

THE NATIONAL APPELLATE BOARD (NAB) OF THE NATIONAL POLICE COMMISSION (NAPOLCOM), PETITIONER, VS. P/INSP. JOHN A. MAMAUAG, SPO2 EUGENE ALMARIO, SPO4 ERLINDA GARCIA AND SPO1 VIVIA...

G.R. NO. 149999. August 12, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 6 September 2001 Decision[2] of the Court of Appeals. The Court of Appeals set aside the 3 July 1997 Resolution of Philippine National Police ("PNP") Chief Recaredo Sarmiento II ("PNP Chief Sarmiento"), the 3 March 2000 Decision and the 30 June 2000 Resolution, both of the National Appellate Board ("NAB") of the National Police Commission.

The Antecedent Facts

Very early in the morning of 2 March 1995, Nancy Gaspar ("Gaspar") and Proclyn Pacay ("Pacay") left the residence of Judge Adoracion G. Angeles ("Judge Angeles") in Quezon City. Gaspar and Pacay were both minors and were later classified as moderate or mild mental retardates by the Department of Social Welfare and Development ("DSWD"). Agnes Lucero ("Lucero") found Gaspar and Pacay wandering around the vicinity of the Philippine Rabbit bus terminal in Cubao. Gaspar and Pacay narrated to Lucero stories of maltreatment and non-payment of salary by Judge Angeles.

Around 4:00 a.m., Lucero brought Gaspar and Pacay to the Baler Police Station 2, Central Police District Command ("CPDC"), Quezon City. At the police station, desk officer SPO1 Jaime Billedo ("Billedo") recorded the girls' complaint in the police blotter. On Billedo's instruction, SPO1 Roberto C. Cariño ("Cariño") brought Gaspar and Pacay to the East Avenue Medical Center for the requisite medical examination. Later, the two girls were returned to the police station where Cariño interviewed them. Cariño's Initial Investigation Report was reviewed and signed by SPO2 Eugene V. Almario ("Almario") and approved by P/Insp. John A. Mamauag ("Mamauag"). Later, SPO1 Vivian M. Felipe ("Felipe") and SPO4 Erlinda L. Garcia ("Garcia") escorted Gaspar and Pacay to the DSWD. P/Insp. Roberto V. Ganas ("Ganas") signed the Letter of Turnover to the DSWD.

The incident drew the attention of the media and spawned several cases. One was a criminal case for child abuse under Republic Act No. 7610[3] against Judge Angeles. Another was an administrative complaint for Grave Misconduct filed by Judge Angeles against Ganas, Mamauag, Almario, Cariño, Felipe and Garcia. Judge Angeles later impleaded Billedo as additional respondent.

In her administrative complaint, Judge Angeles alleged:

- On March 2, 1995, respondents Ganas, Almario and Mamauag submitted an Initial Investigation Report to the

District Director, CPDC, and respondent Ganias turned over a Report to the DSWD merely on the basis of a verbal report of Agnes Lucero on Judge Reyes' alleged maltreatment of Nancy Gaspar and Proclyn Pacay "without getting the required sworn statements of the two (2) girls and Agnes Lucero";

- While the two girls were under police custody, respondents found in the possession of Pacay several items of jewelry and clothing materials belonging to and stolen from complainant Judge Angeles. Complainant's witnesses, Dr. Sagradia Aldova, Oliva Angeles and Mary Ann Agustin requested the respondents to register in the police logbook the discovery of the stolen articles but to no avail;

- Despite the insistent request of said witnesses and subsequently of the complainant that a report for qualified theft be entered in the police blotter, respondents maliciously refused to act upon the incident and conduct further investigation;

- Respondent's bad faith and highly irregular conduct in handling the maltreatment charge against complainant was also manifested when respondents did not give her a chance to explain her side by not contacting her although her residence is just a few houses away from the police station;

- Even before she was informed of the accusations against her, the police leaked the baseless maltreatment case against her as shown by the presence of so many people and members of the media as well as the Human Rights Commission personnel at the police station;

- The fact that no case has yet been filed against her shows that the whole event was maliciously manipulated by her detractors to harass and malign complainant with the willing assistance of men in uniform.[4]

The Inspectorate and Legal Affairs Division ("ILAD") of the CPDC investigated the administrative complaint. After its investigation, the ILAD recommended the dismissal of the charges. In a Resolution[5] dated 10 April 1995, the CPDC District Director approved the recommendation and dismissed the complaint. Not satisfied with the outcome of her complaint, Judge Angeles moved for re-investigation of the case before PNP Chief Sarmiento.

