

ARSENIO P. LUMIQUED (DECEASED), REGIONAL DIRECTOR, DAR – CAR, REPRESENTED BY HIS HEIRS, FRANCISCA A. LUMIQUED, MAY A. LUMIQUED, ARLENE A. LUMIQUED AND RICHARD A. LUMIQUED, PETIT...

G.R. No. 117565. November 18, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Does the due process clause encompass the right to be assisted by counsel during an administrative inquiry?

Arsenio P. Lumiqued was the Regional Director of the Department of Agrarian Reform – Cordillera Autonomous Region (DAR-CAR) until President Fidel V. Ramos dismissed him from that position pursuant to Administrative Order No. 52 dated May 12, 1993. In view of Lumiqued's death on May 19, 1994, his heirs instituted this petition for certiorari and mandamus, questioning such order.

The dismissal was the aftermath of three complaints filed by DAR-CAR Regional Cashier and private respondent Jeannette Obar-Zamudio with the Board of Discipline of the DAR. The first affidavit-complaint dated November 16, 1989,[1] charged Lumiqued with malversation through falsification of official documents. From May to September 1989, Lumiqued allegedly committed at least 93 counts of falsification by padding gasoline receipts. He even submitted a vulcanizing shop receipt worth P550.00 for gasoline bought from the shop, and another receipt for P660.00 for a single vulcanizing job. With the use of falsified receipts, Lumiqued claimed and was reimbursed the sum of P44,172.46. Private respondent added that Lumiqued seldom made field trips and preferred to stay in the office, making it impossible for him to consume the nearly 120 liters of gasoline he claimed everyday.

In her second affidavit-complaint dated November 22, 1989,[2] private respondent accused Lumiqued with violation of Commission on Audit (COA) rules and regulations, alleging that during the months of April, May, July, August, September and October, 1989, he made unliquidated cash advances in the total amount of P116,000.00. Lumiqued purportedly defrauded the government "by deliberately concealing his unliquidated cash advances through the falsification of accounting entries in order not to reflect on 'Cash advances of other officials' under code 8-70-600 of accounting rules."

The third affidavit-complaint dated December 15, 1989,[3] charged Lumiqued with oppression and harassment. According to private respondent, her two previous complaints prompted Lumiqued to retaliate by relieving her from her post as Regional Cashier without just cause.

The three affidavit-complaints were referred in due course to the Department of Justice (DOJ) for appropriate action. On May 20, 1992, Acting Justice Secretary Eduardo G. Montenegro issued Department Order No. 145 creating a committee to investigate the complaints against Lumiqued. The order appointed Regional State Prosecutor Apolinario Exevea as committee chairman with City Prosecutor Erdolfo Balajadia and Provincial

Prosecutor Felix Cabading as members. They were mandated to conduct an investigation within thirty days from receipt of the order, and to submit their report and recommendation within fifteen days from its conclusion.

The investigating committee accordingly issued a subpoena directing Lumiqued to submit his counter-affidavit on or before June 17, 1992. Lumiqued, however, filed instead an urgent motion to defer submission of his counter-affidavit pending actual receipt of two of private respondent's complaints. The committee granted the motion and gave him a five-day extension.

In his counter-affidavit dated June 23, 1992,[4] Lumiqued alleged, inter alia, that the cases were filed against him to extort money from innocent public servants like him, and were initiated by private respondent in connivance with a certain Benedict Ballug of Tarlac and a certain Benigno Aquino III. He claimed that the apparent weakness of the charge was bolstered by private respondent's execution of an affidavit of desistance.[5]

Lumiqued admitted that his average daily gasoline consumption was 108.45 liters. He submitted, however, that such consumption was warranted as it was the aggregate consumption of the five service vehicles issued under his name and intended for the use of the Office of the Regional Director of the DAR. He added that the receipts which were issued beyond his region were made in the course of his travels to Ifugao Province, the DAR Central Office in Diliman, Quezon City, and Laguna, where he attended a seminar. Because these receipts were merely turned over to him by drivers for reimbursement, it was not his obligation but that of auditors and accountants to determine whether they were falsified. He affixed his signature on the receipts only to signify that the same were validly issued by the establishments concerned in order that official transactions of the DAR-CAR could be carried out.

