

AUGUSTO R. SAMALIO, PETITIONER, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, DEPARTMENT OF JUSTICE AND BUREAU OF IMMIGRATION, RESPONDENTS.

G.R. NO. 140079. March 31, 2005

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the May 24, 1999 decision,[1] as well as the September 1, 1999 resolution, of the Court of Appeals (CA) in CA-G.R. SP No. 48723 which in turn affirmed the November 26, 1997 resolution of the Civil Service Commission (CSC). The aforementioned CSC resolution upheld the August 30, 1996 1st Indorsement of then Justice Secretary Teofisto T. Guingona confirming the penalty of dismissal from service imposed by the Bureau of Immigration upon petitioner on the ground of dishonesty, oppression, misconduct and conduct grossly prejudicial to the best interest of the service in connection with his act of extorting money from Ms. Weng Sai Qin, a foreign national.

The facts, as found by the CA and adopted by petitioner himself, are as follows:

Petitioner Augusto R. Samalio was formerly an Intelligence Officer of the Bureau of Immigration and Deportation.

In Resolution No. 0-93-0224 dated February 4, 1993, the City Prosecutor's office of Pasay City recommended that petitioner Samalio be prosecuted for the crimes of Robbery and Violation of Section 46 of the Immigration Law before the Sandiganbayan under the following facts:

"x x x that on 2 February 1993, Ms. Weng Sai Qin arrived at the NAIA from Saipan. While waiting for her turn at the arrival immigration counter, her passport was examined by Immigration Officer Juliet Pajarillaga. Noting that Ms. Weng, a Chinese, was holding a Uruguayan passport, Ms. Pajarillaga suspected that the former's passport was fake. Ms. Weng was taken out of the queue and brought to Respondent who was the duty intelligence officer. Ms. Weng, who could only speak in Chinese, asked respondent by sign language that she wanted to meet a friend who was waiting at the NAIA arrival area. Respondent approved the request and accompanied Ms. Weng to the arrival area. Thereafter, Respondent, with Ms. Weng and her male friend in tow, returned to the immigration area. While inside the office of Respondent, Ms. Weng asked that her passport be returned. Sensing a demand for money in exchange for her passport, Ms. Weng flashed \$500.00 in front of Respondent. The money was grabbed by Respondent. Shortly, her passport was returned and [sic] she was allowed to leave. When Ms. Weng checked her passport later, she discovered that it did not bear an immigration arrival stamp. Thereafter, Ms. Weng complained against Respondent."

In a later Indorsement communication dated February 9, 1993 to the Bureau of Immigration and Deportation (BID), former NAIA General Manager Gen. Guillermo G. Cunanan enclosed a copy of the aforesaid City Prosecutor's Resolution. Reacting, then BID Commissioner, Zafiro L. Respicio, issued Personnel Order No. 93-179-93 commencing an administrative case against petitioner Augusto R. Samalio for Violation of CSMC No. 46, Rule 2, Section 1, for dishonesty, oppression, misconduct, disgraceful and immoral conduct,

inefficiency and incompetence in the performance of official duties, violation of reasonable office rules and regulations and conduct prejudicial to the best interest of the service, requiring petitioner to submit his answer to the charges together with supporting statements and documents, and whether or not he elects a formal investigation if his answer is not considered satisfactory. In the same Personnel Order, Samalio was preventively suspended for a period of ninety (90) days as the charge sheet against him involves dishonesty, oppression and misconduct. Forthwith, petitioner attempted the lifting of his preventive suspension. It was struck down.

Later on, petitioner submitted an answer denying the charges and expressly electing a formal investigation if such answer be not found to be satisfactory. Attached thereto are the affidavits of his witnesses Rodrigo C. Pedrealba, Dante Aquino, Florencio B. Austria and Winston C. Vitan. The answer was found to be unsatisfactory so the case was set for formal hearing before the Board of Discipline of BID.

The case suffered several postponed hearings due to the requests and non-availability of the parties but mostly due to the absence of complainant's witnesses until on September 7, 1993, respondent was allowed to file a motion to dismiss with the Special Prosecutor designated given time to comment thereon. When the dismissal motion was filed, assigned Special Prosecutor Edmund F. Macaraig interposed no objection thereto. Notwithstanding, the case was not dismissed and instead, the Special Prosecutor was given five (5) days to inform the Board whether or not he intends to present additional witnesses.

