

RUBEN S. GALERO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, DEPUTY OMBUDSMAN (VISAYAS), AND PHILIPPINE PORTS AUTHORITY, RESPONDENTS.

G.R. No. 151121. July 21, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57397 dated April 26, 2001 affirming the Resolution[2] of the Office of the Ombudsman (Visayas) in OMB-VIS-ADM-97-0565 finding petitioner Ruben S. Galero guilty of Dishonesty, Falsifying Official Documents and Causing Undue Injury to the Government and imposing the penalty of dismissal from service, forfeiture of all benefits and perpetual disqualification to hold public office. Likewise assailed is the CA's Resolution[3] dated December 21, 2001 denying his motion for reconsideration.

The factual and procedural antecedents follow:

On January 17, 1997, Rogelio Caigoy (Mr. Caigoy), then the resident Ombudsman of the Philippine Ports Authority - Port Management Office (PPA-PMO), Pulupandan, Negros Occidental, received an anonymous letter from concerned citizens, reporting that Robert Geocadin (Mr. