

ARNOLD P. MOLLANEDA, PETITIONER, VS. LEONIDA C. UMACOB, RESPONDENT.

G.R. No. 140128. June 06, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari of the (a) Decision[1] dated May 14, 1999 of the Court of Appeals in CA-G.R. SP No. 48902 affirming in toto Resolution No. 973277 of the Civil Service Commission; and (b) Resolution[2] dated August 26, 1999 of the said court denying the motion for reconsideration of its Decision.

The case stemmed from the affidavit-complaint for sexual harassment filed by Leonida Umacob (respondent) against Arnold Mollaneda (petitioner) with the Civil Service Commission - Regional Office XI, Davao City (CSC-RO XI) in September 1994 alleging:

"That sometime on September 7, 1994 at around 7:30 o'clock more or less, in the morning, while inside the office of Mr. Rolando P. Suase, Admin Officer 2 of Davao City Schools, located at the Division Office Building, along Palma Gil St., Davao City, to follow-up my request for transfer from my present assignment to either Buhangin District or Bangoy District, Davao City, Mr. Rolando P. Suase was not around and it was school Division Superintendent, Mr. Arnold P. Mollaneda who was seated at his (Rolando's) table, as at the time, the office of Mr. Arnold Mollaneda just adjacent was being cleaned by a janitor.

That immediately I approached him and seated opposite to him and handed to him my letter of recommendation from DECS Regional Director, Region XI, Dr. Ramon Y. Alba, recommending my possible transfer and after reading the same advised her to return next week as there is no available item and that he will think about it. However, I insisted that he will give me a note to fix the time and date of our next meeting and or appointment at his office. At this instance, he handed me a piece of paper with his prepared signature and requested me to write my name on it, after which, he took it back from me and assured me to grant my request and at the same time, he made some notations on the same piece of paper below my name, indicating my possible transfer to Buhangin or Bangoy District of which I thanked him for the accomodation. At this point, he stood up, bringing along with him the paper so that I also stood up. However, before I could get outside the office, he then handed to me the said piece of paper and advised me to give it to a certain May Pescadero, personnel clerk, for the making/cutting of the order of transfer. All of a sudden he hugged and embraced me, then he kissed my nose and lip in a torrid manner. That I tried to resist but he forcibly held my neck so that he was able to kiss me in an easy way. That - not contented, he then mashed my left breast. He did the malicious act for several times, afterwhich he warned me not to tell anybody what he did to me inside the office.

That as a result of the very unfortunate incident, I was so shocked, that I was not able to speak or talk or confess to my husband what our School Superintendent did to me. Likewise, I also informed one Venus Mariano, also DECS employee, who advised me to stay and remain calm. However, I decided to report the matter to San Pedro Patrol Station." [3] (Emphasis supplied)

Respondent furnished the Department of Education, Culture and Sports - Regional Office XI, Davao City (DECS-RO XI) a copy of her affidavit-complaint. Thus, on September 30, 1994, Regional Director Susana

Cabahug issued an order^[4] directing the formation of a committee to conduct an investigation of respondent's complaint against petitioner.

On October 4, 1994, petitioner filed with the CSC-RO XI his answer to the affidavit-complaint denying the allegations therein and alleging that there are "material contradictions," in respondent's version of the incident, thus:

"1) On the date of the alleged happening of the incident, she was with her husband who was just outside the Office of Mr. Mollaneda according to witness Security Guard Raul Moncada, but she did not report the incident to her husband, nor did she register any complaint on that date September 7, 1994;

She reported the alleged acts of lasciviousness complained of to the police only the following day, September 8, 1994, at about 3:45 P.M. as shown by the extract of the entry of the police blotter attached to her AFFIDAVIT-COMPLAINT in this case.

2) In her report to the police as shown by the said police blotter, she said that "While at the office of Mr. Arnold Mollaneda, Division Superintendent DECS XI, she was requested by the latter to transfer in the office of Mr. Rolando Suase as the janitor/security guard was cleaning the room of the respondent."

