VICENTE A. MIEL, PETITIONER, VS. JESUS A. MALINDOG, RESPONDENT.

G.R. No. 143538. February 13, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated 29 July 1999 and Resolution[3] dated 26 May 2000 of the Court of Appeals in CA-G.R. SP No. 48045.

The facts gathered from the records are as follows:

On 19 July 1994, petitioner Vicente A. Miel, then employed as Engineer II of the Samar Engineering District, Department of Public Works and Highways, Catbalogan, Samar (SED-DPWH), filed with the Civil Service Commission, Region Office No. 8, Tacloban City (CSC-RO No. 8), a Complaint for falsification of official documents, dishonesty, conduct prejudicial to the best interest of the service and grave misconduct, against respondent Jesus A. Malindog, then employed also as Engineer II of SED-DPWH, Samar.

Petitioner alleged in his Complaint that respondent submitted three separate Personal Data Sheets (PDS), or Civil Service Form No. 212, pertinent portions of which are reproduced below:

> According to the first PDS[4]:
>
> PERSONAL DATA SHEET
> (20 DECEMBER 1988)
>
> x x x x
>
> SERVICE RECORD (Include experience outside government service)
>
> INCLUSIVE DATES
>
> POSITION
>
> DEPARTMENT/AGENCY
>
> From
>
> To
>
> x x x x
>
> July 1, 1984 - October 9, 1986
>
> C.E. Supervisor
>
> PHILPOS BAGACAY MINES

The second PDS[5] stated:

PERSONAL DATA SHEET
(2 MARCH 1992)

x x x x

SERVICE RECORD (Include experience outside government service)

INCLUSIVE DATES

POSITION

DEPARTMENT/AGENCY

From

To

x x x x

June 1, 1984 - Dec. 31, 1986

Civil Engineer

PJHL, DPWH

Jan.1, 1984 - June 30,1986

Civil Engineer

-do-

July 1, 1986 - Oct. 9, 1986

Civil Engineer

-do-

And the third PDS[6] declared:

PERSONAL DATA SHEET
(Year 1994)

x x x x

SERVICE RECORD (Include experience outside government service)

INCLUSIVE DATES

POSITION

DEPARTMENT/AGENCY

From

To

x x x x

Jan. 1, 1984 - October 9, 1986

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on leave

Petitioner compared respondent's three PDSs and pointed out the following contradictory and apparently deceitful information therein: respondent stated under the service record section of his first PDS that he worked for PHILPOS BAGACAY MINES, a private company in Hinabangan, Samar, as C.E. Supervisor from 1 July 1984 up to 9 October 1986; then respondent indicated under the service record section of his second PDS that he worked at the Philippine-Japan Highway Loan Division (PJHLD) of the DPWH Region 8 from 1 May 1984 until 9 October 1986; and, finally, respondent wrote under the service record section of his third PDS that he was "on leave" from his job as civil engineer in DPWH Region 8 from 1 January 1984 up to 9 October 1986. By reason of these false statements made by respondent in his PDS, he was granted an amount of P1,500.00 as loyalty cash award by SED-DPWH. Respondent was also recommended for promotion to the vacant position of Engineer III in SED-DPWH, but petitioner contended that respondent should be disqualified from the said promotion by reason of the falsification he made on his three PDSs. Petitioner, thus, prayed in his Complaint[7] that appropriate sanctions be imposed on respondent based on the foregoing allegations.

On 5 September 1994, respondent filed before CSC-RO No. 8 an Answer[8] to petitioner's Complaint. In his Answer, respondent denied the charges against him and averred that they were malicious and pure harassment. Respondent claimed that petitioner held a grudge against respondent because they were in "bitter contest" for the vacant position of Engineer III in SED-DPWH. Petitioner scanned respondent's personal records just to make a case against him. Respondent explained that he indeed worked for PHILPOS BAGACAY MINES and at the PJHLD of DPWH Region 8, but he could no longer recall the exact dates of said employments, considering the length of time that had lapsed since then. Also due to the frailty of human memory, respondent could not exactly remember his whereabouts during the period he was supposedly on leave from his job as civil engineer in DPWH Region 8 for the period of 1 January 1984 to 9 October 1986. Respondent asserted that he did not commit any wrong when he accepted the loyalty cash award. He did not bribe or use unlawful schemes in order to be recommended for the vacant Engineer III position. Respondent pleaded that petitioner's Complaint be dismissed for lack of merit.

