

**NEMESIO ARTURO S. YABUT AND RICARDO M. TAMARGO,
PETITIONERS, VS. OFFICE OF THE OMBUDSMAN AND DR. PAUL
DORAN, RESPONDENTS.***G.R. No. 111304. June 17, 1994*

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-111304/>**VITUG, J.:**

This petition for review challenges (1) the Resolution, dated 28 June 1993, of the Office of the Ombudsman finding petitioners guilty of simple misconduct and oppression in the performance of official duties and recommending the penalty of a 2-month suspension from office, without pay, and (2) the Order, dated 29 July 1993, rejecting petitioners' motion for reconsideration.

The occurrence that sparked this controversy happened at around two o'clock in afternoon of 16 February 1993 in a logjammed traffic intersection in Makati. The incident, for a time, hugged the front pages of some major dailies.

Petitioner Nemesio Arturo S. Yabut, Vice Mayor of the municipality, was directing traffic at the intersection of Sen. Gil Puyat Avenue and Makati Avenue, he being concurrently the commander of the Traffic Management Division of Makati. On that day, traffic was unusually heavy because of the re-routing of the vehicular flow from the Edsa-Pioneer-Boni area. Private respondent Paul Doran, an American national and a permanent resident in the Philippines, was on board his car in the innermost lane of Makati Avenue, apparently intending to make a left turn to Gil Puyat Avenue towards Pasay City. Since priority was given to vehicles coming from Mandaluyong, Doran and the others in his lane had been made to wait for several turns. When the "go" signal was finally given, Doran stopped where Yabut was and asked "why (it took) so long to make a left turn?" Petitioner Yabut answered "Sorry, sir, its traffic." This did not satisfy Doran who exclaimed, "who the hell are you," and stuck a dirty finger sign at Yabut. Angry words soon turned into an exchange of punches between the two. Ultimately, Yabut's traffic officers joined the fray. They pulled out Doran from his car and started beating him until three men rescued Doran and brought him to the nearby Pacific Star Building. Both Yabut and Doran suffered injuries as a result of the scuffle.

On 22 February 1993, Doran made a formal complaint against Yabut before the National Bureau of Investigation (NBI), which summoned Yabut on 24 February 1993 to appear before its Anti-Organized Crime Division (AOCD). Yabut asked for five (5) days within which to file counter-affidavits; the NBI gave him two (2) days. On 26 February 1993, Yabut filed his affidavit and that of his witnesses. The NBI forthwith indorsed the case to respondent Office of the Ombudsman (Adm. Case # 0-93-0087), which promptly imposed a ninety-day preventive suspension on Yabut. On 02 March 1993, Yabut moved for the reconsideration of the suspension order. In an Order, dated 12 March 1993, the Ombudsman, through Overall Deputy Ombudsman Francisco Villa, resolved the motion, thus:

"WHEREFORE, in view of the foregoing, it is hereby ORDERED that:

"1. The complainant be furnished with copies of the affidavits of the respondent and his witnesses, and for the

former, if he so desires, to make a reply thereto within ten (10) days from receipt of the same;

“2. Ricardo M. Tamargo,[1] security aide of the respondent, be named as a co-respondent in the above-entitled case; that he be furnished with copies of the sworn statements of the complainant and his witnesses; and that he may file further responsive pleadings, if he so desires, within ten (10) days from receipt of the same;

“3. The resolution of the respondent’s motion to lift suspension order be held in abeyance until and after the respective pleadings/evidence of the parties have been submitted.”[2]

Thereupon, the parties submitted their respective evidence consisting of the sworn statements of Yabut, Eleuterio Quiñones, Jr., Ricardo Tamargo, Roberto Barboza and Cecilia Concha-Colmenares, for petitioners, and of Dr. Paul Doran, Alex Pastrana, Epifanio Dagza and Harold Quenery, for private respondent Doran.

During the preliminary conference held on 19 May 1993, conformably with Rule III, Section 5, of Administrative Order No. 07, otherwise known as the “Rules of Procedure of the Office of the Ombudsman,” the parties agreed to submit the case for resolution. Yabut also moved for the lifting of his preventive suspension. The following day, the preventive suspension order was lifted. The parties were each given fifteen (15) days within which to submit their respective memoranda. Yabut and Tamargo filed their memorandum on 03 June 1993; Doran decided not to file any.

On 28 June 1993, the investigating officer (Amy Ana de Villa-Rosero) submitted the questioned Resolution[3] containing her findings and recommendation. The resolution was approved by the Overall Deputy Ombudsman. The decretal part of the resolution read:

“WHEREFORE, premises considered, and pursuant to Section 25 of R.A. No. 6770 and Section 10 of Administrative Order No. 07 of this Office, it is respectfully recommended that respondents Yabut and Tamargo be meted with the penalty of suspension from office without pay for a period of two (2) months effective upon receipt of a copy of this resolution.”