And her version as published in The Mindanao Daily Mirror in the issue of September 10, 1994 (see ANNEX C of the complaint of Mollaneda to the City Prosecution Office). "Omacob said Mollaneda in a written note told her to transfer to the room of a certain Rolando Suase since the janitor will clean his room. But before she could move to the other room Mollaneda allegedly hugged, kissed and mashed her breast and told her not to tell it to anybody."

3) In her instant Affidavit-Complaint, she again says "while inside the Office of Mr. Rolando P. Suase x x x to follow-up my request for transfer x x x Mr. Suase was not around and it was Schools Division Superintendent, Mr. Arnold P. Mollaneda who was seated at his (Rolando) table, as at that time, the Office of Mr. Arnold P. Mollaneda just adjacent was being cleaned by a janitor x x x." It was inside the office of Mr. Suase that she was given a note on her request for transfer by Mr. Mollaneda to be given to May Pescadero when "At this point, he stood up bringing along with him the paper so that I also stood-up, however, before I could get outside the office, he then handed to me the said piece of paper and advised me to give it to a certain May Pescadero, personnel clerk for the making/cutting of the order of transfer and at the same time all of a sudden, he hug and embraced me, then he kissed my nose and lips in a torrid manner. That I tried to resist but he forcibly held my neck so that he was able to kiss me in an easy way. That not contented, he then mashed my left breast, which he did the malicious act for several times, afterwhich he warned me not to tell anybody what he did to me inside the office."^[5]

In the present petition, petitioner alleged his own version of the incident,^[6] thus:

"Petitioner, in his sworn statement, stated that on September 7, 1994, he had interviewed or conferred with about three (3) persons already who were applying for new teaching positions or for transfers when Respondent came to HIS OFFICE. When it was her turn to be interviewed, petitioner told her that she could not be transferred immediately because the Division only had very few vacant items and the same were already given to earlier applicants. Nevertheless, she was told to wait while he searched for a new vacant item.

Petitioner gave the Respondent a note for her to give to the Acting Personnel Officer Mildred "May" Pescadero so that Respondent may be included in the list of teachers applying for transfer. Upon reading the note, however, the Respondent angrily told him why could she not be immediately accommodated when she had the written recommendation of Dir. Ramon Alba. She told Petitioner that asking her to wait was unfair because there were other applicants from Marilog district who were transferred and one of them who was slated to be transferred was Mrs. Daylinda Bacoy.

Petitioner explained to the Respondent that Mrs. Bacoy suffered an injury when she fell off the horse she was riding on when she went to her school in Kiopao Elementary School. Petitioner scolded the Respondent for her insubordinate attitude toward him. She was counting so much on the recommendation of Dir. Ramon Alba who was Petitioner's superior, and could not believe that no positive action was made by Petitioner on the basis of said recommendation. In going OUT OF THE OFFICE OF PETITIONER, she was heard to have murmured that Petitioner would regret his act of discrimination.

There was no act of sexual harassment that occurred during the relatively brief conversation between the herein parties. The witnesses, whose affidavits were attached to the Affidavit of Mr. Mollaneda, all swore to the fact that they saw what transpired between Petitioner and the Respondent and that there was no act of sexual harassment that occurred. Moreover, they swore to the fact that the interview took place inside Mr. Mollaneda's office as the both parties were seen through a glass panel separating Petitioner's office and the anteroom."

Meanwhile, pending resolution by the CSC-RO XI of respondent's complaint, the DECS investigating committee recommended to the DECS Regional Director "the dropping of the case" for lack of merit.[8]

On June 5, 1995, the CSC-RO XI issued a resolution charging petitioner with grave misconduct, oppression, abuse of authority and conduct prejudicial to the best interest of the service. The said office found there was a prima facie case against him[9] and eventually elevated to the Civil Service Commission (Commission) the records of the case.

Thereafter, the Commission designated Atty. Anacleto Buena to hear and receive the evidence in the case. A formal hearing was conducted in Davao City. Both parties were assisted by counsel.