The Ruling of the PNP Chief

In a Decision[6] dated 7 June 1996, PNP Chief Sarmiento ruled as follows:

WHEREFORE, this Headquarters finds: Respondent[s] P/CINSP. ROBERTO GANIAS, SPO1 Jaime Billedo, and SPO1 Roberto Cariño guilty of Serious Neglect of Duty and orders their dismissal from the police service; P/INSP JOHN MAMAUAG and SPO2 Eugene Almario guilty of Less Serious Neglect of Duty and orders that both of them be suspended from the police service for Ninety (90) days with forfeiture of pay; and SPO4 Erlinda Garcia and SPO1 Vivian Felipe exonerated of the charge for insufficiency of evidence.[7]

Judge Angeles filed a Motion for Partial Reconsideration.[8] In a Resolution[9] dated 3 July 1997, PNP Chief Sarmiento modified his previous ruling and ordered the dismissal from the service of Mamauag, Almario, Garcia and Felipe ("Mamauag, et al.").

Mamauag, et al. forthwith filed a petition for certiorari and mandamus against PNP Chief Sarmiento, PNP Inspector General Jovencio Sales and Judge Angeles before the Regional Trial Court of Quezon City, Branch 101. In an Order[10] dated 25 November 1997, the Regional Trial Court dismissed the petition for failure of petitioners to exhaust administrative remedies and for failure to show that respondents abused their discretion.

Mamauag, et al. then appealed the PNP Chief's Resolution before the NAB.

The Ruling of the National Appellate Board

In a Decision,[11] dated 3 March 2000, the NAB dismissed the appeal for late filing and lack of merit. The NAB

declared:

Appellants Mamauag, Almario, Garcia and Felipe, in seeking immediate judicial remedy by way of a Petition for Certiorari and Prohibition against appellee and the PNP dismissal authority even if they have not yet exhausted all administrative remedies available to them had in fact defaulted in their right to exercise such later option by omission of their own doing. The right to appeal is provided for by law and he who seeks to exercise that right must abide with the rules provided therefor.

The substantive rule regarding appeals from a decision of dismissal from the police service imposed by the Chief, PNP is found in Section 45 of RA 6975, which provides in part, thus:

"Section 45. Finality of Disciplinary Decision - "Provided, further, that the disciplinary action imposed by the Chief of the PNP involving ... dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof."

It was on a day certain between July 3 1997 (the date of the Resolution of dismissal) and July 18, 1997 (date of Petition for Certiorari and Prohibition) that Mamauag, et al. must have received a copy of aforesaid Resolution and from that same day, they had ten (10) days within which to file their appeal before the NAB had they chosen to exhaust administrative remedies. But they chose to avail of another remedy thereby effectively foreclosing their right of appeal to NAB in view of the lapse of the reglementary period for filing the same.

WHEREFORE, premises considered, the appeal of P/Insp. John Mamauag, SPO2 Eugene Almario, SPO4 Erlinda Garcia and SPO1 Vivian Felipe is hereby DISMISSED for lack of merit.

SO ORDERED.[12]

Mamauag, et al. filed a motion for reconsideration of the Decision but the NAB denied it in the NAB Resolution[13] of 30 June 2000. Thus, Mamauag, et al. sought relief from the Court of Appeals.

The Ruling of the Court of Appeals

In its Decision of 6 September 2001, the Court of Appeals ruled:

WHEREFORE, in view of the foregoing, the Resolution of the PNP Chief Recaredo Sarmiento II dated 3 July 1997, having been rendered in excess of his jurisdiction is hereby SET ASIDE for being null and void. Accordingly, the DECISION and RESOLUTION made by the National Appellate Board dated 3 March 2000 and 30 June 2000, respectively, are also SET ASIDE for being null and void.

