

**PAT. EDGAR M. GO, INP., PETITIONER, VS. NATIONAL POLICE COMMISSION, RESPONDENT.***G.R. No. 107845. April 18, 1997*

Ponente: MENDOZA, J.

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Petitioner Edgar M. Go had been a member of the Olongapo City Police Department since April 18, 1974. On December 16, 1983, he was dismissed for alleged involvement in illegal gambling, more particularly the operation of jai-alai bookies. The decision,<sup>[1]</sup> dated November 24, 1983, of the Summary Dismissal Board No. 2 of the PC/INP Regional Command No. 3 at Camp Olivas, San Fernando, Pampanga, stated:

Investigation reveals that on 21 January 1983 at about 9:00 o'clock in the evening, a team of military personnel raided the house of the respondent at No. 18 Murphy St., Pag-asa, Olongapo City. The raiding team were able to apprehend fifteen (15) persons inside the house of PAT. EDGAR GO to include his wife, Minda Go. Lieutenant Paterno Ding PC, the leader of the raiding team was able to confiscate the amount of One Thousand (P1,000.00) Pesos, assorted papelitos, ballpen and calculator used in the operation of Jai Alai Bookies.

Investigation further reveals that another raid was conducted for the second time at the house of PAT. EDGAR GO. Major Jaime Garcia, Deputy Commander of Olongapo Metrodiscom Command in his written report to the Olongapo Metrodiscom Commander stated that on 16 June 1983 PAT. EDGAR GO, together with his brother, Lolito Go were both involved in Jai Alai Bookies which were being committed right at the house of the respondent. Witnesses like Rodolfo Ablaza and Rolando dela Fuente admitted that they were the collector of PAT. EDGAR GO and Lolito Go in the operation of Jai Alai Bookies.

It was further discovered during the investigation of the case that the first raid conducted on 21 January 1983, a criminal complaint was filed before the City Court of Olongapo City against the wife and brother of the respondent respectively. But PAT. EDGAR GO approached the Metropolitan Commander for a favor to dismiss the case against his wife and brother with the promise that the Jai Alai activities committed in his residence will be stop once and for all. The Fiscal later on dismissed the case for insufficiency of evidence for failure on the part of the raiding team to prosecute the case. Moreover, when the second raid was conducted it was proven that illegal Jai Alai activities was still going on in the residence of the respondent.

On the other hand, respondent inspite of several notices failed to appear before the board in order to refute the charges against him. The board in its desire to base the instant case with impartiality, objectivity and legality has to postpone the hearing of the case for several times, just to allow the respondent and his witnesses to appear before the Board, but all our efforts proved futile with the refusal of the respondent to appear before the Board in spite of all notices duly served to him by the [illegible] Metropolitan District Command. So, after four (4) months of several postponements, the Board proceeded with the hearing and considered the non-appearance of the respondent as a waiver on his part to present his evidence.

The Board after receiving both the written and oral evidences/testimonies, has concluded that it would be inconceivable for an ordinary man to believe that Pat. Edgar Go, a policeman at that, would not be able to

know what is going on inside his own residence, as a matter of fact, he made a promise to the Olongapo Metrodiscom Commander that such illegal activities will never happened again and yet same was proven to be existing when the second raid was conducted. While it is true that on 16 June 1983 and 21 January 1983 complainant was in his official assignment, it was clearly established that PAT. EDGAR GO has the full knowledge on the existence of the illegal Jai Alai activities and even those apprehended during the first and the second raid implicated the respondent.

PD 1707 in relation to Memorandum agreement between NAPOLCOM and Director General, INP dated November 24, 1980 provides that a syndicate crime and tong collection are serious offenses against an INP members and is therefore within the jurisdiction of the dismissal authorities.

Petitioner was informed of his dismissal in a memo, dated December 20, 1983, by Lt. Col. Ferdinand A. Lagman, District Superintendent, INP of the Olongapo Metropolitan District Command.[2] He appealed to the Director General of the PC/INP, complaining of denial of due process. He claimed that no copy of the complaint with supporting affidavits had been served on him as required by NAPOLCOM Resolution No. 81-01; that he was simply ordered by radio to appear before the summary dismissal board for investigation; that he went to attend the hearing on May 9, 1983 but neither the complainant nor his witnesses were present and he was advised by the board's chairman, a certain Colonel Cinco, to secure the services of a lawyer for the next hearing; that at the hearing on September 6 or 9, 1983, the members of the board and complainant and his witnesses were again absent; that the third hearing scheduled on September 21, 1983 was also postponed because of the absence of the members of the board; that although a hearing had allegedly been held on October 19, 1983, he was not able to attend it because he had not been previously notified; that he heard nothing more about the case until he was informed of the decision dismissing him, a copy of which was received by him only on February 20, 1984.

