

**NESTOR M. CAYAGO AND VIRGILIO M. FERRER, PETITIONERS, VS.
HON. JOEY LINA, SECRETARY OF THE DEPARTMENT OF INTERIOR
AND LOCAL GOVERNMENT, AND CHAIRMAN, NATIONAL POLICE
COMMISSION;...**

G.R. NO. 149539. January 19, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the Revised Rules of Court, as amended, of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 53633 upholding Civil Service Commission (CSC) Resolution No. 991276, which, in turn, affirmed the Decision dated August 12, 1998 of then Department of Interior and Local Government (DILG) Undersecretary Ronaldo V. Puno, dismissing petitioners Nestor M. Cayago and Virgilio M. Ferrer from the police service for grave misconduct, as well as the Resolution dated August 9, 2001, denying the motion for reconsideration thereof.

The Antecedents

The petitioners were police officers[2] who were charged with kidnapping for ransom in an Information dated January 30, 1995, filed in the Regional Trial Court (RTC) of Quezon City, Branch 94, docketed as Criminal Case No. Q-95-60144. Summary dismissal proceedings against the petitioners then ensued. In a Decision dated July 24, 1995, then Police Director General, Philippine National Police (PNP) Chief Recaredo A. Sarmiento II dismissed the petitioners from the service. The pertinent portion of the order reads:

This Headquarters finds that there exists substantial evidence to prove the administrative culpability of all the respondents. The totality of the defense evidence submitted, as obtaining on record, is not legally sufficient to overcome the overwhelming evidence adduced proving their guilt.

WHEREFORE, premises considered, SPO1 Nestor Cayago, SPO1 Loreto Francisco, PO3 Cesar Nakar and PO3 Virgilio Ferrer are hereby ordered dismissed from the police service.

SO ORDERED.[3]

Thereafter, Police Chief Superintendent Anselmo Sayson Avenido, Jr., issued Special Order No. 2017[4] dismissing the petitioners from the police service effective September 19, 1995. The petitioners filed a Motion for Reconsideration[5] of the said Order dated August 3, 1995, alleging that the findings of fact made by the disciplinary body were not supported by substantial evidence. Instead of waiting for their motion to be resolved, however, the petitioners appealed the decision to the National Appellate Board (NAB) of the National Police Commission (NAPOLCOM), docketed therein as NAB SD Case No. 2-96-113. The NAB rendered its Decision on July 17, 1996, finding that the petitioners' appeal was without merit and affirming the latter's dismissal from the service. The dispositive portion of the decision reads:

In light of all the foregoing, this Board finds the Appeals filed by SPO1 Nestor Cayago and PO3 Virgilio

Ferrer without merit, and accordingly, affirms their summary dismissal from the police service as contained in the Decision dated July 24, 1995 of the Chief, PNP.

So Ordered.[6]

The petitioners did not file a motion for reconsideration of the said decision.

In the meantime, the RTC of Quezon City, Branch 94, issued a Resolution dated February 24, 1997, granting the “Motion to Dismiss By Way of Demurrer to Evidence” filed by the petitioners in Criminal Case No. Q-95-60144 for insufficiency of evidence. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the case is hereby dismissed against accused Nestor Cayago and Virgilio Ferrer as prayed for, and dismissed as against the other accused motu proprio, on [the] ground of insufficiency of evidence with costs de oficio.

Consequently, the bail bonds put up by all the herein accused, are cancelled in accordance with law.

SO ORDERED.[7]

The petitioners submitted a copy of the said resolution to the PNP Chief in support of their still unresolved motion for reconsideration.

More than a year after the NAB rendered its decision, the PNP Chief issued a Resolution dated August 19, 1997, partially granting the petitioners’ motion for reconsideration. The petitioners were found liable for less grave irregularities in the performance of duties for which they were meted the penalty of suspension for a period of ninety (90) days. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Decision sought to be reconsidered is hereby SET ASIDE and the orders issued implemental thereof is likewise hereby CANCELLED/NULLIFIED. Let another Decision be entered finding SPO1 Nestor Mejia Cayago and PO3 Virgilio Manzon Ferrer guilty of Less Grave Irregularities in the Performance of Duties and, accordingly, the penalty of ninety (90) days suspension without pay is hereby imposed on each of them which penalty is now deemed served.