SO ORDERED.[14]

In finding for Mamauag, et al., the Court of Appeals explained:

First of all, the said provision expressly states that "the disciplinary action imposed upon a member of the PNP shall be final and executory." Nowhere does the said provision grant any party to move for a reconsideration of any disciplinary action imposed as the remedy provided thereunder is an appeal of either party of the decision to the National Appellate Board, if such involves a demotion or dismissal of a member of the PNP. In fact, since the original decision only suspended petitioners Mamauag and Almario from service and even exonerated Felipe and Garcia, the said decision is not even subject to any appeal. The said decision clearly does not involve any demotion nor dismissal which could properly be appealed to the NAB.

Moreover, even under the assumption that a motion for reconsideration is allowed, the one filed by Judge Angeles should not have merited any consideration from the PNP Chief. Judge Angeles did not have the personality to make such a motion. While Sec. 45 of R.A. 6975 does not clearly provide who may appeal (or for that matter make any motion for reconsideration) from the decision of the PNP Chief, the last clause mentions "either party may appeal with the Secretary" and by the doctrine of necessary implication this

extends to said decision of the PNP Chief.

It is elementary that in an administrative case, the complainant is a mere witness. No private interest is involved in an administrative case as the offense committed is against the government. As held by the Supreme Court in *Paredes vs. Civil Service Commission*:

"As correctly ruled by private respondent, petitioner Paredes the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness (*GONZALO VS. D. RODA*, 64 SCRA 120). Even if she is the Head of Administrative Services Department of the HSRC as a complainant she is merely a witness for the government in an administrative case. No private interest is involved in an administrative case as the offense is committed against the government." (Emphasis supplied)

Obviously, Judge Angeles has no interest which would be directly and materially affected by the decision rendered by the PNP Chief. Not being a proper party to the said case as she is only a mere witness then her motion should not have served as a ground for the re-evaluation of the administrative case against the petitioners which resulted into a modification of the PNP Chief's earlier decision.

On this score, We find the latest ruling of the Supreme Court on this matter:

"Subsequently, the Court of Appeals reversed the decision of the Civil service Commission and held the respondent not guilty of nepotism. Who may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the responden[t] who was declared not guilty of the charge. Nor the complainant George P. Suan who was merely a witness for the government. Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court." (Emphasis supplied)

Applying this to the present case by analogy, had the original judgment been rendered in favor of the petitioners, it would be the Philippine National Police which would be adversely affected and thus would be the proper party to appeal such a judgment. Corollary to this, where the original judgment is adverse to the petitioners, it is they who could properly appeal the same. In either case, the complainant Judge Angeles certainly has no legal personality to move for a reconsideration of the original decision handed down by the PNP Chief.

In view of the foregoing, this Court can only rule, as We do now, that the appealed resolution (dated 3 July 1997) was made in excess of the PNP Chief's jurisdiction rendering it null and void. Hence, upon the basic legal precept that a void decision or resolution can never attain finality, NAB should have ruled accordingly on the matter. Finding that it did not, the Court's remedial power must perforce be exercised to rectify the matter before Us.[15]

Hence, the NAB's recourse to this Court.

The Issues

The Office of the Solicitor General, representing the NAB, raises the following issues:

- Whether Section 45 of Republic Act No. 6975[16] (RA 6975) allows the filing of a motion for reconsideration;
- Whether the private complainant in an administrative case has the legal personality to move for reconsideration, or appeal an adverse decision of the disciplining authority.

The Ruling of This Court

The petition has no merit.

Mamauag and Almario argue that the disciplinary action of 90-day suspension imposed on them in the 7 June

1996 Decision of PNP Chief Sarmiento has become final and executory. Mamauag, et al. also argue that private complainant Judge Angeles has no personality to move for partial reconsideration of the 7 June 1996 Decision of PNP Chief Sarmiento. Mamauag, et al. cite Sections 43(e) and 45 of RA 6975 which provide:

SEC. 43. People's Law Enforcement Board (PLEB). - x x x

(e) Decisions. - The decision of the PLEB shall become final and executory: Provided, That a decision involving demotion or dismissal from the service may be appealed by either party with the regional appellate board within ten (10) days from receipt of the copy of the decision.

x x x

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, 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.

The Court of Appeals sustained Mamauag, et al.

Decisions Appealable Under RA 6975

Section 45 of RA 6975 provides that a "disciplinary action imposed upon a member of the PNP shall be final and executory." Under Section 45, a disciplinary action is appealable only if it involves either a "demotion or dismissal from the service." If the disciplinary action is less than a demotion or dismissal from the service, the disciplinary action "shall be final and executory" as Section 45 of RA 6975 expressly mandates. Thus, a decision imposing suspension on a PNP member is not subject to appeal to a higher authority.