After conducting a preliminary investigation of petitioner's Complaint, Lorenzo S. Danipog (Danipog), Director III of CSC-RO No. 8, issued a Resolution[9] formally charging respondent with dishonesty. Director Danipog found that respondent had willfully and maliciously written false information on his three PDSs. He opined that respondent purposely fabricated his second and third PDSs so he could be entitled to the loyalty cash award of P1,500.00. Director Danipog did not give much credence to respondent's defense of "frailty of memory," because respondent's false statements on his PDSs were carefully written and complete as to days, months and years, which could only be done by a conscious mind. The falsification of statements in the PDS constituted dishonesty, and Danipog concluded that there was prima facie case to charge respondent with the same.

On 7 July 1997, the Civil Service Commission Head Office (CSC-HO) issued Resolution No. 973301[10] finding respondent guilty of dishonesty and imposing upon him the penalty of dismissal from the service. The CSC-HO believed that respondent falsified his second and third PDSs so he could be entitled to the loyalty cash award of P1,500.00 from SED-DPWH; under Section 7(e), Rule X of the Omnibus Rules Implementing Book V of the 1987 Administrative Code of the Philippines and CSC Memorandum Circular No. 42 dated 15 October 1992, the loyalty award shall be given only to a government employee who has completed at least ten (10) years of continuous and satisfactory service to the particular office granting the award. The CSC-HO held that respondent's actuation constituted dishonesty under the Civil Service Rules. The dispositive portion of the CSC-HO Resolution reads:

WHEREFORE, Jesus A. Malindog is hereby found guilty of Dishonesty. Accordingly, he is meted the penalty

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> of dismissal from the service with all the accessory penalties including perpetual disqualification from holding public office and from taking future government examinations.[11]

Respondent filed a Motion for Reconsideration of CSC-HO Resolution No. 973301 dated 7 July 1997, but it was denied by the CSC-HO in its Resolution No. 980648[12] dated 25 March 1998. Thus, respondent appealed to the Court of Appeals via Rule 43 of the Rules of Court. Respondent's appeal was docketed as CA-G.R. SP No. 48045.

The Court of Appeals promulgated on 29 July 1999 its Decision in CA-G.R. SP No. 48045, affirming with modification CSC-HO Resolution No. 973301 dated 7 July 1997. The appellate court sustained the finding of the CSC-HO that respondent was guilty of dishonesty for making false statements in his second and third PDSs. Nevertheless, it held that the penalty of dismissal imposed on respondent should be reduced to one-year suspension from work without pay considering that: (1) respondent had been in the government service for almost 20 years; (2) this was his first offense; (3) he rose from the ranks as a mere laborer until he was promoted to Engineer II at the SED-DPWH; and (3) he returned the loyalty cash award of P1,500.00. Hence, the Court of Appeals decreed:

> WHEREFORE, the Resolutions of the Civil Service Commission are hereby AFFIRMED, with the MODIFICATION that petitioner is penalized to suffer one year suspension without pay, with the warning that a repetition of the same or similar act will be dealt with more severely.[13]

In its Resolution dated 26 May 2000, the Court of Appeals denied petitioner's Motion for Reconsideration of the aforementioned Decision.

Consequently, petitioner lodged the instant Petition before us assigning the following errors:

> I.
>
> THE COURT OF APPEALS ERRED IN FAILING TO APPLY SECTION 4, RULE 43 OF THE RULES OF PROCEDURE THAT THE APPEAL OF RESPONDENT WAS FILED OUT OF TIME BY IGNORING OUR DOCUMENTARY EVIDENCE ISSUED BY THE CIVIL SERVICE COMMISSION THAT RESPONDENT'S FORMER COUNSEL OR THROUGH RESPONSIBLE PERSON IN HIS OFFICE ADDRESS RECEIVED CSC RESOLUTION DENYING HIS MOTION FOR RECONSIDERATION FIFTY ONE (51) DAYS BEFORE FILING HIS PETITION FOR REVIEW WITH THE COURT OF APPEALS. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO EXCESS OF JURISDICTION;
>
> II.
>
> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION BY IMPOSING THE PENALTY OF ONE YEAR SUSPENSION INSTEAD OF AFFIRMING THE CIVIL SERVICE COMMISSION'S PENALTY OF DISMISSAL AGAINST THE LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT, SINCE IT COULD NOT FAULT THE CIVIL SERVICE COMMISSION FOR HAVING COMMITTED ANY GRAVE ABUSE OF DISCRETION.