On July 7, 1997, the Commission issued Resolution No. 973277 finding petitioner guilty of grave misconduct and conduct grossly prejudicial to the best interest of the service. He was meted the penalty of dismissal from the government service with all its accessory penalties.[10] Forthwith, petitioner filed a motion for reconsideration but was denied in Resolution No. 981761.[11]

Feeling aggrieved, petitioner filed with the Court of Appeals a petition for review alleging: "first, that the Commission erred in finding him guilty x x x notwithstanding the fact that he was denied his right to due process; and second, that the Commission erred in giving weight to the hearsay testimonies of the witnesses for respondent." [12]

On May 14, 1999, the Court of Appeals rendered its Decision[13] affirming in toto Resolution No. 973277 of the Commission. The appellate court held:

"It is a time-honored rule that the matter of assigning values to the testimony of witnesses is best performed by the trial courts, tribunals, or administrative bodies or agencies exercising quasi-judicial powers. Unlike appellate courts, they can weigh such testimony in clear observance of the demeanor, conduct and attitude of the witnesses at the trial or hearing. Thus, absent any showing that they have overlooked facts of substance and value that if considered might affect the result, their findings must be given weight and respect.

In the present case, nothing significant has been shown to convince this Court that the Commission acted with bias or ignored something of substance that could have, in any degree, warranted an exoneration of petitioner from the charges hurled against him.

It bears mentioning that respondent victim is a public school teacher. If she is not motivated by the truth, she would not have subjected herself to the rigors of a hearing before the Commission and airing in public matters that affect her honor. It is hard to conceive that respondent would reveal and admit the shameful and humiliating experience she had undergone if it were not true. In any case, the fact that petitioner could not

proffer any explanation as to why respondent and the prosecution witnesses would falsely testify against him logically proves that no improper motive impelled them to accuse the former of such serious offense as sexual harassment.

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Petitioner, in the present case, may not successfully plead violation of his right to due process as he, in fact, participated at the pre-trial, agreed to matters therein taken up, attended the hearing, and lengthily cross-examined the prosecution witnesses.

Anent petitioner's contention that the decision of the Commission was in conflict with newspaper reports of a decision dismissing the case against him for insufficiency of evidence, suffice it to state that what the movant considers as a decision is merely a newspaper report. Newspaper accounts and clippings are hearsay and have no evidentiary value. (People vs. Aguel, 97 SCRA 795)."[14]

Rebuffed in his bid for reconsideration of the Court of Appeals Decision, petitioner filed the instant petition, and as grounds therefor alleges:

"I

THE RELIANCE OF THE COURT OF APPEALS ON THE THEORY THAT FINDINGS OF QUASI-JUDICIAL AGENCIES ARE GIVEN CONSIDERABLE WEIGHT, IS MISPLACED IN VIEW OF THE PERTINENT FACTS OF THE CASE.

II

A SIMILAR ADMINISTRATIVE CASE WAS INSTITUTED IN AND INVESTIGATED BY THE D.E.C.S. AND A RESOLUTION WAS RENDERED DISMISSING THE CASE AGAINST PETITIONER.

III

THE TESTIMONIES OF THE WITNESSES FOR THE PETITIONER WERE ALL EYE-WITNESSES TO THE ACTUAL INCIDENT, WHICH CAST DOUBT ON THE CREDIBILITY OF THE RESPONDENT'S TESTIMONY."[15]

Petitioner contends that the oft-cited rule - the matter of assigning values to the testimony of witnesses is best performed by the x x x administrative bodies or agencies exercising quasi-judicial powers - finds no application in the present case. According to petitioner, the failure of the CSC Commissioners to "personally observe the demeanor, conduct and attitude of the witnesses" and their reliance solely on Atty. Buena's recommendation and notes should have discouraged the Court of Appeals from giving weight to the findings of the Commission. Petitioner also argues that respondent engaged in forum shopping by filing her affidavit-complaint with the DECS-RO XI and CSC-RO XI; and that the Court of Appeals should have considered in his favor the DECS-RO XI's resolution dismissing the administrative case against him. Finally, petitioner insists that the Court of Appeals erroneously gave credence to the "hearsay" testimonies of Melencio Umacob, respondent's husband, and Venus Mariano, secretary of the Assistant Division Superintendent of the Davao City Schools. These witnesses testified that respondent narrated to them the events concerning the sexual harassment committed against her by petitioner.