Administrative disciplinary action connotes administrative penalty.[17] If the decision exonerates the respondents or otherwise dismisses the charges against the respondents, there is no disciplinary action since no penalty is imposed. The provision that a penalty less than demotion or dismissal from service is final and executory does not apply to dismissal of charges or exoneration because they are not disciplinary actions. This gives rise to two crucial questions.

First, can a party appeal from a decision of the disciplining authority dismissing the charges against a PNP member? Second, if a decision dismissing the charges against a PNP member is appealable, who can appeal - the PNP or the private complainant, or both?

Before the case of *CSC v. Dacoycoy*,[18] case law held that dismissal of the charges or exoneration of the respondents in administrative disciplinary proceedings is final and not subject to appeal even by the government. Thus, in *Del Castillo v. Civil Service Commission*,[19] et al., the Court held:

Section 37, paragraph (a), of PD 807, the Philippine Civil Service Law, provides:

(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office xxx (*Italics supplied*).

Interpreting the above provision, we held in *Mendez v. CSC* that:

xxx xxx xxx

It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law. (*Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs*, 153 SCRA 318).

A cursory reading of P.D. 807, otherwise known as 'The Philippine Civil Service Law' shows that said law does not contemplate a review of decisions exonerating officers or employees from administrative charges.

Section 37 paragraph (a) thereof, provides:

xxx xxx xxx

Said provision must be read together with Section 39 paragraph (a) of P.D. 805 which contemplates:

Appeals, where allowable, shall be made by the party adversely affected by the decision xxx (*italics supplied*) (p. 104, Rollo)

The phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office. In the instant case, Coloyan who filed the appeal cannot be considered an aggrieved party because he is not the respondent in the administrative case below.

Finally, pursuant to Section 37 paragraph (b) of P.D. 807, the city major, as head of the city government, is empowered to enforce judgment with finality on lesser penalties like suspension from work for one month and forfeiture of salary equivalent to one month against erring employees.

By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges files against him. But when the respondent is exonerated of said charges, as in this case, there is no occasion for appeal. (*Emphasis supplied*)

However, in *Dacoycoy*, the Court modified the rule in *Del Castillo* and earlier cases by allowing the Civil Service Commission to appeal dismissals of charges or exoneration of respondents in administrative disciplinary proceedings. In *Dacoycoy*, the Court ruled:

At this point, we have necessarily to resolve the question of the party adversely affected who may take an appeal from an adverse decision of the appellate court in an administrative civil service disciplinary case. There is no question that respondent *Dacoycoy* may appeal to the Court of Appeals from the decision of the Civil Service Commission adverse to him. He was the respondent official meted out the penalty of dismissal from the service. On appeal to the Court of Appeals, the court required the petitioner therein, here respondent *Dacoycoy*, to implead the Civil Service Commission as public respondent as the government agency tasked with the duty to enforce the constitutional and statutory provisions on the civil service.

Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant *George P. Suan*, who was merely a witness for the government. Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court. By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or

dismissal from office" and not included are "cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary" or "when the respondent is exonerated of the charges, there is no occasion for appeal." In other words, we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges" enunciated in *Paredes v. Civil Service Commission*; *Mendez v. Civil Service Commission*; *Magpale v. Civil Service Commission*; *Navarro v. Civil Service Commission* and *Export Processing Zone Authority* and more recently *Del Castillo v. Civil Service Commission*. (Emphasis supplied)

Subsequent decisions[20] of the Court affirmed *Dacoycoy*.

Dacoycoy allowed the Civil Service Commission to appeal dismissals of charges or exoneration of respondents in administrative disciplinary proceedings. However, *Dacoycoy* maintained the rule that the private complainant is a mere government witness without a right to appeal.[21] Thus, case law holding that the private complainant has no right to appeal the decision of the disciplining authority remains good law. As explained by Justice Jose Melo in his concurring opinion in *Floralde v. Court of Appeals*:[22]