Explaining why a vulcanizing shop issued a gasoline receipt, Lumiqued said that he and his companions were cruising along Santa Fe, Nueva Vizcaya on their way to Ifugao when their service vehicle ran out of gas. Since it was almost midnight, they sought the help of the owner of a vulcanizing shop who readily furnished them with the gasoline they needed. The vulcanizing shop issued its own receipt so that they could reimburse the cost of the gasoline. Domingo Lucero, the owner of said vulcanizing shop, corroborated this explanation in an affidavit dated June 25, 1990.[6] With respect to the accusation that he sought reimbursement in the amount of P660.00 for one vulcanizing job, Lumiqued submitted that the amount was actually only P6.60. Any error committed in posting the amount in the books of the Regional Office was not his personal error or accountability.

To refute private respondent's allegation that he violated COA rules and regulations in incurring unliquidated cash advances in the amount of P116,000.00, Lumiqued presented a certification[7] of DAR-CAR Administrative Officer Deogracias F. Almora that he had no outstanding cash advances on record as of December 31, 1989.

In disputing the charges of oppression and harassment against him, Lumiqued contended that private respondent was not terminated from the service but was merely relieved of her duties due to her prolonged absences. While admitting that private respondent filed the required applications for leave of absence, Lumiqued claimed that the exigency of the service necessitated disapproval of her application for leave of absence. He allegedly rejected her second application for leave of absence in view of her failure to file the same immediately with the head office or upon her return to work. He also asserted that no medical certificate supported her application for leave of absence.

In the same counter-affidavit, Lumiqued also claimed that private respondent was corrupt and dishonest because a COA examination revealed that her cash accountabilities from June 22 to November 23, 1989, were short by P30,406.87. Although private respondent immediately returned the amount on January 18, 1990, the day following the completion of the cash examination, Lumiqued claimed that she should be relieved from her duties and assigned to jobs that would not require handling of cash and money matters.

Committee hearings on the complaints were conducted on July 3 and 10, 1992, but Lumiqued was not assisted by counsel. On the second hearing date, he moved for its resetting to July 17, 1992, to enable him to employ the services of counsel. The committee granted the motion, but neither Lumiqued nor his counsel appeared on the date he himself had chosen, so the committee deemed the case submitted for resolution.

On August 12, 1992, Lumiqued filed an urgent motion for additional hearing,[8] alleging that he suffered a stroke on July 10, 1992. The motion was forwarded to the Office of the State Prosecutor apparently because the investigation had already been terminated. In an order dated September 7, 1992,[9] State Prosecutor Zoila C. Montero denied the motion, viz:

“The medical certificate given show(s) that respondent was discharged from the Sacred Heart Hospital on July 17, 1992, the date of the hearing, which date was upon the request of respondent (Lumiqued). The records do not disclose that respondent advised the Investigating committee of his confinement and inability to attend despite his discharge, either by himself or thru counsel. The records likewise do not show that efforts were exerted to notify the Committee of respondent’s condition on any reasonable date after July 17, 1992. It is herein noted that as early as June 23, 1992, respondent was already being assisted by counsel.

Moreover an evaluation of the counter-affidavit submitted reveal(s) the sufficiency, completeness and thoroughness of the counter-affidavit together with the documentary evidence annexed thereto, such that a judicious determination of the case based on the pleadings submitted is already possible.

Moreover, considering that the complaint-affidavit was filed as far back as November 16, 1989 yet, justice can not be delayed much longer.”

Following the conclusion of the hearings, the investigating committee rendered a report dated July 31, 1992,[10] finding Lumiqued liable for all the charges against him. It made the following findings:

“After a thorough evaluation of the evidences (sic) submitted by the parties, this committee finds the evidence submitted by the complainant sufficient to establish the guilt of the respondent for Gross Dishonesty and Grave Misconduct.

That most of the gasoline receipts used by the respondent in claiming for the reimbursement of his gasoline expenses were falsified is clearly established by the 15 Certified Xerox Copies of the duplicate receipts (Annexes G-1 to G-15) and the certifications issued by the different gasoline stations where the respondent purchased gasoline. Annexes ‘G-1’ to ‘G-15’ show that the actual average purchase made by the respondent is about 8.46 liters only at a purchase price of P50.00, in contrast to the receipts used by the respondent which reflects an average of 108.45 liters at a purchase price of P550.00. Here, the greed of the respondent is made manifest by his act of claiming reimbursements of more than 10 times the value of what he actually spends. While only 15 of the gasoline receipts were ascertained to have been falsified, the motive, the pattern and the scheme employed by the respondent in defrauding the government has, nevertheless, been established.