Petitioner claimed that had he been allowed to cross-examine the witnesses against him, he could have shown that Rodolfo Ablaza and Rolando de la Fuente, who, according to the board's decision said they had worked as jai-alai collectors of petitioner and his brother, subsequently executed affidavits in which they said they had been misled into signing their prior statements. Finally, petitioner argued that, in any event, his dismissal should have taken effect only upon his receipt of a copy of the decision on February 20, 1984 and not on December 16, 1983. He cited his 11 years of service in the police department and various awards and commendations which had been given to him and prayed that he be exonerated and reinstated to the police department and paid back salaries, from the time of his dismissal to the time of his reinstatement, and other reliefs to which he might be entitled.

Petitioner's appeal was denied as the Director General of the PC/INP noted in a decision, dated August 21, 1990, that "there appears a factual basis which is legally unassailable" for the summary dismissal board's findings.[3]

Petitioner appealed to the National Police Commission which likewise dismissed his appeal for "utter lack of merit." [4] In its decision, dated March 5, 1992, the NAPOLCOM held:

The fact that the Jai alai bookies were operating in the house being occupied by herein respondent-appellant, the apprehension of his wife and brother in two (2) successive raids effected by law-enforcement authority and his intercession for the dismissal of the case filed in consequence thereof, are tangible proofs that he was, indeed, an accessory - if not a principal - in said gambling operation.

As to the assertion of respondent-appellant that he was deprived of his right to due process, anchored on the allegation that he was not served any notice of hearing, it is belied by the records. On several occasions, the Summary Dismissal Board sent notices to herein respondent-appellant requiring him to appear and present evidence in his behalf, but he ignored said notices, prompting the Board to proceed with the investigation ex parte.

Hence, this petition for certiorari to set aside the decision of the NAPOLCOM.

Petitioner maintains that he was not served written charges and informed of the nature of such charges; that no hearing had actually been held by the summary dismissal board; and that at any rate he was not heard.

We find petitioner's claim meritorious. Petitioner's case was decided under P.D. No. 971, as amended by P.D. No. 1707. While §8-A of the Decree authorizes summary dismissals "without the necessity of a formal investigation" of members of the INP "when the charge is serious and the evidence is strong," the Decree and the implementing rules nonetheless give the respondent the right to be furnished a copy of the complaint and to file an answer within three (3) days. This right consists of the following:

(1) The Hearing Officer or INP Director concerned shall furnish the respondent a copy of the complaint with all the sworn statements and other documents attached thereto with a notification that on the scheduled date of hearing, the respondent must submit sworn counter-statements and/or other evidence to disprove the charge, otherwise, the former shall forthwith recommend his summary removal based on the evidence on hand[5]

(2) Notification of Charges or Complaint; Order to Answer. - The respondent INP member shall be furnished with a copy of the complaint or charges against him and he shall answer said complaint within three (3) days from receipt thereof, enclosing therewith pertinent supporting documents or evidences in his behalf. If the respondent fails to answer the charges within the prescribed period, the Summary Dismissal Authority shall immediately conduct the investigation ex parte.[6]

The filing of charges and the allowance of reasonable opportunity to respondent to answer the charges constitute the minimum requirements of due process. Thus, in *Government Service and Insurance System v. Court of Appeals*,<sup>[7]</sup> §40 of P.D. No. 807, which similarly authorized the summary dismissals of civil service employees without formal investigation "when the charge is serious and the evidence of guilt is strong," was construed by this Court to require the giving of notice of charges to a respondent and the right to answer. We said:

We think it is time this Court firms up its position on the validity of Section 40 of the Civil Service Act. It is clear to us that what the opening sentence of Section 40 is saying is that an employee may be removed or dismissed even without formal investigation, in certain instances. It is equally clear to us that an employee must be informed of the charges preferred [sic] against him, and that the normal way by which the employee is so informed is by furnishing him with a copy of the charges made against him. This is a basic procedural requirement that a statute cannot dispense with and still remains consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defenses. The ordinary way by which a Civil Service employee is given this opportunity is by holding an investigation, in the course of which the employee may assert his defenses and present his supporting evidence. If Section 40 of the Civil Service Decree is to be saved from unconstitutionality, it cannot be interpreted or applied in such a manner as to deprive a respondent employee of these two (2) minimum rights. These are not the only indispensable requirements of procedural due process; they are, however, most directly involved in the matter of whether or not an investigation of charges against a civil service employee is essential.[8]

The INP record of this case does not show that a formal complaint was ever filed against petitioner. Nor are there attached to such record supporting affidavits of witnesses, if any, against him. Neither the decision of the board, nor that of the Director General of the PC/INP denying reconsideration, nor the decision of the NAPOLCOM on appeal contains reference to any written complaint with supporting affidavits filed against petitioner.

Petitioner's complaint that he had not been furnished written charges with supporting affidavits merited no more than a passing mention in the decision of the PC/INP Director General. In his appeal to the NAPOLCOM, petitioner reiterated his claim, but the decision of this agency, dismissing his appeal, merely rehashed the decision of the Director General. There was no effort made to deal with the assignment of errors of petitioner.