SO ORDERED.[8]

The PNP Chief, thereafter, issued Special Order No. 1910[9] restoring the petitioners to full duty status effective August 19, 1997. However, in a Memorandum[10] dated October 14, 1997, NAPOLCOM Commissioner Edgar Dula Torres directed the PNP Chief to nullify the said order on the ground that the latter had no jurisdiction to take cognizance of and resolve the petitioners’ motion for reconsideration. The Commissioner ruled that the NAB Decision dated July 17, 1996, affirming the dismissal of the petitioners from the service, had long become final and executory. Hence, Special Order No. 2568[11] dated October 24, 1997 was issued nullifying Special Order No. 1910, effectively dismissing the petitioners from the police service.

Thereafter, the petitioners appealed the July 17, 1996 Decision of the NAB to the CSC. Acting thereon, the CSC issued Resolution No. 980479[12] on March 11, 1998, dismissing the appeal on the ground that it was the DILG Secretary who had jurisdiction over such appeal. Citing Sections 44 and 45 of Republic Act No. 6975, the CSC ruled that the appeal of the case before it was premature.

Undaunted, the petitioners appealed Special Order No. 2568 to then DILG Secretary Epimaco A. Velasco.[13] On August 12, 1998, then DILG Undersecretary and Acting Chairman of the NAPOLCOM Ronaldo V. Puno issued an Order[14] denying the appeal for lack of jurisdiction, considering that the NAB Decision dated July 17, 1996 had long become final and executory. The petitioners again elevated the case on appeal to the CSC, which dismissed the same in Resolution No. 991276 dated June 24, 1999.

Thereafter, the petitioners appealed the decision to the Court of Appeals (CA) via a petition for review on July 19, 1999 on the ground that the NAB Decision dated July 17, 1996 had not yet become final and executory, as they were not furnished a copy thereof. They also maintained that the said decision was void since the PNP Chief retained his jurisdiction over the case when they filed their motion for reconsideration. The petitioners further claimed that they were denied due process since complainant Veloria failed to testify on his sworn affidavit, and that they were not given the opportunity to cross-examine him during the summary dismissal proceedings.

The appellate court denied the petition for lack of merit. It overruled the petitioners' claim of not having received a copy of the NAB decision as a mere bare allegation. The CA pointed out that despite such allegation of non-receipt, the petitioners were, nevertheless, able to file their appeal with the CSC, which was, however, dismissed for having been filed prematurely as it should have first been brought to the DILG Secretary; the petitioners were then able to elevate the decision of the DILG Secretary to the CSC, which was, likewise, dismissed for having been belatedly filed.

The CA also ruled that, contrary to their claim, the petitioners were accorded due process. The pertinent portion of the decision reads:

Applying the foregoing jurisprudence in petitioners' case, there is therefore no denying that petitioners were accorded due process: (1) they were apprised of the charges against them; (2) they presented their counter-affidavits, supplemental affidavits and other pieces of evidence to rebut the Sworn Affidavit of complainant Veloria; (3) they were represented by counsel before the Summary Dismissal Hearing Officer; and (4) they were able to redress their case all the way from the PNP Director General up to the Civil Service Commission. Contrary to petitioners' contention, cross-examination in summary dismissal proceedings is not mandatory. The Affidavit of complainant Veloria already comprises his direct testimony. Petitioners' Counter-Affidavit and other supplemental Affidavits, on the other hand, take the place of their cross-examination as therein lies their refutation of complainant's charges.

...