That the gasoline receipts have been falsified was not rebutted by the respondent. In fact, he had in effect admitted that he had been claiming for the payment of an average consumption of 108.45 liters/day by justifying that this was being used by the 4 vehicles issued to his office. Besides he also admitted having signed the receipts.

Respondent’s act in defrauding the government of a considerable sum of money by falsifying receipts constitutes not only Dishonesty of a high degree but also a criminal offense for Malversation through Falsification of Official Documents.

This committee likewise finds that the respondent have (sic) unliquidated cash advances in the year 1989 which is in violation of established office and auditing rules. His cash advances totalling to about P116,000.00 were properly documented. The requests for obligation of allotments and the vouchers covering the amounts

were all signed by him. The mere certification issued by the Administrative Officer of the DAR-CAR cannot therefore rebut these concrete evidences (sic).

On the third complaint, this committee likewise believes that the respondent's act in relieving the complainant of her functions as a Regional Cashier on December 1, 1989 was an act of harassment. It is noted that this was done barely two weeks after the complainant filed charges against her (sic). The recommendation of Jose G. Medina of the Commission on Audit came only on May 11, 1990 or almost six months after the respondent's order relieving the complainant was issued. His act in harassing a subordinate employee in retaliation to a complaint she filed constitute(s) Gross Misconduct on the part of the respondent who is a head of office.

The affidavits of Joseph In-uyay and Josefina Guting are of no help to the respondent. In fact, this only show(s) that he is capable of giving bribes if only to have the cases against him dismissed. He could not have given a certain Benigno Aquino III the sum of P10,000.00 for any other purpose."

Accordingly, the investigating committee recommended Lumiqued's dismissal or removal from office, without prejudice to the filing of the appropriate criminal charges against him.

Acting on the report and recommendation, former Justice Secretary Franklin M. Drilon adopted the same in his Memorandum to President Fidel V. Ramos dated October 22, 1992. He added that the filing of the affidavit of desistance^[11] would not prevent the issuance of a resolution on the matter considering that what was at stake was not only "the violation of complainant's (herein private respondent's) personal rights" but also "the competence and fitness of the respondent (Lumiqued) to remain in public office." He opined that, in fact, the evidence on record could call for "a punitive action against the respondent on the initiative of the DAR."

On December 17, 1992, Lumiqued filed a motion for reconsideration of "the findings of the Committee" with the DOJ.^[12] Undersecretary Ramon S. Esguerra indorsed the motion to the investigating committee.^[13] In a letter dated April 1, 1993, the three-member investigating committee informed Undersecretary Esguerra that the committee "had no more authority to act on the same (motion for reconsideration) considering that the matter has already been forwarded to the Office of the President" and that their authority under Department Order No. 145 ceased when they transmitted their report to the DOJ.^[14] Concurring with this view, Undersecretary Esguerra informed Lumiqued that the investigating committee could no longer act on his motion for reconsideration. He added that the motion was also prematurely filed because the Office of the President (OP) had yet to act on Secretary Drilon's recommendation.^[15]

On May 12, 1993, President Fidel V. Ramos himself issued Administrative Order No. 52 (A.O. No. 52),^[16] finding Lumiqued administratively liable for dishonesty in the alteration of fifteen gasoline receipts, and dismissing him from the service, with forfeiture of his retirement and other benefits. Thus:

"That the receipts were merely turned over to him by his drivers and that the auditor and accountant of the DAR-CAR should be the ones to be held liable is untenable. The receipts in question were signed by respondent for the purpose of attesting that those receipts were validly issued by the commercial establishments and were properly disbursed and used in the official business for which it was intended.

This Office is not about to shift the blame for all these to the drivers employed by the DAR-CAR as respondent would want us to do."

The OP, however, found that the charges of oppression and harassment, as well as that of incurring unliquidated cash advances, were not satisfactorily established.

In a "petition for appeal"^[17] addressed to President Ramos, Lumiqued prayed that A.O. No. 52 be reconsidered and that he be reinstated to his former position "with all the benefits accorded to him by law and existing rules and regulations." This petition was basically premised on the affidavit dated May 27, 1993, of a certain Dwight L.

Lumiqued, a former driver of the DAR-CAR, who confessed to having authored the falsification of gasoline receipts and attested to petitioner Lumiqued's being an "honest man" who had no "premonition" that the receipts he (Dwight) turned over to him were "altered." [18]

Treating the "petition for appeal" as a motion for the reconsideration of A.O. No. 52, the OP, through Senior Deputy Executive Secretary Leonardo A. Quisumbing, denied the same on August 31, 1993.