Indeed, what the summary dismissal board appears to have done in this case was simply to receive the report on two raids allegedly conducted on petitioner's house on January 21, 1983 and on June 16, 1983, in the course of which what were believed were gambling paraphernalia (money in the amount of P1,000.00, assorted "papelitos," a ballpen, and a calculator) were allegedly found and two witnesses (Rodolfo Ablaza and Rolando de la Fuente) allegedly admitted they were collectors of petitioner and his brother Lolito Go. But the report, if it was ever in writing, is not in the record of this case which the NAPOLCOM transmitted to the Court. Nor does the decision of the summary dismissal board disclose on what the supposed report was based. This is in violation of the rule that in administrative proceedings "the decision must be rendered on the evidence contained in the record and disclosed to the party affected." [9]

In all probability the report of the team which conducted the raids was not even in writing and the supposed testimonies of the two witnesses were not taken down. This is evident from the decision of the board which, instead of referring to the testimonies or affidavits of witnesses, repeatedly refers to the results of an "investigation." Thus, the decision states: "Investigation reveals . . .," "investigation further reveals . . .," "It was further discovered during the investigation. . . ." It is clear that the facts found by the board were not the result of any investigation conducted by it but by some other group, possibly the team that allegedly conducted the raids and that what the board did was simply to rely on their finding.

Under these circumstances there was no way by which petitioner could defend himself. In summary dismissal proceedings, unless other fully effective means for implementing the constitutional requirement of notice and hearing are devised, it is mandatory that charges be specified in writing and that the affidavits in support thereof be attached to the complaint because these are the only ways by which evidence against the respondent can be brought to his knowledge. They take the place of direct examination of witnesses. The formal investigation, which is dispensed with in summary dismissal proceedings, refers to the presentation of witnesses by their direct examination and not to the requirement that the respondent in the administrative case be notified of the charges and given the chance to defend himself.

The Solicitor General argues that petitioner could not have failed to inquire what the charges against him were because he admits he appeared before the board as ordered. That may be so. Petitioner might have been told what the charge or charges against him were, but not the details thereof, and, certainly, not what the alleged witnesses against him might have said because, as already stated, the record of the INP simply did not contain their alleged testimonies.

Nor does it appear that petitioner was heard in his defense. His claim, that thrice he appeared before the summary dismissal board but no hearing was ever held either because complainant and his witnesses did not appear or the members of the board were absent or both complainant and witnesses and members of the board were absent, was never specifically denied in any of the decisions of the administrative authorities, beyond saying that the claim was belied by the record. There is simply nothing in the INP record of the case to show this. It may be argued that the requirements of due process are satisfied if a party initially denied a hearing is subsequently granted one by means of motion for reconsideration. [10] That is true indeed if the charges and the evidence against him are set forth in the record of the case, but not where, as here, they are not. If in his appeal to the PC/INP Director General, petitioner presented the affidavits of retraction of two of the witnesses against him, it was only because the decision of the board mentioned that these witnesses allegedly said they had acted as petitioner's collectors and not because their prior statements were in the record.

We conclude that petitioner was denied the due process of law and that not even the fact that the charge against him is serious and evidence of his guilt is — in the opinion of his superiors — strong can compensate for the procedural shortcut evident in the record of this case. It is precisely in cases such as this that the utmost care be

exercised lest in the drive to clean up the ranks of the police those who are innocent are denied justice or, through blunder, those who are guilty are allowed to escape punishment.

WHEREFORE, the decision of the National Police Commission is ANNULLED and petitioner is ordered REINSTATED with backwages for five (5) years and paid other benefits and RESTORED in his seniority. SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Panganiban, and Torres, Jr., JJ., concur.  
Hermosisima, Jr., J., on leave.

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[1] Records, pp. 18-19.

[2] Id., p. 12.

[3] Id., pp. 43-45.

[4]Id., pp. 50-52. The NAPOLCOM was composed of Department of Interior and Local Government (DILG) Secretary Cesar N. Sarino, as chairman; Teodulo C. Natividad as Vice-Chairman and Executive Officer; and Virgilio M. David, Edgar Dula Torres, and Guillermo P. Enriquez, Jr., as members.

[5] Memorandum Circular No. 6, Sept. 15, 1980, §5(b).

[6]Memorandum Circular No. 81-01, Sept. 18, 1981, §2.

**[7] 201 SCRA 661 (1991).**

[8] Id. at 671-672.

[9]Ang Tibay v. CIR, 69 Phil. 635, 643 (1940).

[10] See Saint Thomas Aquinas Academy v. WCC, G.R. No. L-12297, April 22, 1959 (unreported); Montemayor v. Araneta University Foundation, 77 SCRA 321 (1977); Rubenecia v. Civil Service Commission, 244 SCRA 640 (1995).

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