In fact, as pointed out in the NAB Decision dated July 17, 1996, "(T)hey were furnished copies of pertinent documents relative to the case and promised to submit their respective additional controverting evidence on June 8, 1995 which they failed to comply." (p. 36, Rollo)

Finally, their acquittal from the criminal charges for Kidnapping filed against them before the Regional Trial Court of Quezon City, Branch 94, bears no consequence with regard to their administrative liability. It is fundamental that in administrative cases, the quantum of proof is only preponderance of evidence to establish administrative guilt, as against proof beyond reasonable doubt of the criminal charge. Their acquittal merely relieved them from criminal liability but in no way carried with it relief from the administrative liability of dismissal from the service. (*Jaculina v. National Police Commission*, supra, at page 497)

WHEREFORE, premises considered, the instant petition for review is hereby DENIED.

SO ORDERED.[15]

The Present Petition

The petitioners forthwith filed their petition for review on certiorari wherein they reiterated the issues and arguments they raised in the CA, viz:

I

WHETHER OR NOT THE DECISION RENDERED BY THE NATIONAL APPELLATE BOARD (NAB) IS VOID AB INITIO AS THE LATTER HAD NO JURISDICTION OVER THE CASE.

II

WHETHER OR NOT PETITIONERS WERE ACCORDED DUE PROCESS IN THEIR DISMISSAL FROM THE SERVICE.[16]

The petitioners aver that the decision of the NAB was “void ab initio” and, as such, had not attained finality. They insist that when they filed their motion for reconsideration before the PNP Chief, the latter retained jurisdiction over the case. In fact, the petitioners aver, they were made to understand by the NAB that it could not act on their appeal in view of the pendency of the motion for reconsideration before the PNP Chief.

The petitioners further contend that they could not be blamed for their filing of a “precautionary appeal” before the NAB, considering that the PNP Chief slept on their motion for reconsideration. Having been deprived of their source of livelihood, the petitioners had to adopt other means and measures within legal bounds just to regain their employment. They further contend that the “precautionary appeal” before the NAB could hardly be considered as an abandonment of their motion for reconsideration, since more often than not, the NAB would not consider appeals without any motion for reconsideration being first filed and resolved by the PNP Chief.

The petitioners further stress that they were not immediately furnished a copy of the NAB decision; neither was the PNP given a copy of the decision. In fact, the Resolution of then PNP Chief, Director General Sarmiento, dated August 19, 1997, did not even mention the NAB decision. The petitioners stress that they learned of the existence of the said NAB decision only when the PNP Chief issued Special Order No. 2568 nullifying Special Order No. 1910. The petitioners point out that the assailed NAB decision could not have become final and executory, since after receipt of Special Order No. 2568, they immediately filed an appeal before the CSC, which was, however, dismissed in Resolution No. 980479 dated March 11, 1998 for being premature; thereafter, they filed an appeal before the Office of the DILG Secretary. The petitioners also point out that the appeal before the DILG Secretary was forwarded to the NAPOLCOM, the very same body which rendered the July 17, 1996 Decision. The petitioners asseverate that this procedure is not in accord with the ruling in *Cabada v. Alunan III*,^[17] where the Court held that the NAPOLCOM has no appellate jurisdiction over decisions rendered by the NAB. Even assuming that the period to appeal had already lapsed, the petitioners aver that technicality should give way to substantial justice.

Anent the second assignment of error, the petitioners stress that they were not accorded due process. They aver that under NAPOLCOM Memorandum Circular No. 92-006, as amended by Circular Nos. 94-021 and 94-022, respondents in summary dismissal proceedings are entitled to cross-examine the complainant and his/her witnesses. In this case, complainant Veloria and his witnesses failed to appear during the summary hearing and were unable to affirm their respective sworn statements before the summary hearing officer. They stress that the PNP Chief, acting on their motion for reconsideration, set aside his Decision dated July 24, 1995 and admitted that due process was not observed in dismissing the petitioners from the service.