Undaunted, Lumiqued filed a second motion for reconsideration, alleging, among other things, that he was denied the constitutional right to counsel during the hearing. [19] On May 19, 1994, [20] however, before his motion could be resolved, Lumiqued died. On September 28, 1994, [21] Secretary Quisumbing denied the second motion for reconsideration for lack of merit.

Hence, the instant petition for certiorari and mandamus praying for the reversal of the Report and Recommendation of the Investigating Committee, the October 22, 1992, Memorandum of then Justice Secretary Drilon, A.O. No. 52 issued by President Ramos, and the orders of Secretary Quisumbing. In a nutshell, it prays for the "payment of retirement benefits and other benefits accorded to deceased Arsenio Lumiqued by law, payable to his heirs; and the backwages from the period he was dismissed from service up to the time of his death on May 19, 1994." [22]

Petitioners fault the investigating committee for its failure to inform Lumiqued of his right to counsel during the hearing. They maintain that his right to counsel could not be waived unless the waiver was in writing and in the presence of counsel. They assert that the committee should have suspended the hearing and granted Lumiqued a reasonable time within which to secure a counsel of his own. If suspension was not possible, the committee should have appointed a counsel de officio to assist him.

These arguments are untenable and misplaced. The right to counsel, which cannot be waived unless the waiver is in writing and in the presence of counsel, is a right afforded a suspect or an accused during custodial investigation. [23] It is not an absolute right and may, thus, be invoked or rejected in a criminal proceeding and, with more reason, in an administrative inquiry. In the case at bar, petitioners invoke the right of an accused in criminal proceedings to have competent and independent counsel of his own choice. Lumiqued, however, was not accused of any crime in the proceedings below. The investigation conducted by the committee created by Department Order No. 145 was for the purpose of determining if he could be held administratively liable under the law for the complaints filed against him. The order issued by Acting Secretary of Justice Montenegro states thus:

"In the interest of the public service and pursuant to the provisions of existing laws, a Committee to conduct the formal investigation of the administrative complaint for oppression, dishonesty, disgraceful and immoral conduct, being notoriously undesirable and conduct prejudicial to the best interest of the service against Mr. ARSENIO P. LUMIQUED, Regional Director, Department of Agrarian Reform, Cordillera Autonomous Region, is hereby created x x x." [24]

As such, the hearing conducted by the investigating committee was not part of a criminal prosecution. This was even made more pronounced when, after finding Lumiqued administratively liable, it hinted at the filing of criminal case for malversation through falsification of public documents in its report and recommendation.

Petitioners' misconception on the nature of the investigation [25] conducted against Lumiqued appears to have been engendered by the fact that the DOJ conducted it. While it is true that under the Administrative Code of 1987, the DOJ shall "administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system," [26] conducting criminal investigations is not its sole function. By its power to "perform such other

functions as may be provided by law,” [27] prosecutors may be called upon to conduct administrative investigations. Accordingly, the investigating committee created by Department Order No. 145 was duty-bound to conduct the administrative investigation in accordance with the rules therefor.

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent’s capacity to represent himself and no duty rests on such a body to furnish the person being investigated with counsel.[28] In an administrative proceeding such as the one that transpired below, a respondent (such as Lumiqued) has the option of engaging the services of counsel or not. This is clear from the provisions of Section 32, Article VII of Republic Act No. 2260[29] (otherwise known as the Civil Service Act) and Section 39, paragraph 2, Rule XIV (on discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292[30] (otherwise known as the Administrative Code of 1987). Excerpts from the transcript of stenographic notes of the hearings attended by Lumiqued[31] clearly show that he was confident of his capacity and so opted to represent himself. Thus, the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

Furthermore, petitioners’ reliance on Resolution No. 94-0521 of the Civil Service Commission on the Uniform Procedure in the Conduct of Administrative Investigation stating that a respondent in an administrative complaint must be “informed of his right to the assistance of a counsel of his choice,”[32] is inappropriate. In the first place, this resolution is applicable only to cases brought before the Civil Service Commission.[33] Secondly, said resolution, which is dated January 25, 1994, took effect fifteen days following its publication in a newspaper of general circulation,[34] much later than the July 1992 hearings of the investigating committee created by Department Order No. 145. Thirdly, the same committee was not remiss in the matter of reminding Lumiqued of his right to counsel. Thus at the July 3, 1992, hearing, Lumiqued was repeatedly appraised of his option to secure services of counsel:

“RSP EXEVEA:

This is an administrative case against Director Lumiqued. Director Lumiqued is present. The complainant is present, Janet Obar-Zamudio. Complainant has just been furnished with a copy of the counter-affidavit of the respondent. Do you have a counsel, Director?

