

DOUGLAS R. VILLAVERT, PETITIONER, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, HON. ARTURO C. MOJICA, IN HIS CAPACITY AS DEPUTY OMBUDSMAN-VISAYAS, AND COMMISSION O...

G.R. No. 133715. February 23, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, in relation to Sec. 27 of RA 6770[1] (The Ombudsman Act of 1989), seeking the annulment of the Memorandum[2] of the Deputy Ombudsman-Visayas dated 17 July 1997, in Adm. Case No. OMB-VIS-ADM-95-0088, approved by the Ombudsman, which recommended the dismissal of petitioner from the Philippine Charity Sweepstakes Office (PCSO), Cebu, as well as the Order[3] dated 30 January 1998 denying petitioner's motion for reconsideration.

Petitioner Douglas R. Villavert is a Sales & Promotion Supervisor of PCSO Cebu Branch responsible for the sale and disposal of PCSO sweepstakes tickets withdrawn by him, which are already considered sold. As Villavert is not expected to sell all withdrawn tickets on his own, he is allowed by the PCSO to consign tickets to ticket outlets and/or to engage the help of sales agents, usually sidewalk peddlers and hawkers.

From 20 March to 12 June 1994, or for two (2) months of weekly draws, petitioner Villavert incurred a total of P997,373.60 worth of unpaid PCSO tickets. On 13 October 1994 he wrote the Chairman and Acting General Manager of PCSO, Manuel L. Morato, proposing to settle his unpaid ticket accounts.[4] His proposal involved the payment of P50,000.00 in cash as down payment; payment of the remaining amount in equal monthly installments of P5,000.00; application of all his per diems and commissions to his account as they became due; and, sale of fifty (50) booklets or more per draw.[5]

On 11 January 1995 Lorna H. Muñoz, COA State Auditor III, wrote petitioner demanding the immediate settlement of the latter's past due ticket accounts with PCSO in the total amount of P997,373.60 with interest at the rate of fourteen percent (14%) per annum. Muñoz also required petitioner to submit within seventy-two (72) hours a written explanation for the delay.[6] In response, petitioner informed Muñoz that he had already submitted a proposal for the settlement of his past due accounts and that pending its approval he had already made a total payment of P23,920.68.

Meanwhile, on 26 January 1995 the PCSO Board of Directors[7] approved Resolution No. 059, Series of 1995, which adopted the recommendation of the Management Committee to reinstate sales supervisors Rene de Guia and Luis Renolla, Jr., and rehabilitate their accounts. By reason of the Resolution, OIC Manager of the Sales Department, Carlos M. Castillo, requested Chairman Morato to give petitioner the same terms and conditions given to de Guia and Renolla, Jr.

On 20 February 1995 Santos M. Alquizalas, COA Director IV, recommended to the Deputy Ombudsman for the

Visayas Arturo C. Mojica that the shortage in the ticket accounts of petitioner should be properly treated under Art. 217[8] of the Revised Penal Code, Sec. 3 of RA 3019,[9] and RA 6713.[10] Taken as a letter-complaint, it was docketed as Adm. Case No. OMB-VIS-ADM-95-0088.

On 27 February 1995 petitioner submitted an amended proposal of settlement for his accounts: a down payment of ten percent (10%) of the total unpaid account or P97,345.29, and the balance to be paid on equal monthly installments equivalent to ten percent (10%) of the down payment or P9,734.52. Petitioner likewise bound himself from then on to purchase all his tickets in cash; to have a ticket quota of no less than fifty (50) booklets for the small draws, and twenty-five (25) booklets for the big draws; and, not to be entitled to his salary for the month if he failed to meet his quota in any draw within that month. The amended proposal was favorably indorsed and recommended for approval by Regional Manager of PCSO-Cebu, William H. Medici, and by PCSO OIC-Manager of the Sales Department, Carlos M. Castillo.[11]

On 19 April 1995 petitioner filed his counter-affidavit where he explained the circumstances which led him to incur subject unpaid ticket accounts. He emphasized his proposal to settle his liability and underscored the favorable indorsement of the Regional Manager of PCSO Cebu as well as by the PCSO OIC-Manager of the Sales Department.[12]

On 4 June 1996 petitioner filed a Manifestation[13] with respondent Deputy Ombudsman-Visayas informing the latter of the approval by PCSO Chairman and Acting General Manager of his amended proposal for settlement. However, in an Order dated 14 August 1996 respondent Deputy Ombudsman-Visayas required petitioner to secure further approval from the PCSO Board of Directors.[14]