Apropos the first issue, petitioner asserts that respondent's appeal of CSC-HO Resolution No. 980648 before the Court of Appeals was filed beyond the period allowed for appeal and should have been therefore dismissed.[14]

Under the provisions of Rule 43 of the Rules of Court, the appeal from the judgments, final orders or resolutions of the CSC shall be taken by filing a verified petition for review to the Court of Appeals within fifteen (15) days from notice of the judgment, final order or resolution. Jurisprudence instructs that when a party is represented by counsel, notice of the judgment, final order or resolution should be made upon the counsel of record.[15] Thus, the fifteen-day period to appeal under Rule 43 of the Rules of Court commenced to run from receipt of the

judgment, final order or resolution by the party's counsel on record.[16]

Records show that in the filing of respondent's Motion for Reconsideration of CSC-HO Resolution No. 973301, respondent was represented by Atty. Alexander L. Bulauitan.[17] The CSC-HO issued Resolution No. 980648 denying respondent's Motion for Reconsideration on 25 March 1998. Atty. Bulauitan received a copy of CSC-HO Resolution No. 980648 on 29 April 1998.[18] Respondent then had fifteen (15) days from such date of receipt, or until 14 May 1998, to appeal to the Court of Appeals under Rule 43 of the Rules of the Court. Respondent, however, filed his appeal of CSC-HO Resolutions No. 973301 and No. 980648 with the Court of Appeals only on 19 June 1998, which was obviously beyond the 15-day reglementary period for doing so.[19]

The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law.[20] Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal.[21]

Nonetheless, we have held that a delay in the filing of an appeal under exceptional circumstances may be excused on grounds of substantial justice and equity.[22] Filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein.[23] Courts may suspend its own rules, or except a particular case from its operations, whenever the purposes of justice require it.[24] In Baylon v. Fact-Finding Intelligence Bureau,[25] we laid down the range of reasons which may provide justification for a court to resist strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

In the case at bar, the CSC-HO found respondent guilty of dishonesty and imposed upon him the penalty of dismissal from the service. The penalty of dismissal is a severe punishment because it blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family. Respondent would certainly suffer grave injustice if the penalty of dismissal imposed on him turned out to be erroneous or disproportionate and such was not duly rectified because of mere technicality. Further, it appears that respondent was not able to file his appeal on time because Atty. Bulauitan failed to immediately inform respondent of the notice of CSC-HO Resolution No. 980648. Atty. Bulauitan was so busy then as campaign manager of a senatorial aspirant that he forgot to notify respondent of the notice of said resolution. Generally, respondent is bound by the negligence of Atty. Bulauitan. However, since respondent had nothing to do with the negligence of Atty. Bulauitan, respondent's case should be an exception to the rule on the effects of the counsel's negligence, as the application of such rule would result in serious injustice to respondent.[26]

Hence, it is in the greater interest of justice that the penalty of dismissal meted out to respondent be meticulously reviewed by the Court of Appeals despite procedural lapses in respondent's appeal. The Court of Appeals, therefore, did not err in giving due course to respondent's appeal.

