioner is dismissal from the government service with forfeiture of benefits.

And finally, the Civil Service Commission totally ignored the fact that the respondent is a Bank Manager who is in charge of daily transactions involving millions of pesos. There is a tremendous difference between the degree of responsibility, care, and trustworthiness expected of a clerk or ordinary employee in the bureaucracy and that required of bank managers, cashiers, finance officers, and other officials directly handling large sums of money and properties.

The standards in the interpretation of good faith, due care, diligence of a good father of a family, neglect of duty, grave misconduct and conduct prejudicial to the interest of the service are not rigid or inflexible terms to be applied like the bed of Procrustes without considering attendant circumstances. Certainly, a bank manager who did not learn from an earlier four months suspension for neglect of duty in 1979 and who allowed kiting operations under his very nose to happen in 1986 until his bank lost P597,450.05 should not be returned to his former position as Bank Manager. There is no room for negligence and carelessness in managing a bank.

WHEREFORE, the instant petition is GRANTED. The questioned Resolutions of the Civil Service Commission are REVERSED and SET ASIDE. Private respondent NAPOLEON M. MALBUN is ordered DISMISSED from the government service with forfeiture of benefits.

SO ORDERED.

Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.

Narvasa, C.J., on leave.

Bellosillo, J., no part. Did not participate in deliberations.

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