In compliance, petitioner submitted inter alia a copy of the Affidavit of Desistance[15] executed by the Regional Director of PCSO-Cebu manifesting the disinterest of the PCSO in further prosecuting the case against petitioner. On 20 December 1996 the PCSO Board of Directors approved petitioner's proposed settlement of 13 October 1994 in its Resolution No. 1491, Series of 1996.[16]

Graft Investigation Officer II Edgemelo C. Rosales, after due consideration of the evidence submitted by petitioner, rendered a resolution recommending the dismissal of Adm. Case No. OMB-VIS-ADM-95-0088 in view of: (a) the approval of petitioner's proposal of settlement by the PCSO Chairman-Acting General Manager; (b) the findings that petitioner did not mismanage his responsibilities in the sale of sweepstakes tickets; and, (c) the Affidavit of Desistance executed by the PCSO through its authorized representative. Despite the recommendation, however, the Deputy Ombudsman-Visayas through Director Virginia Palanca-Santiago issued a Memorandum dated 17 July 1997 finding petitioner "liable for administrative sanction for Grave Misconduct and / or Dishonesty." Consequently, petitioner was recommended for dismissal from the public service with all the accessory penalties provided under Memorandum Circular No. 30, Series of 1989, of the Civil Service Commission.[17] On 7 November 1997 respondent Ombudsman approved the Memorandum. On 4 December 1997 petitioner filed a Motion for Reconsideration which was denied by the Deputy Ombudsman-Visayas in an Order dated 30 January 1998 and approved by the Ombudsman on 3 April 1998. Hence, this petition for review on certiorari under Rule 45 of the Rules of Court, in relation to Sec. 27 of RA 6770.

This petition for review was filed on 18 June 1998. Thereafter, on 16 September 1998 we promulgated *Fabian v. Desierto*[18] where the basis for the filing of this petition before this Court, i.e., Sec. 27, RA 6770,[19] insofar as it allows appeals to the Supreme Court in administrative disciplinary cases, was declared invalid, thus depriving this Court of jurisdiction.

In *Fabian*, Sec. 27 of RA 6770, which authorizes an appeal to this Court from decisions of the Office of the Ombudsman in administrative disciplinary cases, was declared violative of the proscription in Sec. 30, Art. VI, of

the Constitution[20] against a law which increases the appellate jurisdiction of this Court without its advice and consent. In addition, the Court noted that Rule 45 of the 1997 Rules of Civil Procedure precludes appeals from quasi-judicial agencies, like the Office of the Ombudsman, to the Supreme Court. Consequently, appeals from decisions of the Office of the Ombudsman in administrative cases should be taken to the Court of Appeals under Rule 43, as reiterated in the subsequent case of *Namuhe v. Ombudsman*. [21]

In both *Fabian* and *Namuhe*, the petitions were referred to the Court of Appeals for final disposition and considered as petitions for review under Rule 43 of the 1997 Rules of Civil Procedure.

On 9 February 1999 this Court promulgated A.M. No. 99-2-02-SC thus -

In light of the decision in *Fabian v. Ombudsman* (G.R. No. 129742, 16 September 1998), any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED, respectively.

As the instant petition was filed prior to 15 March 1999, its referral for final disposition to the Court of Appeals is still in order.

ACCORDINGLY, let this case be REFERRED to the Court of Appeals as a petition for review under Rule 43 of the 1997 Rules of Civil Procedure to be disposed of in accordance with law.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.
Buena, J., on leave.

[1] Sec. 27. Effectivity and Finality of Decisions. - xxxx 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.

[2] *Rollo*, p. 91.

[3] *Id.*, p. 138.

[4] *Id.*, p. 61.

[5] *Ibid.*

[6] *Id.*, p. 65.

[7] [Chairman-Acting General Manager Manuel L. Morato, Margarita P. Juico, Carmelo L. Royeca, Abraham C. Manuel and Joaquin P. Yuseco.

[8] Malversation of public funds or property. – Presumption of Malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer: xxxx 4. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to

reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand of any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (As amended by RA 1060)

[9] Anti-Graft and Corrupt Practices Act.

[10] Code of Conduct and Ethical Standards for Public Officials and Employees.

[11] *Id.*, p. 77.

[12] *Id.*, pp. 68-70.

[13] Dated 30 May 1996; *id.*, pp. 79-81.

[14] Rollo, p. 85.

[15] *Id.*, pp. 89-90.

[16] *Id.*, p. 88.

[17] *Id.*, pp. 91-93.

[18] G.R. No. 129742, 295 SCRA 470.

[19] See Note 1.

[20] "No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence."

[21] G.R. No. 124965, 29 October 1998, 298 SCRA 298.

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