With regard to his second assigned error, petitioner argues that respondent was guilty of dishonesty in making false statements in his PDS and, thus, respondent should be dismissed from the service.[27]

Public service requires the utmost integrity and strictest discipline. Thus, a public servant must exhibit at all times

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the highest sense of honesty and integrity. No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency.[28] The Code of Conduct and Ethical Standards for Public Officials and Employees additionally provides that every public servant shall at all times uphold public interest over his or her personal interest.[29]

A PDS is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any government employee or official regarding his personal background, qualification, and eligibility. Government employees are tasked under the Civil Service rules to properly and completely accomplish their PDS.[30] The act of making untruthful statements, or concealment of any information in the PDS, constitutes dishonesty and is punishable under the Civil Service rules.[31] Dishonesty is a "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness."[32] Dishonesty inevitably reflects on the discipline and morale of the service.[33]

It appears that respondent prepared and submitted three PDSs dated 20 December 1988 (first), 2 March 1992 (second) and 1994 (third).[34] Respondent filed these PDSs on three separate occasions, and these were verified by the records officer of the SED-DPWH.[35] It is already incontrovertible that respondent's three PDSs contained different and conflicting pieces of information as to his employment for the period 1984-1986.

There is no reason for us to disturb the consistent finding of CSC-RO No. 8, CSC-HO, and the Court of Appeals that respondent made untruthful statements when he stated in his second PDS that he worked at the PHJLD of DPWH Region 8 from 1 May 1984 until 9 October 1986; and when he indicated in his third PDS that he was "on leave" from his job as civil engineer at DPWH Region 8 from 1 January 1984 up to 9 October 1986, when, in fact, he was working at PHILPOS BAGACAY MINES during the same period according to his first PDS. Findings of fact of administrative agencies and quasi-judicial bodies, such as the CSC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. This is particularly true where the Court of Appeals affirms such findings of fact.[36]

Respondent's act of making false statements in his second and third PDSs clearly displayed dishonesty on his part. Respondent's dishonesty became more apparent when he received the unwarranted loyalty cash award of P1,500.00[37] for supposedly rendering 10 years of unbroken service. Evidently, the erroneous computation of respondent's years of service was caused by his varying and irreconcilable statements in his three PDSs.

Respondent's contention that the false statements in his second and third PDSs were caused by his frail memory deserves scant consideration. It should be noted that the gaps among the dates he accomplished his three PDSs, i.e., 20 December 1988, 2 March 1992 and 1994, were not that long as to make him forget the vital information stated in each of them. And respondent accomplished all three PDSs within a decade from the time of his employment in 1984 to 1986, making it unlikely for him not to remember clearly the details thereof. Also, respondent was not that old or sickly, being only 38 and 40 years old at the time he signed his second and third PDSs, respectively, for him to have such poor memory.[38] Finally, respondent is a civil engineer and government employee. As such, he is expected to be knowledgeable of and responsible for documents pertaining to his employment.

Section 52, A(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), classifies dishonesty as a grave offense with a corresponding penalty of dismissal even if committed for the first time.

Be that as it may, we observed that respondent had been in the government service for more or less 20 years,

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during which he made a steady ascent from a lowly laborer at the National Irrigation Administration, Catbalogan, Samar, to a Civil Engineer II at the SED-DPWH.[39] Respondent also had no previous derogatory record as a government employee. Moreover, he returned the loyalty cash award of P1,500.00.[40] We can consider the foregoing as mitigating circumstances[41] to lower the penalty imposable on respondent pursuant to Section 53 of the Civil Service Rules, viz:

Section 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. - In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

> The following circumstances shall be appreciated:
>
> x x x x
>
> g. habituality
>
> x x x x
>
> j. length of service in the government
>
> x x x x
>
> l. other analogous circumstances.

In Apuyan, Jr. v. Sta. Isabel,[42] a government employee was charged with and found guilty of dishonesty. Nonetheless, instead of dismissing respondent, we imposed the penalty of one-year suspension without pay considering that his dishonesty was his first offense. In Civil Service Commission v. Belagan,[43] a government employee was found guilty of grave misconduct, the penalty for which was dismissal from the service. However, we did not impose the penalty of dismissal upon respondent, considering the presence of the following mitigating circumstances: (1) his long years of service in the government; and (2) his unblemished record in the past. We likewise ruled therein that the appropriate penalty for respondent was one-year suspension from service without pay.

Pursuant to the aforementioned jurisprudence, we hold that instead of imposing the penalty of dismissal upon respondent in the instant case, we are penalizing him for his dishonesty with one-year suspension from service without pay and with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

WHEREFORE, the Decision dated 29 July 1999 and Resolution dated 26 May 2000 of the Court of Appeals in CA-G.R. SP No. 48045 are hereby AFFIRMED in toto. Respondent is hereby WARNED that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Ynares-Santiago, Chairperson, Carpio,[*] Austria-Martinez, and Peralta, JJ., concur.

