

ORLANDO T. MENDOZA, PETITIONER, VS. CIVIL SERVICE COMMISSION, AND JOSE G. MACAPINLAC IN HIS CAPACITY AS MUNICIPAL MAYOR OF TARLAC, TARLAC, RESPONDENTS.

G.R. No. 105685. July 05, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to annul and set aside Resolution No. 92-213 dated February 4, 1992 of the Civil Service Commission (CSC), which ordered the dismissal of petitioner from the government service.

We dismiss the petition.

I

Petitioner, was a Senior Revenue Inspector serving under a permanent appointment in the Office of the Treasurer of Tarlac, Tarlac.

In a letter dated March 10, 1989, Jose G. Macapinlac, the incumbent Municipal Mayor of Tarlac, ordered petitioner to explain within 72 hours from receipt thereof why no administrative and criminal charges should be filed against him for falsification of realty tax receipts and unauthorized collections of real estate taxes. The said letter-complaint was sent on March 16 by registered mail to petitioner's office at the Office of the Municipal Treasurer of Tarlac (Registry Receipt No. 5151). The return card showed that the letter-complaint was received on March 17.

Respondent Mayor, not having received any answer from petitioner, rendered a letter-decision dated April 6, 1989, dismissing petitioner from the service. A copy of the letter-decision was sent to petitioner by registered mail on April 7 (Registry Receipt No. 6486). The return card showed that the letter-decision was received on April 11.

According to petitioner, when he was not able to draw his salary by the third week of April, he made several inquiries. It was then that he was handed the letter-decision dated April 6, 1989, ordering his dismissal from the service (Rollo, p. 13).

In a letter dated April 18, 1989, petitioner asked for a reconsideration of the letter-decision dated April 6, 1989, alleging that he was never furnished a copy of the letter-complaint dated March 10, 1989 and that he was not afforded the right to present his evidence at a formal hearing (Rollo, p. 15).

According to respondent Mayor, he did not act on the motion for reconsideration because, while it was dated April 18, 1989, it was filed only on July 4, 1989.

On May 30, 1990, petitioner appealed the letter-decision dated April 6, 1989 of respondent Mayor to the Merit Systems Protection Board (MSPB). Petitioner reiterated before the MSPB the same arguments contained in his

motion for reconsideration dated April 18, 1989 filed with respondent Mayor (Rollo, pp. 16-20).

Respondent Mayor moved for the dismissal of the appeal, contending that it was filed 395 days after the letter-decision appealed from had become final and executory. The MSPB denied the motion to dismiss the appeal and directed respondent Mayor to file his comment to petitioner's appeal.

Not receiving any comment from respondent Mayor, the MSPB considered the matter submitted for decision. On May 31, 1991, it rendered a decision setting aside the letter-decision dated April 6, 1989 and reinstating petitioner to his former position. It held that the period for appeal of petitioner from the letter-decision dated April 6, 1989, was suspended by the filing of the motion for reconsideration dated April 18, 1989 and that petitioner was denied due process when the letter-decision dated March 10, 1989, dismissing him was rendered ex-parte.

On July 12, respondent Mayor appealed the decision of the MSPB to the CSC (Rollo, pp. 27-39).

On February 4, 1992, the CSC reversed the decision of the MSPB, holding that petitioner's appeal to the MSPB was filed out of time and that at any rate, petitioner was accorded due process.

Hence this petition.

II

Petitioner raises the following issues:

"WHETHER OR NOT HIS DISMISSAL FROM THE SERVICE VIOLATED DUE PROCESS REQUIREMENTS.

WHETHER OR NOT HIS APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD WAS PERFECTED ON TIME" (Rollo, p. 5).

As to the first issue, we agree with the CSC that petitioner was afforded due process and opportunity to be heard.

Petitioner insists that he was never furnished a copy of the letter-complaint of March 10, 1989, which directed him to answer the charges contained therein within 72 hours from receipt thereof.

The CSC believed otherwise, relying on the evidence on record showing that the letter-complaint was sent by registered mail to petitioner's address at the Office of the Municipal Treasurer of Tarlac on March 16, 1989 as shown by the Tarlac Post Office Registry Receipt No. 5151 and was received by someone in that office on March 17, 1989 as shown by the registry return card. It is a common practice that letters addressed to an official or employee in a government office are received by an employee assigned to handle mail matters.

In his motion for reconsideration dated April 18, 1989, petitioner did not question the failure of respondent Mayor to serve him the letter-complaint. Instead, he claimed that while the letter-complaint directed him "to answer the adverse allegations contained therein," it did not apprise him of his right to counsel and therefore was constitutionally defective. Another telling point in his motion for reconsideration is his admission therein that he may be deemed to have waived his right to answer the complaint.