For her part, respondent reiterates the ruling of the Court of Appeals that in reviewing administrative cases, the appellate court is traditionally sanctioned to subscribe to the findings of the lower court or administrative body or agency since it is in a better position to determine the credibility of witnesses. As to the alleged "act of forum-shopping," petitioner claims that in pursuing redress of her grievances, she sought refuge both in the court and in the Commission for she believed they are the proper fora for her criminal and administrative complaints. And lastly, respondent counters that the Commission did not err in giving more credence to the testimonies of her

witnesses, stressing that petitioner's witnesses are biased, they being his subordinates.

During the pendency of this case in this Court, petitioner submitted the decision of the Municipal Trial Court, Branch 5, Davao City, acquitting him of the crime of acts of lasciviousness which arose from the same incident involved in the present administrative case.

The petition is bereft of merit.

In assailing the Decision of the Court of Appeals, petitioner is actually urging us not to give credence to the factual findings of the Commission on the ground that the Commissioners did not personally hear the case.

The fact that the Commission assigned Atty. Buena to hear and receive evidence does not render its factual findings unworthy of credence. In laying down the precedent that the matter of assigning values to the testimony of witnesses is best performed by trial courts or administrative bodies rather than by appellate courts, this Court merely recognizes that the trial court or the administrative body as a trier of facts is in a better position to assess the demeanor of the witnesses and the credibility of their testimonies as they were within its proximal view during the hearing or investigation. At any rate, it cannot be gainsaid that the term "administrative body or agency" includes the subordinate officials upon whose hand the body or agency delegates a portion of its authority. Included therein are the hearing officers through whose eyes and ears the administrative body or agency observes the demeanor, conduct and attitude of the witnesses and listens to their testimonies.[16]

It must be emphasized that the appointment of competent officers to hear and receive evidence is commonly resorted to by administrative bodies or agencies in the interest of an orderly and efficient disposition of administrative cases. This Court, in *American Tobacco Company v. Director of Patents*, [17], ruled:

"Thus, it is well-settled that while the power to decide resides solely in the administrative agency vested by law, this does not preclude a delegation of the power to hold a hearing on the basis of which the decision of the administrative agency will be made."

The rule that requires an administrative officer to exercise his own judgment and discretion does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to him the facts, on the basis of which the officer makes his decisions. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law. Neither does due process of law nor the requirements of fair hearing require that the actual taking of testimony be before the same officer who will make the decision in the case. As long as a party is not deprived of his right to present his own case and submit evidence in support thereof, and the decision is supported by the evidence in the record, there is no question that the requirements of due process and fair trial are fully met. In short, there is no abnegation of responsibility on the part of the officer concerned as the actual decision remains with and is made by said officer. It is, however, required that to "give the substance of a hearing, which is for the purpose of making determinations upon evidence the officer who makes the determinations must consider and appraise the evidence which justifies them.

In the case at bar, while the hearing officer may make preliminary rulings on the myriad of questions raised at the hearings of these cases, the ultimate decision on the merits of all the issues and questions involved is left to the Director of Patents. Apart from the circumstance that the point involved is procedural and not jurisdictional, petitioners have not shown in what manner they have been prejudiced by the proceedings."

Under our jurisprudence, an administrative agency may employ other persons, such as a hearing officer, examiner or investigator, to receive evidence, conduct hearing and make reports on the basis of which the agency shall render its decision. Such a procedure is a practical necessity. Corollarily, in a catena of cases, this Court laid down the cardinal requirements of due process in administrative proceedings, one of which is that "the tribunal or body

or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate." [18] Thus, it is logical to say that this mandate was rendered precisely to ensure that in cases where the hearing or reception of evidence is assigned to a subordinate, the body or agency shall not merely rely on his recommendation but instead shall personally weigh and assess the evidence which the said subordinate has gathered. In the case at bar, it is evident that the Commission itself evaluated in detail the evidence of both parties as reported by Atty. Buena. In fact, in laying down its conclusion, it made constant reference to the testimonies of the parties and of their witnesses and to the documentary evidence presented.