However, in *Civil Service Commission v. Dacoycoy* (306 SCRA 425 [1999]), which incidentally is another ponencia of Mr. Justice Pardo, the majority, with undersigned ponente dissenting, modified the above doctrine by allowing the CSC to appeal in cases where the respondent is exonerated of the charges. Nevertheless, in both cases, the Court did not deviate from the doctrine that the complainant, being a mere witness for the government, cannot appeal the decision rendered in the administrative case. In *Paredes*, we declared that the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the CSC. In an administrative case, the complainant is a mere witness. No private interest is involved in an administrative case as the offense is committed against the government. (Emphasis supplied)

Section 91 of RA 6975 provides that the "Civil Service Law and its rules and regulations shall apply to all personnel of the Department." Consequently, case law on administrative disciplinary proceedings under the Civil Service Law also applies to administrative disciplinary proceedings against PNP members. Even without Section 91, case law on the civil service necessarily applies to PNP members who are embraced in the phrase "civil service"[23] under Section 2(1), Article IX-B of the 1987 Constitution.

RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*,[24] decided after *Dacoycoy*, the Court declared:

To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."

In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases

instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.

In any event, a private complainant like Judge Angeles is not one of "either party" who can appeal under Sections 43 and 45 of RA 6975. The private complainant is a mere witness of the government which is the real party in interest.[25] In short, private complainant Judge Angeles is not a party under Sections 43 and 45 who can appeal the decision of the disciplining authority.

Thus, Judge Angeles has no legal personality to appeal the dismissal of the charges against Mamauag, et al. by the CPDC District Director in the Resolution of 10 April 1995. The motion for re-investigation filed by Judge Angeles with the PNP Chief is in substance an appeal from the decision of the CPDC District Director. The PNP Chief had no jurisdiction to entertain Judge Angeles' appeal in the guise of a motion for re-investigation. Since the PNP Chief had no jurisdiction, all actions taken by the PNP Chief pursuant to the appeal is void. Thus, the Decision of the CPDC District Director dismissing the charges against Mamauag, et al. stands and is now final and executory.

We note that, as found by PNP Chief Sarmiento in his earlier Decision of 7 June 1996, there is no evidence on record to hold Garcia and Felipe liable for any misconduct. The 3 July 1997 Resolution of PNP Chief Sarmiento stated that Garcia and Felipe "were eye-witnesses to the criminal act" of the theft of Judge Angeles' jewelry. The same Resolution also held that Garcia and Felipe "were active participants in the cover-up (of the theft) contrary to the assertion that they merely brought minors Pacay and Gaspar to the DSWD upon instructions of their superior."

The theft, however, happened at the house of Judge Angeles. Garcia and Felipe were indisputably not eyewitnesses to the crime of theft, contrary to the finding of the PNP Chief. There is also no evidence on record of any act showing that Garcia and Felipe participated in any cover-up of the theft. We quote the NAB Decision of 29 July 1997 explaining why there was no cover-up of the alleged theft:

Appellants argue that after minors Pacay and Gaspar narrated and showed signs of their harrowing life under Judge Angeles, and pursuant to standard police practice and the policy of the state to protect children against abuse, exploitation and discrimination committed by persons having care and custody of them, appellant Cariño decided with the approval of Chief Insp. Ganas to bring said minors to the hospital for medico-legal examination. Thereafter, the minors were placed under the protective custody of the DSWD in accordance with Executive Order No. 50, Series of 1986. For performing their duties pursuant to law and after tending to the needs of said minors as mandated under Sec. 2 of RA 7610, and for refusing to enter in the police blotter a fictitious crime of Qualified Theft and to turn over said minors to the custody of the complainant, appellants were unceremoniously suspended and subjected to summary dismissal proceedings.

It would defy both logic and human nature that a mere SPO1 such as appellant Cariño would refuse the rightful demands of respectable emissaries of a well-known and feared RTC Judge whose reputation precedes her. There is no plausible reason, therefore, for appellant to refuse entry of the alleged stolen jewelry in the blotter. They are more than aware that they are facing a lawyer and judge who can make life miserable for them if they refuse to perform their duties enjoined by law. The truth of the matter is that what was discovered was a coin purse/wallet of Nancy Gaspar placed inside the paper bag of Proclyn Pacay and which yielded fancy jewelry items, a P20-peso bill and a wristwatch that according to Gaspar was given her by the private complainant. It was Oliva Angeles and Dra. Sagrada who took with them the coin purse of Pacay. How the private complainant produced the alleged stolen jewelry worth P26,820.25 is a matter which only they can explain.[26]