The Office of the Solicitor General (OSG), for its part, asserts that the petitioners themselves were the ones who appealed the case to the NAB even before the PNP Chief could resolve their motion for reconsideration, and that the NAB did not take cognizance of the case of its own accord. The mere fact that the petitioners immediately appealed the case to the NAB without waiting for the PNP Chief’s resolution did not divest the NAB of its jurisdiction to decide the appeal. According to the OSG, the petitioners cannot liken their appeal before the NAB to a petition for certiorari under Rule 65 of the Rules of Court, where a prior motion for reconsideration is essential. It points out that a motion for reconsideration of the PNP Chief’s Decision and an eventual appeal to the NAB are just two of the administrative remedies available to the petitioners, which, in turn, does not mean that they may be resorted to simultaneously at whim. The OSG claims that it would have been wiser if the petitioners had observed the usual sequence or hierarchical order in availing of such remedies. The OSG stresses that there is

no such specie of appeal as “precautionary appeal,” which was what the petitioners resorted to when they elevated their case to the NAB pending the resolution of their motion for reconsideration before the PNP Chief. Finally, contrary to their protestations, the petitioners were given sufficient opportunity to submit evidence in support of their defense.

The Ruling of the Court

The instant petition must fail for the following reasons:

First. Under Section 1, Rule 45 of the Revised Rules of Court, an appeal by certiorari to this Court should raise only questions of law which must be distinctly set forth in the petition. Elementary is the rule that a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The errors raised in the present petition include one of fact and law, not the proper subject of a petition for review on certiorari.[18]

Second. The well-settled rule is that the findings or conclusions of administrative bodies are generally respected and even given finality,[19] particularly when amply supported by substantial evidence. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise, substitute its own judgment for that of the administrative agency on the sufficiency of evidence. It is for the administrative agency concerned in the exercise of discretion to determine which party deserves credence on the basis of the evidence received. The rule, therefore, is that courts of justice will not generally interfere with purely administrative matters which are addressed to the sound discretion of government agencies unless there is a clear showing that the latter acted arbitrarily or with grave abuse of discretion or when they have acted in a capricious and whimsical manner such that their action may amount to an excess of jurisdiction.[20]

Third. The petitioners failed to file a motion for reconsideration of the NAB Decision dated July 17, 1996. Moreover, the said decision had already attained finality at the time the petitioners appealed the same to the DILG more than a year later, only on November 12, 1997. Even the appeal before the CSC was belatedly filed. As amply stated by the CSC in Resolution No. 991276 –

When Cayago and Ferrer waited for more than one (1) year to lapse before they appealed the NAB Decision to the DILG Secretary, the same should no longer be disturbed as it has long attained finality. Thus, when the appellants appealed the NAB decision to the Commission, said appeal did not operate to stop the running of the period to appeal to the DILG Secretary, which should, in the first place, have been the initial and proper remedy.

It should be pointed out that even the instant appeal was also filed outside the fifteen (15)-day reglementary period of filing an appeal to this Commission.

As noted, Cayago and Ferrer had categorically admitted in their Appeal Memorandum that they received the Decision of DILG Secretary Puno dismissing their appeal thereat on August 27, 1998. It was only on September 22, 1998 that appellants filed their appeal with the Commission. Counting the number of days from the date they received the DILG Secretary’s decision up to the time they interposed their present appeal, it is clear that almost one (1) month had elapsed.

Applicable at this juncture is Section 49(1), Chapter 7, Title I(A), Book V of the Administrative Code of 1987 (Executive Order No. 292) which provides, as follows:

“SEC. 49 Appeals. - (1) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen (15) days. x x x”...

Corollarily, Section 37, C (Appeals), Part II (Disciplinary Cases), of the Uniform Rules of Procedure in the

Conduct of Administrative Investigations explicitly states as follows:

“Section 37. Appeals. – Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities, imposing penalties exceeding thirty (30) days salary, may be appealed to the Commission proper within a period of fifteen days from receipt thereof.” (Underscoring supplied)

The aforementioned provisions state clearly that the decision of the department head, in this case the DILG Secretary, may be appealed to the Commission within fifteen (15) days from receipt thereof. Failure to appeal the same within the period prescribed by the law and rules renders the said decision final and executory.