It must be addressed that, the Commission's act of delegating the authority to hear and receive evidence to Atty. Buena is not without legal basis. Section 47, Book V of Executive Order No. 292 (otherwise known as the Administrative Code of 1987) provides that the Commission may depute any department or agency or official or group of officials to conduct an investigation on the complaint filed by a private citizen against a government official or employee. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

Going further, petitioner complains that he was not furnished a copy of Atty. Buena's notes and recommendation. The Court cannot empathize with him. In *Ruiz v. Drilon*, [18] we unequivocally held that a respondent in an administrative case is not entitled to be informed of the findings and recommendation of any investigating committee created to inquire into the charges filed against him. He is entitled only to the administrative decision based on substantial evidence made of record and a reasonable opportunity to meet the charges and the evidence presented against him during the hearing. [20] Besides, Atty. Buena's findings and recommendation are internal communications between him and the Commission and, therefore, confidential. In *Pefianco v. Moral*, [21] this Court held:

"Respondent's (Moral) counsel is reminded that the Report of the DECS Investigating Committee is not an integral part of the Decision itself x x x [t]he report is an internal communication between the Investigating Committee and the DECS Secretary, and therefore, confidential until the latter had already read and used the same in making his own determination of the facts and applicable law of the case, to be expressed in the Decision he may make.

The Report remains an internal and confidential matter to be used as part - although not controlling - of the basis for the decision. Only when the party adversely affected by the decision has filed and perfected an appeal to the Civil Service Commission may all the records of the case, including the aforesaid Report be forwarded to the CSC. In the latter appellate tribunal, the respondent's counsel may be allowed to read and/or be given a copy of the Report to enable the appellant to file an intelligent and exhaustive appellant's Brief Memorandum."

Petitioner's second argument requires no lengthy discussion. First, he did not raise the issue of forum-shopping before the Commission. [22] It bears emphasis that respondent merely furnished the DECS-RO XI a copy of her affidavit-complaint. And second, we surveyed the records and there is nothing therein which supports petitioner's claim that the DECS-RO XI dismissed respondent's affidavit-complaint. The resolution²² of the DECS mainly recommended to the Regional Director of the DECS-RO XI the dropping of the case. A recommendatory resolution does not have the effect of actually disposing of a case. Its function is merely to advise the disciplining authority of what action should be taken or what penalty should be imposed. It is not controlling and the disciplining authority may or may not conform with the recommended action.

On petitioner's assertion that the testimony of respondent's witnesses are hearsay and, therefore, inadmissible in evidence, we are constrained to hold a different view. A reading of the testimonies of Umacob and Mariano shows that they were not presented to prove the truth of respondent's accusations against petitioner, but only to establish

the fact that respondent narrated to them what transpired between her and petitioner. While it is true that the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the facts asserted in the statement, is clearly hearsay evidence, it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made.[23] Regardless of the truth or falsity of a statement, when the fact that it has been made is relevant, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue, or be circumstantially relevant as to the existence of such a fact.[24]

Significantly, respondent herself and her witnesses were present during the hearing of the case. Hence, petitioner was given the opportunity to cross-examine them. The real basis for the exclusion of hearsay evidence lies in the fact that a hearsay testimony is not subject to the tests which can ordinarily be applied for the ascertainment of the truth of testimony, since the declarant is not present and available for cross-examination.[25]