On December 16, 1993, the DID Commissioner issued Personnel Order No. 93-428 reorganizing the Board of Discipline and this case was assigned to a new Board presided by Atty. Kalaw. Subpoenas were again sent and hearings were scheduled several times before the new Board until on February 6, 1995, Special Prosecutor assigned, Edmund F. Macaraig, moved that Samalio's Motion to Dismiss be denied and that the case be considered submitted for resolution based on the records. On February 16, 1995, the hearing officer denied Samalio's Motion to Dismiss but granted his Comment/Manifestation explaining his absence during the February 6, 1995 hearing and requesting that the case be set anew on February 22, 1995.

Finally, on July 25, 1996, BID Acting Commissioner Ramon J. Liwag, issued the decision finding Augusto R. Samalio guilty of the charges and was ordered dismissed from service.

In the 1st Indorsement dated August 30, 1996, former Justice Secretary Teofisto T. Guingona, Jr. confirmed the penalty of dismissal from service of Augusto R. Samalio. Soon after, the Motion for Reconsideration was denied in a Resolution dated June 2, 1997.

Guingona's decision was appealed to the Civil Service Commission which issued Resolution No. 974501 dated November 26, 1997 dismissing the appeal for lack of merit and affirming the decisions of Acting Commissioner Liwag and Secretary Guingona. Similarly, the attempt for a reconsideration was likewise dismissed in Civil Service Resolution No. 981925.

In the meantime, on June 13, 1994, during the pendency of the instant administrative case, Augusto R. Samalio was convicted (in Sandiganbayan Criminal Case No. 18679) of the crime of Robbery, as defined in Articles 293 and 294, paragraph 5 of the Revised Penal Code and was sentenced to suffer indeterminate penalty of Four (4) Months and One (1) Day of Arresto Mayor to Four (4) Years, Two (2) Months and Eleven (11) Days of Prison Correccional and to indemnify complainant Weng Sai Qin the amount of US \$500.00 and to pay the costs. Samalio did not appeal the conviction and instead applied for and was granted probation by the Sandiganbayan for two (2) years in an Order dated December 12, 1994.[2] (Citations omitted)

Petitioner assailed before the CA, in a petition for review, the correctness and validity of CSC Resolution Nos. 974501 and 981925. The CA, however, dismissed the petition for review and subsequently denied the motion for reconsideration.

Petitioner now comes before us to challenge the CA decision dismissing his petition for review as well as the

resolution denying his motion for reconsideration. Petitioner claims he was not accorded due process and the CA failed to consider the proper effects of his discharge under probation.

In support of his contention that he was deprived of due process, petitioner alleges that no witness or evidence was presented against him, that the CA erred in the interpretation of Section 47, Rule 130 of the Rules of Court and that there was no hearing conducted on his case.

Petitioner's contention is without merit.

The CSC decision and resolution which upheld the resolution of the Secretary of Justice confirming the decision of the Commissioner of the BID are supported by substantial evidence. The CSC, as well as the Secretary of Justice and the Commissioner of the BID, decided the case on the basis of the pleadings and papers submitted by the parties, and relied on the records of the proceedings taken. In particular, the decision was based on the criminal complaint filed by Weng Sai Qin against petitioner before the City Prosecutor's Office of Pasay City, as well as Resolution No. 0-93-0224 dated February 4, 1993 of the same office recommending the prosecution of petitioner at the Sandiganbayan for the crimes of robbery and violation of Section 46 of the Immigration Law.

The CSC, as well as the Secretary of Justice, also took cognizance of the testimony of Weng Sai Qin in Sandiganbayan Criminal Case No. 18679 and the fact of petitioner's conviction in that case. Thus, there was ample evidence which satisfied the burden of proof required in administrative proceedings – substantial evidence or that quantum of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion[3] to support the decision of the CSC.

The CSC and the Secretary of Justice did not err in applying Section 47, Rule 130 of the Revised Rules of Court, otherwise known as the "rule on former testimony," in deciding petitioner's administrative case. The provisions of the Rules of Court may be applied suppletorily to the rules of procedure of administrative bodies exercising quasi-judicial powers, unless otherwise provided by law or the rules of procedure of the administrative agency concerned. The Rules of Court, which are meant to secure to every litigant the adjective phase of due process of law, may be applied to proceedings before an administrative body with quasi-judicial powers in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.[4]

For Section 47, Rule 130 to apply, the following requisites must be satisfied: (a) the witness is dead or unable to testify; (b) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests; (c) the former case involved the same subject as that in the present case, although on different causes of action; (d) the issue testified to by the witness in the former trial is the same issue involved in the present case and (e) the adverse party had an opportunity to cross-examine the witness in the former case.[5]