Considering that Cayago and Ferrer interposed this instant appeal about one month after they received the decision of DILG Secretary Puno, the instant appeal should not be entertained.[21]

The applicable law on the discipline of members of the PNP is Republic Act No. 6975, otherwise known as “An Act Establishing the Philippine National Police under a Reorganized Department of Interior and Local Government, and for Other Purposes.”[22] The pertinent provisions thereof are Sections 44 and 45, which provide as follows:

SEC. 44. Disciplinary Appellate Boards. – The formal administrative disciplinary machinery for the PNP shall be the National Appellate Board and the regional appellate boards.

The National Appellate Board shall consist of four (4) divisions, each division composed of a Commissioner as Chairman and two (2) others as members. The Board shall consider appeals from decisions of the Chief of the PNP.

The National Appellate Board may conduct its hearings or sessions in Metropolitan Manila or any part of the country as it may deem necessary.

There shall be at least one (1) regional appellate board per administrative region in the country to be composed of a senior officer of the regional commission as Chairman and one (1) representative each from the PNP, and the regional peace and order council members. It shall consider appeals from decisions of the regional directors, other officials, mayors and the PLEBs: Provided, That the Commission may create additional regional appellate boards as the need arises.

...

SEC. 45. Finality of Disciplinary Action. – The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof; Provided, furthermore, That the regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal; Provided, finally, That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.

Thus, when a police officer is dismissed by the PNP Director General and the dismissal is affirmed by the NAB, the proper remedy of the aggrieved party is to appeal the dismissal to the DILG Secretary.[23]

In the case at bar, the petitioners filed a motion for reconsideration of the July 24, 1995 Decision of the PNP Chief, and, without waiting for the same to be resolved, appealed the case to the NAB in the exercise of its appellate jurisdiction. As pointed out by the appellate court, it was the petitioners themselves who sought relief

from the NAB. As such, they cannot now deny its jurisdiction over their appeal. By appealing to the NAB despite their still unresolved motion for reconsideration with the PNP Chief, they thereby abandoned the said motion for reconsideration. Indeed, it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards make a volte face and deny that same jurisdiction.[24] We note with approval the following ratiocination of the CA:

... [I]t is clear that the NAB has exclusive appellate jurisdiction over disciplinary actions imposed by the PNP Director General. In the present case, the Court notes that petitioners took that recourse, i.e., filed an appeal with the National Appellate Board. However, the Court, likewise, notes that prior to their filing of an appeal with the NAB, petitioners also filed a Motion for Reconsideration with the PNP Director General. Thus, arises the dilemma. The NAB rendered its Decision sustaining the PNP Director General's decision summarily dismissing petitioners from the service. On the other hand, the PNP Director General subsequently reversed its own initial Decision and found petitioners guilty of a lesser offense. And while petitioners cannot be blamed for their display of zeal in the pursuit of their case, it must be emphasized however, that the law provides for the proper remedies. Furthermore, there is no such specie of appeal such as "precautionary appeal" which petitioners resorted to when they elevated their case to the National Appellate Board (NAB), pending resolution of their motion for reconsideration. Likewise, petitioners cannot simultaneously resort to the filing of a motion for reconsideration with the PNP Director General, and an appeal with the NAB. Either they file a motion for reconsideration, and if denied, appeal their case to the NAB, OR, without filing a motion for reconsideration, directly appeal their case to the NAB. Petitioners' simultaneous filing of these two remedies is a clear act of trifling with judicial processes, for the distinct possibility that these two bodies will render conflicting resolutions of the case is not highly improbable, as what happened in this case. It is well-settled that a party is not allowed to pursue simultaneous remedies in two different fora because such practice works havoc on orderly judicial procedure. (Professional Regulation Commission, et al. v. Court of Appeals, G.R. No. 118437, July 9, 1998) And now, petitioners want the Court to settle the quandary that they themselves created.