Lastly, petitioner cannot find solace in the dismissal of the criminal case against him. Long-ingrained in our jurisprudence is the rule that the dismissal of a criminal case against an accused who is a respondent in an administrative case on the ground of insufficiency of evidence does not foreclose the administrative proceeding against him or give him a clean bill of health in all respects. In dismissing the case, the court is simply saying that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt, a condition sine qua non for conviction because of the presumption of innocence which the Constitution guarantees an accused.[27] However, in administrative proceedings, the quantum of proof required is only substantial evidence.[28] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] After a more incisive scrutiny of the records, we are convinced that petitioner's culpability has been proven by substantial evidence. Respondent's testimony was found by the Commission to be "natural, straightforward, spontaneous and convincing." [30] Unlike petitioner's testimony, that of respondent is replete with details consistent with human nature. Clearly, the dismissal of the criminal case against petitioner by the Municipal Trial Court, Branch 5, Davao City cannot bind this Court in the disposition of the instant administrative case.[31]

In sum, we find no reason to reverse the decision of the Court of Appeals. While it is unfortunate that petitioner will lose his job because of a moment's indiscretion, this Court shall not flinch in imposing upon him the severe penalty of dismissal. As Schools Division Superintendent, petitioner is bound by a high standard of work ethics. By succumbing to his moral perversity, he failed to live up to such standard. Indeed, he provided a justifiable ground for his dismissal from the service.

WHEREFORE, the appealed decision of the Court of Appeals is hereby AFFIRMED. No costs.
SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Justice Artemio Tuquero and concurred in by Justices Eubolo Verzola and Candido Rivera, Rollo, pp. 22-31.

[2] Annex "C" of the Petition, Rollo, pp. 44-45.

[3] Annex "D" of the Petition, Rollo, p. 46.

[4] Annex "H" of the Petition, Rollo, p. 68.

[5] Annex "G" of the Petition, Rollo, pp. 49-50.

[6] Rollo, pp. 4-5.

[8] Annex "M" of the Petition, Rollo, pp. 74-75.

[9] Resolution dated June 5, 1995, Annex "N" of the Petition, Rollo, pp. 76-80.

[10] Rollo, pp. 82-88.

[11] Rollo, pp. 102-108.

[12] Decision of the Court of Appeals, Rollo, p. 28.

[13] Rollo, pp. 23-31.

[14] Rollo, pp. 29-31.

[15] Petition, Rollo, p. 10.

[16] "The necessary rule (the one who decides must hear) does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Arguments may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them." (Morgan vs. United States of America, 298 US 468-482 [OCT 1935], 80 L. ed 1288-1296)

[17] 67 SCRA 287 (1975); Skyworld Condominium Owners Association, Inc. vs. Securities and Exchange Commission, 211 SCRA 565 (1992); National Union of Printing Workers vs. Asia Printing, et al., 99 Phil 589 (1956); Cebu Transit Co. vs. Jereza, 58 Phil 760 (1933).

[18] Lupo v.. Administrative Action Board, 190 SCRA 69 (1990).

[18] 209 SCRA 695 (1992).

[20] Pefianco v.. Moral, 322 SCRA 439 (2000).

[21] Ibid.

[22] Gardose v.. Tarroza, 290 SCRA 186 (1998).

[22] Rollo, pp. 74-75.

[23] People v. Cusi, Jr., 14 SCRA 944 (1965).

[24] Rodriguez v.. Court of Appeals, 273 SCRA 607 (1997).

[25] Francisco, Evidence, 1996 Ed., 246; 20 Am Jur. 400-401.

[27] Office of the Court Administrator v.. Enriquez, 218 SCRA 1 (1993).

[28] Vedaña v.. Valencia 295 SCRA 1 (1998) Cortes v. Agcaoili, 294 SCRA 423 (1998); Lorena v.. Encomienda 302 SCRA 632 (1999); Lachica v. Flordeliza, 254 SCRA 278 (1996); Manila Central Line Corp. v. Manila Central Line Free Workers Union-National Federation of Labor, 290 SCRA 690 (1998).

[29] Heirs of E.B. Roxas, Inc. v. Tolentino 167 SCRA 334 (1988).

[30] Resolution No. 973277, Rollo, p. 85

[31] *Moreno v. Bragat* 293 SCRA 581 (1998); *Office of the Court Administrator v. Matas* 247 SCRA 9 (1995); Agpalo, *The Law of Public Officers*, First Ed. 1998, p. 367.

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