In this case, Weng Sai Qin was unable to testify in the administrative proceedings before the BID because she left the country on February 6, 1993,[6] or even before the administrative complaint against petitioner was instituted. Petitioner does not deny that the testimony of Weng Sai Qin was given in Sandiganbayan Criminal Case No. 18679, a case which sprang from the information filed pursuant to Resolution No. 0-93-0224 dated February 4, 1993 of the City Prosecutor's Office of Pasay City, the very same resolution used by Commissioner Respcio as basis for filing the administrative complaint. Hence, the issue testified to by Weng Sai Qin in Sandiganbayan Criminal Case No. 18679 was the same issue in the administrative case, that is, whether petitioner extorted money from Weng Sai Qin. Petitioner also had the opportunity to face and cross-examine his accuser Weng Sai Qin, and to defend and vindicate his cause before the Sandiganbayan. Clearly, all the requisites for the proper application of the rule on former testimony, as embodied in Section 47, Rule 130, were satisfied. Thus, the CSC and the

Secretary of Justice committed no error when they applied it and took cognizance of the former testimony of Weng Sai Qin in Sandiganbayan Criminal Case No. 18679 where petitioner was convicted.

Petitioner contends that the CA, as well as the CSC and the Secretary of Justice, should not have applied Section 47, Rule 130 because there was failure to lay the basis or predicate for the rule. The argument is specious and deserves scant consideration. The records of this case reveal that even in the early stages of the proceedings before the Board of Discipline of the BID, Weng Sai Qin's departure from the country and consequent inability to testify in the proceedings had already been disclosed to the parties.[7]

Further, administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law.[8] Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them.[9] In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[10]

The Uniform Rules of Procedure in the Conduct of Administrative Investigations in the CSC[11] which were applicable to petitioner's case provided that administrative investigations shall be conducted without necessarily adhering to technical rules applicable in judicial proceedings.[12] The Uniform Rules further provided that evidence having materiality and relevance to the administrative case shall be accepted.[13] Not only was petitioner's objection to the application of Section 47, Rule 130 a technicality that could be disregarded; the testimony of Weng Sai Qin in Sandiganbayan Criminal Case No. 18679 was also material and relevant to the administrative case. Hence, the CSC was correct in applying Section 47, Rule 130 when it took cognizance of the former testimony of Weng Sai Qin in the aforementioned criminal case.

Petitioner's assertion that there was no hearing (that he was deprived of the opportunity to be heard) is likewise without merit. Apparently, petitioner's concept of the opportunity to be heard is the opportunity to ventilate one's side in a formal hearing where he can have a face-to-face confrontation with the complainant. However, it is well-settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings.[14]

Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process.[15] 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.[16] The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored.[17] In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.[18]

In this case, petitioner was heard through the various pleadings which he filed with the Board of Discipline of the BID when he filed his answer[19] and two motions to dismiss,[20] as well as other motions and papers. He was also able to participate in all stages of the administrative proceeding. He was able to elevate his case to the Secretary of Justice and, subsequently, to the CSC by way of appeal.

We have consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[21] And any seeming defect in its observance is cured by the filing of a

motion for reconsideration.[22] Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[23]

Petitioner himself admits that he filed a motion for reconsideration[24] of the decision of the BID which was confirmed by the Secretary of Justice. He also admits that he filed a motion for reconsideration[25] with the CSC. Hence, by his own admission, petitioner's protestations that he had been deprived of due process must necessarily fail.

Petitioner claims that when the Sandiganbayan approved his probation in the criminal case, it restored him to all civil rights lost or suspended as a result of his conviction, including the right to remain in government service. Petitioner cites the case of *Baclayon v. Mutia, et al.*[26] where the grant of probation suspended the imposition not only of the principal penalties but of the accessory penalties as well.

Petitioner's contention is misplaced.

First, the *Baclayon* case is not in point. In that case, no administrative complaint was instituted against the public officer, a public school teacher, during the pendency of the criminal case against her and even after her conviction. There being no administrative case instituted against the public officer and no administrative liability having been imposed, there was no administrative sanction that could have been suspended by the grant of probation.

Second, dismissal is not an accessory penalty either of *prision correccional* [27] or *arresto mayor*,[28] the range of penalty imposed upon petitioner in Sandiganbayan Criminal Case No. 18679. Hence, even assuming arguendo that petitioner's contention was correct, the grant of probation could not have resulted in the suspension of an accessory penalty like dismissal that does not even exist.

