

JENNY ZACARIAS, PETITIONER, VS. NATIONAL POLICE COMMISSION, REPRESENTED BY ACTING VICE CHAIRMAN & EXECUTIVE OFFICER GUILLERMO P. ENRIQUEZ, NATIONAL APPELLATE BOARD (SECOND DIVIS...

G.R. No. 119847. October 24, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 31407, "Jenny Zacarias, petitioner, vs. National Police Commission, et al., respondents."

The facts of this case as culled from the records are as follows:

Sometime in June 1987, Jenny Zacarias, petitioner, then a member of the Western Police District Command, Manila, was detailed at the Anti-Kidnapping Task Force, Criminal Investigation Service Command (CISC), Philippine National Police (PNP), Camp Crame, Quezon City.[3]

On November 5, 1991, Chief Inspector Ruben Zacarias, then Chief, Intelligence and Operations of the Anti-Kidnapping Task Force, issued an order assigning petitioner to be on duty at the Office of the Special Team, also of the Anti-Kidnapping Task Force. Detained there were Alfredo "Joey" de Leon, suspected commander of the notorious "Red Scorpion Group" charged with kidnapping with ransom cases,[4] and Nicanor Attractivo who was charged with robbery and homicide.

At around 9:00 o'clock in the morning of November 8, 1991, the two detainees escaped while in the custody of petitioner, then the outgoing guard on duty.[5]

Immediately, the Police Inspector General conducted an investigation. Petitioner's version of the incident is that at about 9:00 o'clock in the morning of November 8, 1991, before he went to the comfort room, he saw detainee Alfredo de Leon lying inside the room adjacent to the Office of the Special Team. When he returned to his office after two to three minutes, the two detainees were no longer around. Petitioner immediately searched the premises but to no avail. He informed SPO2 Matammu, the incoming duty guard, about it. They then reported the matter to Senior Inspector Gil Menesses who immediately formed a team to locate the two detainees. But still, they could not be found.[6]

SPO2 Romeo Matammu gave his sworn statement, confirming that when he arrived at the Office of the Special Team at about 9:00 o'clock in the morning of November 8, 1991, as the incoming duty guard, petitioner informed him that the two detainees escaped. He immediately drove his jeep around the camp and searched for them, but they could not be found.[7]

The Police Inspector General found that "the escape was an outcome of the laxity and non-performance of official duty of outgoing duty guard SPO3 Jenny Zacarias when the latter did not padlock the room where the detainees

were temporarily detained before going to the comfort room. x x x."[8] Accordingly, the Police Inspector General recommended that petitioner be summarily dismissed from the service pursuant to Section 42 of Republic Act No. 6975.[9]

Consequently, petitioner was administratively charged with neglect of duty, inefficiency and incompetence in the performance of his duties.

On December 4, 1991, the Chief of the PNP, acting upon the Inspector General's recommendation, rendered a decision dismissing summarily from the service petitioner effective on the same day.[10]

On appeal, docketed as NAB SD Case No. 2-92-007, the National Appellate Board (NAB) of the NAPOLCOM affirmed the PNP Chief's decision. The NAB held that on the basis of the evidence on hand, petitioner is guilty as charged.

Petitioner filed a motion for reconsideration but was denied by the NAB.

Petitioner then filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 31407. In its Decision[11] dated April 28, 1994, the Appellate Court dismissed the petition which, in effect, upheld petitioner's summary dismissal from the service. It ruled that "the laxity and inefficiency of petitioner as the police guard on duty, resulting in the escape from his custody of Alfredo de Leon, the notorious leader of the Red Scorpion Group, constitutes 'conduct unbecoming an officer and a gentleman' which, under paragraph (c) of Section 42 of the PNP Law, is a ground for summary dismissal." [12]

Petitioner filed a motion for reconsideration but it was denied.

Petitioner now comes to us via the instant petition for review on certiorari. Essentially, he ascribes to the Court of Appeals the following errors:

I

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT ADMINISTRATIVE OFFENSES OF NEGLIGENCE OF DUTY OR INEFFICIENCY OR INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES CONSTITUTE CONDUCT UNBECOMING OF A POLICE OFFICER WHICH MAY BE THE PROPER GROUND FOR SUMMARY DISMISSAL FROM THE SERVICE UNDER SECTION 42, R.A. 6975; AND

II

RESPONDENT COURT OF APPEALS ERRED IN NOT CONCLUDING THAT PETITIONER WAS DENIED DUE PROCESS.[13]

The Solicitor General, in his comment,[14] disputes petitioner's claims and prays that the petition be dismissed for lack of merit.

The summary dismissal of petitioner by the PNP Chief and the NAB was anchored on Section 42 of R.A. 6975 which provides:

"SEC. 42. Summary Dismissal Powers of the PNP Chief and Regional Directors. - The Chief of the PNP and Regional Directors, after due notice and summary hearings, may immediately remove or dismiss any respondent PNP member in any of the following cases:

(a) When the charge is serious and the evidence of guilt is strong;

(b) When the respondent is a recidivist or has been repeatedly charged and there are reasonable grounds to believe that he is guilty of the charges; and

(c) When the respondent is guilty of conduct unbecoming of a police officer." (Underscoring supplied)

The Court of Appeals, in its assailed Decision, cited Section 3 of NAPOLCOM Memorandum Circular No. 92-006 promulgated on August 6, 1992 defining the causes for summary dismissal of erring PNP members, thus:

"Section 3 - Causes for Summary Dismissal. Any of the following can be a cause/reason for summary dismissal of any PNP member:

- When the charge is serious and the evidence of guilt is strong.

x x x

- When the respondent is a recidivist or has been repeatedly charged and there are reasonable grounds to believe that he is guilty of the charges.

x x x

- When the respondent is guilty of conduct unbecoming of a police officer.