PNP Chief Sarmiento's Decision of 7 June 1996 dismissed from the service Ganas, Billedo, and Cariño, suspended for 90 days Mamauag and Almario, and exonerated Garcia and Felipe. All the respondents initially

appealed the Decision to the NAB. The NAB exonerated Ganas, Billedo and Cariño and advised the PNP Chief "to take note of our findings in the instant case and to act thereon accordingly" with respect to Judge Angeles' pending motion for partial reconsideration involving Mamauag, et al. The PNP Chief, however, issued his Resolution on 3 July 1997 dismissing from the service Mamauag, et al., twenty-six days before the NAB Decision of 29 July 1997.

The NAB, which is a higher disciplining authority than the PNP Chief, found that the same grave misconduct charged against all the respondents never happened. Thus, the NAB exonerated and reinstated Ganas, Billedo and Cariño, whom the PNP Chief dismissed from the service in his original Decision of 7 June 1996. The NAB decision became final and executory on 28 February 1998. Ironically, Mamauag and Almario, whom the PNP Chief originally meted out a lesser penalty of 90-day suspension but subsequently dismissed on motion for partial reconsideration, have not been reinstated to their positions up to now. Garcia and Felipe, whom the PNP Chief originally exonerated but subsequently dismissed on motion for partial reconsideration, have also not been reinstated to their positions. And yet, as found by the NAB, the appellate disciplining authority superior to the PNP Chief, the same offense of grave misconduct charged against all respondents, including Mamauag, et al., never happened.

WHEREFORE, we DENY the instant petition. We AFFIRM the Decision of the Court of Appeals promulgated on 06 September 2001 in CA-G.R. SP No. 61711 with MODIFICATION. We REVERSE the 3 July 1997 Resolution of PNP Chief Recaredo Sarmiento II and REINSTATE the Resolution of 10 April 1995 of the CPDC District Director dismissing the charges against P/Insp. John A. Mamauag, SPO2 Eugene Almario, SPO4 Erlinda Garcia, and SPO1 Vivian Felipe, who are all entitled to back salaries and other benefits as provided under Section 48[27] of Republic Act No. 6975.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, and Azcuna, JJ., concur.
Ynares-Santiago, J., no part.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Godardo A. Jacinto and Eliezer R. De los Santos, concurring. Rollo, pp. 30-37.

[3] Special Protection of Children against Child Abuse, Exploitation and Discrimination Act.

[4] CA Rollo, p. 47.

[5] Rollo, pp. 58-59.

[6] Ibid., pp. 60-65.

[7] Ibid., p. 65.

[8] CA Rollo, pp. 159-163.

[9] Rollo, pp. 66-68.

[10] Signed by Judge Pedro T. Santiago. Rollo, pp. 69-70.

[11] Signed by Commissioners Leo S. Magahum, Jose Percival L. Adiong and Romeo L. Cairme. Rollo, pp. 50-53.

[12] Rollo, pp. 52-53.

[13] CA Rollo, pp. 32-33.

[14] Rollo, pp. 36-37.

[15] Ibid., pp. 34-36.

[16] An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and For Other Purposes.

[17] *Villasis v. Pabatao, etc.*, 200 Phil. 22 (1982).

[18] 366 Phil. 86 (1999).

[19] 311 Phil. 340 (1995).

[20] *Dagadag v. Tongnawa*, G.R. No. 161166-67, 3 February 2005; *Civil Service Commission v. Gentallan*, G.R. No. 152833, 9 May 2005; *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507.

[21] Concurring Opinion of Justice Jose Melo, *Floralde v. Court of Appeals*, 392 Phil. 146 (2000).

[22] Ibid.

[23] Sec. 2(1) provides:

"The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."

[24] 378 Phil. 466 (1999).

[25] *CSC v. Dacoycoy*, *supra* note 18.

[26] CA Rollo, pp. 51-52.

[27] Section 48 of RA 6975 provides: "SEC. 48. Entitlement to Reinstatement and Salary. - A member of the PNP who may have been suspended from office in accordance with the provisions of this Act or who shall have been terminated or separated from office shall, upon acquittal from the charges against him, be entitled to reinstatement and to prompt payment of salary, allowances and other benefits withheld from him by reason of such suspension or termination."

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