Third, "to suspend" means "to stop temporarily; to discontinue" [29] or "to cause to be intermitted or interrupted." [30] The records of this case show that petitioner was granted probation in an order dated December 12, 1992[31] of the Second Division of the Sandiganbayan. He was dismissed from the service in the decision dated July 25, 1996[32] of the BID Commissioner. Since the grant of probation was granted long before the administrative case was decided, the probation could not have possibly suspended the imposition of the penalty of dismissal from the service in the administrative case since there was no administrative penalty that could have been interrupted by the probation at the time it was granted. Indeed, petitioner's discharge on probation could not have restored or reinstated him to his employment in government service since he had not been yet been dismissed therefrom at the time of his discharge.

Finally, even if dismissal had been one of the accessory penalties of the principal penalty imposed upon petitioner in the criminal case, and even if the administrative case had been decided earlier than the criminal case, still the imposition of the penalty of dismissal could not have been suspended by the grant of probation. As petitioner himself contends, the criminal action is separate and distinct from the administrative case. And, if only for that reason, so is administrative liability separate and distinct from penal liability.[33] Hence, probation affects only the criminal aspect of the case,[34] not its administrative dimension.

WHEREFORE, the petition is hereby DENIED. The assailed decision of the Court of Appeals in CA-G.R. SP No. 48723 dated May 24, 1999, affirming the decision and resolution of the Civil Service Commission is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Teodoro P. Regino and Renato C. Dacudao of the Special Fourth Division.

[2] Rollo, pp. 17-20.

[3] *Anflo Management & Industrial Corp., et al. v. Bolanio*, 439 Phil. 309 (2002).

[4] *Generoso Villanueva Transportation Co., Inc. v. Moya, et al.*, 149 Phil. 213 (1971).

[5] *Regalado*, Remedial Law Compendium, Vol. II, 7th Revised edition, pp. 620-621.

[6] Records, p. 53.

[7] See order dated April 20, 1993 of the BID's Board of Discipline, Records, p. 53.

[8] *Bantolino, et al. v. Coca-Cola Bottlers Phils., Inc.* G.R. No. 153660, 10 June 2003, 403 SCRA 699.

[9] *De los Santos v. NLRC, et al.*, 423 Phil. 1020 (2001).

[10] *Emin v. De Leon, et al.*, 428 Phil. 172 (2002).

[11] CSC Resolution No. 94-0521 dated January 25, 1994. This has been repealed by CSC Resolution No. 99-1936 dated August 31, 1999, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service. However, Section 3, Rule I of CSC Resolution No. 99-1936 is similar to Section 11, Part I of CSC Resolution No. 94-0521.

[12] Section 11, Part I, *id.*

[13] Section 31, Part II (B), *id.*

[14] *Artezuela v. Maderazo*, 431 Phil. 135 (2002).

[15] *Liquid v. Camano, Jr.*, 435 Phil. 695 (2002).

[16] *Stayfast Philippines Corp. v. NLRC, et al.*, G.R. No. 81480, 9 February 1993, 218 SCRA 596, citing *Llora Motors, Inc., et al. v. Drilon, et al.*, G.R. No. 82895, 7 November 1989, 179 SCRA 175.

[17] *Adamson & Adamson, Inc. v. Amores, et al.*, G.R. No. L-58292, 23 July 1987, 152 SCRA 237.

[18] *CMP Federal Security Agency, Inc. v. NLRC, et al.*, 362 Phil. 439 (1999).

[19] Records, pp. 42-47.

[20] Records, pp. 62-63; pp. 113-114.

[21] *Zacarias v. National Police Commission, et al.*, G.R. No. 119847, 24 October 2003, 414 SCRA 387.

[22] *Abalos v. Civil Service Commission, et al.*, G.R. No. 95861, 19 April 1991, 196 SCRA 81.

[23] *Rubenecia v. Civil Service Commission*, 314 Phil. 612 (1995).

[24] Rollo, p. 10.

[25]id.

[26] 214 Phil. 126 (1984).

[27] Article 43, Revised Penal Code.

[28] Article 44, id.

[29] Webster's Third New International Dictionary of the English Language.

[30]id.

[31] Records, pp. 90-91.

[32]id., pp. 79-81.

[33] Veloso v. Sandiganbayan, et al., G.R. Nos. 89043-65, 16 July 1990, 187 SCRA 504.

[34] Budlong v. Apalisok, et al., 207 Phil. 804 (1983).

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