'Conduct unbecoming of a police officer' refers to any behavior or action of a PNP member, irrespective of rank, done in his official capacity, which, in dishonoring or otherwise disgracing himself as a PNP member, seriously compromises his character and standing as a gentleman in such a manner as to indicate his vitiated or corrupt state of moral character; it may also refer to acts or behavior with any PNP member in an unofficial or private capacity which is dishonoring or disgracing himself personally as a gentleman, seriously compromises his position as a PNP member and exhibits himself as morally unworthy to remain as a member of the organization." [15] (Underscoring supplied)

Petitioner contends that the charges of neglect of duty and inefficiency and incompetence in the performance of official duties against him cannot be classified under any of the three cases enumerated above. Hence, the Chief of the PNP and the NAB cannot dismiss him summarily from the service.

Webster defines "unbecoming" conduct as "improper" performance. Such term "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method." [16]

Obviously, the charges of neglect of duty, inefficiency and incompetence in the performance of official duties fall within the scope of conduct unbecoming a police officer. Thus, we agree with the Court of Appeals when it ruled:

"Even assuming that the charge against petitioner is not serious within the contemplation of paragraph (a) of Section 42 above quoted, or that he is not a recidivist within the context of paragraph (b), he could nonetheless fall within the ambit of paragraph (c) thereof, in that, because of his laxity and inefficiency in the performance of his duties, he is guilty of conduct unbecoming of a police officer." [17] (Underscoring supplied)

We thus hold that under Section 42 of R.A. 6795 and Section 3 of NAPOLCOM Memorandum Circular No. 92-006 the summary dismissal of petitioner from the service is in order. And, under Section 8 of Memorandum Circular No. 92-006, such dismissal from the service is immediately executory, thus:

"The decision of the PNP Summary Dismissal Authorities imposing upon respondent a penalty of dismissal from the service shall be immediately executory. However, in the event that the respondent is exonerated on appeal, he shall be considered as having been under suspension during the pendency of the appeal, with entitlement to back salaries and allowances." (Underscoring supplied)

On petitioner's contention that he was denied due process, it bears stressing that the Police Inspector General conducted an investigation wherein the petitioner and other witnesses were heard. It was only after the investigation that the Police Inspector General recommended to the PNP Chief that petitioner be dismissed from

the service summarily. As held by the NAB in its decision affirming the PNP Chief's action, petitioner, by his own declaration, had furnished the evidence against himself, which was duly corroborated by SPO2 Romeo Matammu, then the incoming guard on duty. Consequently, petitioner's claim that he was denied due process is totally baseless.

We have consistently held that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of.[18] And any seeming defect in its observance is cured by the filing of a motion for reconsideration.[19] A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.[20] What is frowned upon is the absolute lack of notice and hearing. There is no denial that the essence of due process was sufficiently complied with in the present case.

In conclusion, we rule that the Court of Appeals did not err in upholding petitioner's summary dismissal from the service. We quote with approval its finding, thus:

"As for petitioner's plea that we take another hard look into the National Appellate Board's decision affirming the former's summary dismissal from the service, we reiterate the well-ensconced rule that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority (*Jaculina vs. NAPOLCOM*, 200 SCRA 489).

"Substantial evidence has been defined to be -

`x x x such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is not shown by stressing that there is contrary evidence on record, direct or circumstantial, for the appellate court cannot substitute its own judgment or criterion for that of the (administrative body) in determining where lies the weight of evidence or what evidence is entitled to belief (*Velasquez vs. Nery*, 211 SCRA 28, 34-35, citing *Picardal vs. Lladas*, 21 SCRA 1483).'

"Accordingly, it is not for us to substitute our own judgment for that of the National Appellate Board on the sufficiency of the evidence and credibility of witnesses (*Asst. Executive Secretary for Legal Affairs of the Office of the President vs. Court of Appeals*, 169 SCRA 27). Administrative decisions of administrative agencies performing quasi-judicial functions within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law (*Dadubo vs. Civil Service Commission and DBP*, G.R. No. 106498, June 28, 1993). We see none of these vices in the present case."

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Justice Ricardo P. Galvez (former Solicitor General, now retired), with Justices Alfredo L. Benipayo (now Solicitor General) and Bernardo L.I. Salas (retired), concurring; Rollo at 70-77.

[2] Rollo at 88-91.

[3] Petition, Rollo at 9.

[4] Id. at 9-10, 32.

[5] Id. at 10, 32.

[6] Rollo at 32-33.

[7] Id. at 34.

[8] Id.

[9] "AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES."

[10] Annex "D" of Petition, Rollo at 31, 34.

[11] Annex "H" of Petition, Rollo at 69-77.

[12] Rollo at 88.

[13] Petition, Rollo at 12-13.

[14] Rollo at 111-122.

[15] Rollo at 72-74.

[16] Webster's New Collegiate Dictionary, 1971 at 426, 964.

[17] Rollo at 74.

[18] Stayfast Philippines Corp. vs. NLRC, G.R. No. 81480, February 9, 1993, 218 SCRA 596; Villareal vs. Court of Appeals, G.R. No. 97505, March 1, 1993, 219 SCRA 293; Philippine Phosphate Fertilizer Corp. vs. Torres, G.R. No. 98050, March 17, 1994, 231 SCRA 335.

[19] Abalos vs. Civil Service Commission, G.R. No. 95861, April 19, 1991, 196 SCRA 81; PNOC-Energy Development Corp. vs. NLRC, G.R. No. 79182, September 11, 1991, 201 SCRA 487.

[20] Stayfast Philippines Corp. vs. NLRC, *supra*, citing Lloria Motors, Inc. vs. Drilon, 179 SCRA 175.

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