In this light, the Court holds that the Decision rendered by the NAB is valid as it has jurisdiction over the appeal filed by petitioners. As adverted to above, it has exclusive appellate jurisdiction over the summary dismissal imposed by the PNP Director General. (Section 45 of Republic Act No. 6975) Notably, unlike in other administrative cases, the filing of a Motion for Reconsideration with the PNP Director General is not a condition sine qua non before an appeal may be assayed. Hence, when petitioners filed an appeal with the NAB, in effect, they abandoned their Motion for Reconsideration with the PNP Director General, and appellate jurisdiction was vested with the NAB. Consequently, the Decision dated July 17, 1996 rendered by the NAB is a valid decision.[25]

The petitioners' contention that the appeal to the NAB from the July 24, 1995 Order of the PNP Director General was merely precautionary is but an afterthought. As gleaned from the July 17, 1996 Decision of the NAB, the appeals of the petitioners were in due course, and not merely precautionary or ex abundantia cautela. The petitioners failed to show that their appeal to the NAB was without prejudice to the resolution by the PNP Chief of their motion for reconsideration.

We also agree with the CA that the petitioners were not in any way denied due process. Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.[26] In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. As long as a party was given the opportunity to defend his interests in due course, he was not denied due process.[27] As we ruled in *Zacarias v. National Police Commission*:[28]

... [T]he 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. And any seeming defect in its observance is cured by the filing of a motion for reconsideration. 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. What is frowned upon is the absolute lack of notice and hearing. ...[29]

In this case, the record shows that (1) the petitioners were apprised of the charges against them; (2) they presented their counter-affidavits, supplemental affidavits, and other pieces of evidence, to rebut the Sworn Affidavit of complainant Veloria; (3) they were represented by counsel before the summary dismissal hearing officer; and (4) they were able to elevate their case from the PNP Chief, Director General to the CSC.[30] Thus, the petitioners were adequately apprised of the charges against them and were afforded the opportunity to answer such charges.[31]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 53633 and the DILG Resolution dated August 9, 2001 are AFFIRMED in toto.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Ramon A. Barcelona (retired), with Associate Justices Rodrigo V. Cosico and Alicia L. Santos (retired), concurring; Rollo, pp. 132-143.

[2] Nestor M. Cayago was a former Senior Police Officer 1, while Virgilio M. Ferrer was a Police Officer 3.

[3] CA Rollo, 36-37.

[4] Id. at 40.

[5] Rollo, pp. 44-45.

[6] CA Rollo, p. 49.

[7] Id. at 51.

[8] Id. at 55.

[9] Id. at 58.

[10] Id. at 59-60.

[11] Id. at 61.

[12] Rollo, pp. 67-70.

[13] Id. at 71-75.

[14] Id. at 79-80.

[15] Id. at 141-143.

[16] Id. at 21.

[17] 260 SCRA 838 (1996).

[18] *Cano v. The Chief, Philippine National Police*, 392 SCRA 299 (2002).

[19] See *Bulilan v. Commission on Audit*, 300 SCRA 445 (1998).

[20] *Remolona v. Civil Service Commission*, 362 SCRA 304 (2001).

[21] *Rollo*, p. 95.

[22] Approved on December 13, 1990.

[23] *Rodriguez v. Court of Appeals*, 386 SCRA 493 (2002).

[24] See *Duremdes v. Duremdes*, 415 SCRA 684 (2003).

[25] *Rollo*, pp. 138-139.

[26] *National Police Commission v. Bernabe*, 332 SCRA 74 (2000).

[27] *Rodriguez v. Court of Appeals*, 386 SCRA 492 (2002).

[28] 414 SCRA 387 (2003)

[29] *Id.* at 393.

[30] *Rollo*, pp. 141-142.

[31] *National Police Commission v. Bernabe*, *supra*.

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