DIR. LUMIQUED:

I did not bring anybody, Sir, because when I went to see him, he told me, Sir, that he has already set a hearing, morning and afternoon today.

RSP EXEVEA:

So, we will proceed with the hearing even without your counsel? You are willing to proceed with the hearing even without your counsel?

DIR. LUMIQUED:

Yes, I am confident . . .

CP BALAJADIA:

You are confident that you will be able to represent yourself?

DIR. LUMIQUED:

That is my concern.”[35] (Underscoring supplied)

In the course of private respondent’s damaging testimony, the investigating committee once again reminded Lumiqued of his need for a counsel. Thus:

“CP BALAJADIA:

Q. (To Director Lumiqued) You really wish to go through with this even without your counsel?

DIRECTOR LUMIQUED:

A. I think so, Sir.

CP BALAJADIA:

Let us make it of record that we have been warning you to proceed with the assistance of counsel but you said that you can take care of yourself so we have no other alternative but to proceed.”[36] (Underscoring supplied)

Thereafter, the following colloquies transpired:

“CP BALAJADIA:

We will suspend in the meantime that we are waiting for the supplemental affidavit you are going to present to us. Do you have any request from the panel of investigators, Director Lumiqued?

DIRECTOR LUMIQUED:

I was not able to bring a lawyer since the lawyer I requested to assist me and was the one who prepared my counter-affidavit is already engaged for a hearing and according to him he is engaged for the whole month of July.

RSP EXEVEA:

We cannot wait . . .

CP BALAJADIA:

Why don’t you engage the services of another counsel. The charges against you are quite serious. We are not saying you are guilty already. We are just apprehensive that you will go through this investigation without a counsel. We would like you to be protected legally in the course of this investigation. Why don’t you get the services of another counsel. There are plenty here in Baguio...

DIRECTOR LUMIQUED:

I will try to see, Sir . . .

CP BALAJADIA:

Please select your date now, we are only given one month to finish the investigation, Director Lumiqued.

RSP EXEVEA:

We will not entertain any postponement. With or without counsel, we will proceed.

CP BALAJADIA:

Madam Witness, will you please submit the document which we asked for and Director Lumiqued, if you have other witnesses, please bring them but reduce their testimonies in affidavit form so that we can expedite with the proceedings.”[37]

At the hearing scheduled for July 10, 1992, Lumiqued still did not avail of the services of counsel. Pertinent excerpts from said hearing follow:

“FISCAL BALAJADIA:

I notice also Mr. Chairman that the respondent is not being represented by a counsel. The last time he was asked to invite his lawyer in this investigation. May we know if he has a lawyer to represent him in this investigation?

DIR. LUMIQUED:

There is none Sir because when I went to my lawyer, he told me that he had set a case also at 9:30 in the other court and he told me if there is a possibility of having this case postponed anytime next week, probably Wednesday so we will have good time (sic) of presenting the affidavit.

FISCAL BALAJADIA:

Are you moving for a postponement Director? May I throw this to the panel. The charges in this case are quite serious and he should be given a chance to the assistance of a counsel/lawyer.

RSP EXEVEA:

And is (sic) appearing that the supplemental-affidavit has been furnished him only now and this has several documents attached to it so I think we could grant him one last postponement considering that he has already asked for an extension.

DIR. LUMIQUED:

Furthermore Sir, I am now being bothered by my heart ailment.”[38]

The hearing was reset to July 17, 1992, the date when Lumiqued was released from the hospital. Prior to said date, however, Lumiqued did not inform the committee of his confinement. Consequently, because the hearing could not push through on said date, and Lumiqued had already submitted his counter-affidavit, the committee decided to wind up the proceedings. This did not mean, however, that Lumiqued was short-changed in his right to due process.