Petitioner claims that he had filed his motion for reconsideration dated April 18, 1989 of the letter-decision within the reglementary period and said filing suspended the period for appeal to the MSPB.

The records of respondent Mayor show that a copy of the letter-decision dated April 6, 1989 was sent by registered mail on April 7, 1989 and received on April 11, 1989. Petitioner therefore had only until April 26, 1989 within which to file said motion for reconsideration.

Instead of filing a motion for reconsideration on or before April 26, 1989, petitioner filed such a motion only on July 4, 1989. The rubber-stamp mark of the date of receipt of the motion for reconsideration dated April 18, 1989 by the Office of the Municipal Mayor of Tarlac showed the date "7-4-89." Petitioner could have easily refuted this stamped date by showing his own copy, bearing the date of receipt thereof, if it was personally delivered, or the registry receipt and return card, if it was posted. Noteworthy also is the fact that petitioner never mentioned in any of his pleadings the date when he filed said motion.

This prompted a berating from the CSC which noted:

"The commission upon verification of this crucial factual issue, found the above contention not only to be devoid of merit but likewise discovered in the process a deliberate attempt on the part of the appellee Mendoza and his former counsel to mislead the MSPB and the commission in arriving at the true facts of the case. This conclusion is based on two factual findings, namely: 1) The copy of the aforesaid letter of reconsideration attached by the appellee in his pleadings does not bear any stamp mark indicating as to when the same was received 'by the addressee, whereas in the copy furnished by the appellant of the same letter of reconsideration, the stamp mark being adverted appears on the upper right portion thereof; 2) The pleadings filed by the appellee is (sic) bereft of any allegation specifically indicating the date when the said letter of reconsideration actually filed or received by the appellant. In view of these circumstances, the commission is more inclined to believe that said letter of reconsideration was actually filed and received by the appellant on July 04, 1989. Such being the case, appellant is therefore correct in saying that the said letter of reconsideration cannot operate to interrupt the running of the period to appeal because at the time of its filing, the decision had already become final and executory" (Rollo pp. 43-44).

Even assuming that petitioner received a copy of the letter-decision only in the third week of April 1989, his filing a motion for reconsideration thereof only on July 4, 1989 was tardy. Under Section 49(1), Title I(a), Book V of E.O. No. 292, a party aggrieved by a decision in an administrative disciplinary proceeding has only 15 days from receipt of the decision within which to appeal or file a motion for reconsideration.

Petitioner also contends that even if his appeal was filed beyond the prescriptive period, his case still falls within the ambit of our ruling in *Mangubat v. De Castro*, 163 SCRA 608 (1988). In that case, we held that administrative rules of procedure shall be construed liberally in order to promote their object and assist the parties in claiming just, speedy and inexpensive determination of their respective claims and defenses.

But, before procedural rules can be relaxed to give way to substantive justice, it is implicit that such liberality be applied in a proper case (*Sps. Luis Ilasco Jr. v. Court of Appeals*, G. R. No. 88983, December 14, 1993). We do not consider the instant petition a proper case.

Aside from claiming that the charges against him were politically motivated, petitioner never explained the discrepancies in the official receipts he had issued and the apparent tampering thereof. In a motion wherein movant seeks the relaxation of procedural rules in order to allow him to present evidence in his behalf, he has to show *prima facie* that he has a meritorious defense.

Petitioner has only himself to blame for his present predicament. It is too late in the day for him to claim that his separation from the service was done *ex-parte* and without affording him an opportunity to be heard on his defense.

III

We decided this case with full awareness of the decisions in *Paredes v. Civil Service Commission*, 192 SCRA 84, (1990) and *Mendez v. Civil Service Commission*, 204 SCRA 965 (1991), where we held that only the respondent in the administrative disciplinary case, not the complainant, can appeal from a decision of the Merit Systems

Protection Board (See also *Magpale v. Civil Service Commission*, 215 SCRA 398 [1992]). These decisions were anchored on the interpretation of Section 39(a) of P. D. No. 807, the "Philippine Civil Service Law," which provides that appeals to the CSC shall be made by "the party adversely affected by the decision." We interpreted the quoted phrase as referring to the respondent in the administrative case.

When private respondent appealed the decision of the MSPB to the CSC, petitioner never questioned the propriety of the appeal and preferred to defend the correctness of the decision. Likewise, petitioner failed to question before this Court the right of private respondent to appeal from the decision of the MSPB. We treat such inactions of petitioner as a waiver on his part to question the authority of the CSC to review the decision of the MSPB. A law limiting the right to appeal to the respondent in the administrative case is a rule of procedure, not of substantive law. Failure to invoke timely a rule of procedure in favor of a party constitutes a waiver thereof (*Republic v. Judge Villanueva*, G.R. No. 83333, February 13, 1989, En Banc, Minute Resolution).

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

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

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