SO RESOLVED.”[4]

Petitioner Yabut filed a “Motion for Clarification/Reconsideration.” In an Order, dated 29 July 1993, public respondent denied the motion; viz:

“FINDING no valid reason to reverse or modify any finding in the disputed resolution dated 28 June 1993, this Office hereby DENIES respondent’s instant motion.”[5]

In due time, petitioners filed the instant “Petition for Review,” contending that the Ombudsman (1) misappreciated the evidence; (2) erred in not crediting petitioner’s period of preventive suspension; and (3) erred in imposing the penalty of two-month suspension from office, without pay, for not being commensurate with the bare finding of simple misconduct.

Prefatorily, it may be well to stress that appeals from decisions/resolutions of the Ombudsman in administrative cases may merely raise questions of law. Factual findings of the Ombudsman, unless clearly unsubstantiated, are conclusive; in fine, it is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings can aptly be made. Specifically, Section 27 of Republic Act No. 6770 (An Act Providing For The Functional And Structural Organization Of The Office Of The Ombudsman, And For Other Purposes) provides:

“Sec. 27. Effectivity and Finality of Decisions. - (1) All provisional orders at the Office of the Ombudsman are immediately effective and executory.

“A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following

grounds:

“(1) New evidence has been discovered which materially affects the order, directive or decision;

“(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

“Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month’s salary shall be final and unappealable.

“In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.” (Underscoring Supplied.)

In consonance with the foregoing, and on the basis of Article XI, Section 13 (8) of the 1987 Constitution,[6] Section 7 of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) was promulgated. Section 7 thereof expresses:

“Sec. 7. Finality of Decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.” (Underscoring supplied.)

Clearly, an appeal then by certiorari to this Court would be the correct remedy, absent a clear case of grave abuse of discretion on the part of the Ombudsman in which latter case Rule 65 may exceptionally be invoked pursuant to Section 1, Article VIII, of the 1987 Constitution.[7]

In the instant petition, we find neither an error of law nor grave abuse of discretion on the part of the Ombudsman.

The incident of 16 February 1993 was most unfortunate. The attendant circumstances, it might be said, could have well caused tempers to rise and patience to break; nevertheless, they served no excuse for the mauling and shooting incidents that followed. While we certainly would not condone the act of provocation made by Doran, which in the words of petitioners was no less than “an act of spite, degradation and mockery,” it did not, however, justify an equally abhorrent reaction from them. Petitioners were public officers; Doran was not. We second the Solicitor General in this observation:

“A public official, more especially an elected one, should not be onion skinned. Strict personal discipline is expected of an occupant of a public office because a public official is a property of the public. He is looked upon to set the example how public officials should correctly conduct themselves even in the face of extreme provocation. Always he is expected to act and serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable for his conduct to the people.

Petitioner Yabut urges that his preventive suspension of 82 days should be credited to the penalty of 2-month suspension imposed on him. A preventive suspension decreed by the Ombudsman by virtue of his authority under Section 21 of Republic Act No. 6770, in relation to Section 9 of Administrative Order No. 07, is not meant to be a

penalty but a means taken to insure the proper and impartial conduct of an investigation. We have ruled, in a number of times before, that a preventive suspension may be ordered even before the charges are heard, as well as before the official concerned is given an opportunity to prove his innocence, being merely a measure that is precisely designed in order not to hamper the normal course of an investigation through the use of influence and authority.[8]

WHEREFORE, the petition is DISMISSED for lack of merit. No special pronouncement on costs.

SO ORDERED.

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

Mendoza, J., no part.

[1] Petitioner Ricardo Tamargo was ordered impleaded in the administrative case after stating in his affidavit that he shot two (2) tires of Doran's car during the incident.

[2] Rollo, pp. 45-47.

[3] The resolution refers to the administrative aspect of the criminal complaint (docketed as OMB-0-930356 endorsed by the NBI to the Office of the Ombudsman) against Vice Mayor Yabut for Grave Misconduct, Oppression, Grave Abuse of Authority and Conduct Unbecoming of a Public Officer.

[4] Rollo, pp. 79-81.

[5] Rollo, pp. 83-84.

[6] "(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as maybe provided by law."

[7] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[8] *Nera vs. Garcia and Elicaño*, 106 Phil 1031, cited in *Espiritu vs. Melgar*, 206 SCRA 256.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.