Lumiqued, a Regional Director of a major department in the executive branch of the government, graduated from the University of the Philippines (Los Baños) with the degree of Bachelor of Science major in Agriculture, was a recipient of various scholarships and grants, and underwent training seminars both here and abroad.[39] Hence, he could have defended himself if need be, without the help of counsel, if truth were on his side. This, apparently, was the thought he entertained during the hearings he was able to attend. In his statement, “That is my concern,” one could detect that it had been uttered testily, if not exasperatedly, because of the doubt or skepticism implicit in the question, “You are confident that you will be able to represent yourself?” despite his having positively asserted earlier, “Yes, I am confident.” He was obviously convinced that he could ably represent himself. Beyond repeatedly reminding him that he could avail himself of counsel and as often receiving the reply that he is confident of his ability to defend himself, the investigating committee could not do more. One can lead a horse to water but cannot make him drink.

The right to counsel is not indispensable to due process unless required by the Constitution or the law. In *Nera v. Auditor General*,[40] the Court said:

“x x x. There is nothing in the Constitution that says that a party in a non-criminal proceeding is entitled to be represented by counsel and that, without such representation, he shall not be bound by such proceedings. The assistance of lawyers, while desirable, is not indispensable. The legal profession was not engrafted in the due

process clause such that without the participation of its members, the safeguard is deemed ignored or violated. The ordinary citizen is not that helpless that he cannot validly act at all except only with a lawyer at his side.”

In administrative proceedings, the essence of due process is simply the opportunity to explain one’s side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings.[41] An actual hearing is not always an indispensable aspect of due process.[42] As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process.[43] Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.[44] Lumiqued’s appeal and his subsequent filing of motions for reconsideration cured whatever irregularity attended the proceedings conducted by the committee.[45]

The constitutional provision on due process safeguards life, liberty and property.[46] In the early case of *Cornejo v. Gabriel and Provincial Board of Rizal* [47] the Court held that a public office is not property within the sense of the constitutional guarantee of due process of law for it is a public trust or agency. This jurisprudential pronouncement has been enshrined in the 1987 Constitution under Article XI, Section 1 on accountability of public officers, as follows:

“Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”

When the dispute concerns one’s constitutional right to security of tenure, however, public office is deemed analogous to property in a limited sense; hence, the right to due process could rightfully be invoked. Nonetheless, the right to security of tenure is not absolute. Of equal weight is the countervailing mandate of the Constitution that all public officers and employees must serve with responsibility, integrity, loyalty and efficiency.[48] In this case, it has been clearly shown that Lumiqued did not live up to this constitutional precept.

The committee’s findings pinning culpability for the charges of dishonesty and grave misconduct upon Lumiqued were not, as shown above, fraught with procedural mischief. Its conclusions were founded on the evidence presented and evaluated as facts. Well-settled in our jurisdiction is the doctrine that findings of fact of administrative agencies must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or preponderant.[49] The quantum of proof necessary for a finding of guilt in administrative cases is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[50]

Consequently, the adoption by Secretary Drilon and the OP of the committee’s recommendation of dismissal may not in any way be deemed tainted with arbitrariness amounting to grave abuse of discretion. Government officials are presumed to perform their functions with regularity. Strong evidence is not necessary to rebut that presumption,[51] which petitioners have not successfully disputed in the instant case.

Dishonesty is a grave offense penalized by dismissal under Section 23 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987. Under Section 9 of the same Rule, the penalty of dismissal carries with it “cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service.” The instant petition, which is aimed primarily at the “payment of retirement benefits and other benefits” plus backwages from the time of Lumiqued’s dismissal until his demise, must, therefore, fail.

WHEREFORE, the instant petition for certiorari and mandamus is hereby **DISMISSED** and Administrative Order

No. 52 of the Office of the President is AFFIRMED. Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 37-75, including annexes.

[2] Ibid., pp. 76-103, including annexes.

[3] Id., pp. 104-105. Private respondent submitted a supplemental affidavit-complaint on July 6, 1992. This fourth complaint is substantially similar to the first complaint except that it contained allegations of falsified gasoline receipts covering the month of April, 1989.

[4] Id., pp. 107-115.

[5] See Footnote 11, *infra*.

[6] Rollo, p. 123.

[7] Ibid., p. 131.

[8] Id., pp. 167-168 .

[9] Id., pp. 169-170.

[10] Petitioners did not attach a copy of the investigating committee's report to their petition. It is found in the folder containing the transcripts of stenographic notes that the Judicial Records Office of this Court had requested from the Office of the Solicitor General.

