

**TOMAS B. CARLOS, PETITIONER, VS. CIVIL SERVICE COMMISSION,
DEPARTMENT OF TRANSPORTATION AND COMMUNICATION
(DOTC), AND ROGELIO A. DAYAN IN HIS OFFICIAL CAPACITY AS A
GENERAL MANA...**

G.R. No. 105293. December 07, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an amended petition for certiorari under Rule 65 of the Revised Rules of Court and Article IX-A, Section 7 of the Constitution to nullify: (a) Resolution No. 91-1314 of the Civil Service Commission (CSC), which set aside the decision of the Merit Systems Protection Board (MSPB) holding that the Department of Transportation and Communication (DOTC) has no jurisdiction to discipline petitioner, an employee of Philippine Ports Authority (PPA) and (b) Resolution No. 92-534 of the CSC, which denied the motion for reconsideration of petitioner.

On November 8, 1976, petitioner was appointed as an Engineer of the PPA and in 1988, he was promoted to the position of Supervising Civil Engineer.

On September 19, 1988, respondent Rogelio A. Dayan, the PPA General Manager, filed with the DOTC Secretary an administrative complaint against petitioner and Cristelo E. Dinopol, for dishonesty, conduct prejudicial to the best interest of the service and violation of the Anti-Graft and Corrupt Practices Act (Administrative Case No. AAB-016-88). On the same day, petitioner and Dinopol were placed under preventive suspension.

On November 23, 1988, the DOTC Secretary rendered his decision in the administrative case, finding petitioner and Dinopol guilty of dishonesty and conduct prejudicial to the best interest of the service.

On August 3, 1989, the DOTC Secretary denied the motion for reconsideration.

Petitioner appealed the DOTC decision to the MSPB.

On March 25, 1991, the MSPB rendered a decision setting aside the decision of the DOTC for lack of jurisdiction and holding that it is the PPA, not the DOTC, that has jurisdiction to discipline PPA employees. Respondent Dayan, as complainant in the administrative case, appealed from the decision of the MSPB to the CSC.

On October 25, 1991, the CSC promulgated Resolution No. 91-1314, reversing the decision of the MSPB and reinstating the DOTC Secretary's decision.

Petitioner's motion for reconsideration of the CSC resolution was denied by the CSC in its Resolution No. 92-534.

Hence, this petition.

Asked to comment on the petition, the Solicitor General agreed with petitioner that the DOTC Secretary has no original jurisdiction to discipline petitioner and that he should be reinstated pending the administrative investigation by the PPA General Manager. The Solicitor General cited the decision of this Court in *Beja v. Court*

of Appeals, 207 SCRA 689 (1992), holding that under P.D. No. 857, the power to investigate employees of the PPA below the rank of Assistant Manager belongs to the General Manager, subject to the approval of the Board of Directors.

The Solicitor General manifested that following the Beja case, the PPA had set aside the decision of the DOTC Secretary dated November 23, 1988 and that it would conduct a reinvestigation of the case of petitioner. The Solicitor General, however, commented that petitioner was not entitled to back wages because the merits of the charges against him had not yet been ventilated.

In reply to the Comment of the Solicitor General, petitioner insisted that he was entitled to the payment of back wages because he had been cleared of the charges against him.

This Court, in *Beja v. Court of Appeals*, supra, held that the DOTC Secretary can not initially investigate PPA personnel below the rank of Assistant Manager because under P.D. No. 857, the power to investigate said personnel belongs to the General Manager of the PPA. The decision of the PPA General Manager is subject to the approval of the Board of Directors. An employee adversely affected by the decision of the PPA General Manager and the Board of Directors, at his option, may appeal to the DOTC Secretary or to the Civil Service Commission. Beja made clear that the PPA General Manager should first conduct an investigation of any complaint against a PPA employee and recommend to the Board of Directors the appropriate penalty.

Beja was reiterated in *Corona v. Court of Appeals*, 214 SCRA 378 (1992) where we stressed that under the PPA Charter and the Civil Service Law, the DOTC Secretary, whose jurisdiction is merely appellate, does not have the power to initially conduct administrative investigation of subordinate officials of the PPA.

The questioned CSC resolutions, must perforce, be set aside.

The remaining issue to be decided is whether petitioner should be paid his back wages. The Solicitor General's position is that the payment of petitioner's back salaries be withheld, considering that he has not yet been cleared of the administrative charge against him. Petitioner counters that he has been cleared of the administrative charge by the PPA and of the criminal case by the Sandiganbayan (Rollo, pp. 94-97; pp. 107-155).

Petitioner relies on the following pronouncement of the Administrative Action Board of the DOTC (AAB-DOTC) dated November 23, 1989, stating:

"The mere fact therefore, that both respondents have allegedly been cleared by the Philippine Ports Authority did not make said resolution final, for the same had not been confirmed by the Secretary, Department of Transportation" (Rollo, p. 35).

As the Solicitor General argued, the AAB-DOTC simply made reference to petitioner's allegations and the reason as to why said allegations were rejected (Rollo, p.159).

There is therefore, no evidence on record as to the existence of any decision of the PPA General Manager, dismissing the administrative complaint against petitioner, much less a resolution of the PPA Board of Directors approving the action of the PPA General Manager.

Neither can the decision of the Sandiganbayan in *People v. Dinopol*, Criminal Case No. 15268, Oct. 30, 1991, be used to dismiss the administrative case against petitioner. In that decision, the Sandiganbayan acquitted the co-respondent of petitioner in the administrative case of violation of the Anti-Graft and Corrupt Practices Act.

The quantum of evidence required in an administrative case is less than that required in a criminal case. While both criminal and administrative proceedings may involve the same operative facts, the former requires proof of guilt beyond reasonable doubt while the latter only requires a preponderance of evidence (*Icasiano, Jr. v.*

Sandiganbayan, 209 SCRA 377 [1992]).

Petitioner's recourse lies with the PPA.

WHEREFORE, the questioned Resolutions of the Civil Service Commission are REVERSED and SET ASIDE.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Melo, Puno, and Vitug, JJ., concur.

Bellosillo, J., on leave.

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