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[*] Associate Justice Antonio T. Carpio was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 February 2009.

[1] Rollo, pp. 3-22.

[2] Penned by Associate Justice Artemon D. Luna with Associate Justices Conchita Carpio Morales (now a

member of this Court) and Bernardo P. Abesamis, concurring; rollo, pp. 23-29.

[3] Rollo, pp. 30-31.

[4] Records, p. 137.

[5] Id. at 138.

[6] Id. at 139.

[7] Id. at 133-136.

[8] Id. at 67-71.

[9] Id. at 128-130.

[10] Rollo, pp. 36-40.

[11] Id. at 40.

[12] Records, pp. 32-34.

[13] Rollo, p. 28.

[14] Id. at 13-17.

[15] Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, 31 March 2006, 486 SCRA 302, 325 citing Spouses Aguilar v. Court of Appeals, 369 Phil 655, 664 (1999); Magno v. Court of Appeals, G.R. No. L-58781, 31 July 1987, 152 SCRA 555, 558; Cubar v. Mendoza, G.R. No. L-55035, 23 February 1983, 120 SCRA 768, 772.

[16] RULES OF COURT, Rule 13, Section 2.

[17] Records, p. 38.

[18] Rollo, p. 75.

[19] CA rollo, pp. 2-9.

[20] Sapitan v. JB Line Bicol Express, Inc., G.R. No. 163775, 19 October 2007, 537 SCRA 230, 242-243.

[21] Sehwani Incorporated v. In-N-Out Burger, Inc., G.R. No. 171053, 15 October 2007, 536 SCRA 225, 233.

[22] Legasto v. Court of Appeals, G.R. Nos. 76854-60, 25 April 1989, 172 SCRA 722, 727.

[23] Philippine National Bank v. Court of Appeals, 316 Phil. 371, 384 (1995).

[24] C. Viuda de Ordoveza v. Raymundo, 63 Phil. 275, 278 (1936).

[25] 442 Phil. 217, 231 (2002).

[26] Id.

[27] Rollo, pp. 17-18.

[28] 1987 Constitution, Article XI, Section 1.

[29] Republic Act No. 6713, Section 2.

[30] Advincula v. Dicen, G.R. No. 162403, 16 May 2005, 458 SCRA 696, 708; Bautista v. Navarro, 200 Phil.

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278, 283 (1982); Inting v. Tanodbayan, 186 Phil. 343, 348 (1980).

[31] Ratti v. Mendoza-De Castro, A.M. No. P-04-1844, 23 July 2004, 435 SCRA 11, 20-21; Civil Service Commission v. Sta. Ana. 435 Phil. 1, 11 (2002); Biteng v. Department of Interior and Local Government (Cordillera Administrative Region), G.R. No. 153894, 16 February 2005, 451 SCRA 520, 528; De Guzman v. De los Santos, 442 Phil. 428, 436 (2002).

[32] Gillamac-Ortiz v. Almeida, Jr., A.M. No. P-07-2401, 28 November 2007, 539 SCRA 20, 25; Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I and Angelita Esmerio, Clerk III, Office of the Clerk of Court, A.M No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1, 15.

[33] Alabastro v. Moncada, Sr., A.M. No. P-04-1887, 16 December 2004, 447 SCRA 42, 59.

[34] Records, pp. 137-139.

[35] Id. at 41 & 48.

[36] Pabu-aya v. Court of Appeals, 408 Phil. 782, 788 (2001).

[37] Records, p. 145.

[38] Respondent was 38 years old in March 1992 and 40 years old in 1994.

[39] Records, pp. 41 and 48.

[40] Id. at 25-27.

[41] Civil Service Commission v. Manzano, G.R. No. 160195, 30 October 2006, 506 SCRA 113, 132; Civil Service Commission v. Belagan, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601.

[42] Adm. Matter No. P-01-1497, 28 May 2004, 430 SCRA 1.

[43] Supra note 41.

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