[11] The affidavit of desistance was executed on July 10, 1991. When she testified on July 3, 1992, Ms. Zamudio swore that she executed that affidavit because of the length of time that transpired before her complaints were acted upon, and that Lumiqued was already "pressuring" her and her family that, considering that she had children, she succumbed to the pressure (TSN, July 3, 1992, p. 10).

[12] Rollo, pp. 174-190.

[13] Ibid, p. 199.

[14] Id., p. 200.

[15] Id., p. 202.

[16] Id., pp. 32-35.

[17] Id., pp. 203-216.

[18] Id., pp. 217-218.

[19] Id., pp. 225-247.

[20] Id., pp. 272-273.

[21] Id., p. 36.

[22] Id., pp. 27-28.

[23] Art. III, Sec. 12 (1), 1987 Constitution. Custodial investigation has been defined as “x x x any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that lends itself to eliciting incriminating statements that the rule (on the right of an accused to be informed of his right to remain silent and to have competent and independent counsel of his choice) begins to operate (People v. Marra, 236 SCRA 565 [1994]).

[24] A copy of this Department Order is found in the folder of photocopies of the transcript of stenographic notes that the Office of the Solicitor General furnished the Judicial Records Office of this Court.

[25] In his motion for reconsideration dated December 17, 1992, Lumiqued charged the investigating committee with having viewed the case against him “from purely tenuous technical angle” thereby leading the Secretary of Justice to arrive at his recommendation “contrary to the spirit if not to the letters of Revised Penal Code and the Administrative Code and COA Rules and Regulations” (sic).

[26] Sec. 1, Title III, Book IV, 1987 Administrative Code.

[27] Sec. 3 (8), *supra*.

[28] *Bancroft v. Board of Governors of Registered Dentists of Oklahoma*, 210 P.2d 666 (1949).

[29] “Sec. 31. Disciplinary Action -- No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process: Provided, That a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service: Provided, further, That no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by complaint: And provided, finally, That the respondent shall be entitled to a formal investigation if he so elects, in which case he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process of subpoena or subpoena duces tecum. (Underscoring supplied)

[30] “Sec. 39. x x x

Either party may avail himself of the services of counsel and may require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of subpoena or subpoena duces tecum. xxx.” (Underscoring supplied)

[31] *Infra*

[32] “Section 21. Formal charge. – When the Commission finds the existence of a prima facie case, the respondent shall be formally charged. He shall be furnished copies of the complaint, sworn statements and other documents submitted by the complainant, unless he had already received the same during the preliminary investigation. The respondent shall be given at least seventy-two (72) hours from receipt of said formal charge to submit his answer under oath, together with the affidavits of his witnesses and other evidence, and a statement indicating whether or not he elects a formal investigation. He shall also be informed of his right to the assistance of a counsel of his choice. If the respondent has already submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.” (Underscoring supplied).

[33] Sec. 2. CSC Resolution No. 94-0521.

[34] Ibid., Sec. 55.

[35] TSN, July 3, 1992, pp. 1-2.

[36] Ibid., pp. 13-14.

[37] Id., pp. 18-19.

[38] TSN, July 10, 1992, pp. 3-4.

[39] Rollo, p. 206.

[40] 164 SCRA 1 (1988), cited in *Feeder v. International Line, Pte., Ltd. v. Court of Appeals*, 197 SCRA 842 (1991).

[41] *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 citing *Mutuc v. Court of Appeals*, 190 SCRA 43 (1990).

[42] *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573.

[43] *Legarda v. Court of Appeals*, G.R. No. 94457, October 16, 1997.

[44] *Pizza Hut/Progressive Development Corporation v. NLRC*, 322 Phil. 579.

[45] *Rubenecia v. Civil Service Commission*, 314 Phil. 612; *T.H. Valderama & Sons, Inc. and/or Roberto Tinsay v. Drilon*, 181 SCRA 308 (1990).

[46] Sec. 1, Art. III, 1987 Constitution.

[47] 41 Phil. 188.

[48] *De Luna v. Ricon*, 250 SCRA 1 (1995).

[49] *Ynson v. Court of Appeals*, 257 SCRA 411 (1996).

[50] *Office of the Court Administrator v. Bucoy*, 235 SCRA 588 (1994), citing *Tolentino v. Court of Appeals*, 150 SCRA 26 (1987) and *Biak-na-Bato Mining Company v. Tanco, Jr.*, 193 SCRA 323 (1991).

[51] *Tatad v. Garcia, Jr.*, 313 Phil. 296.

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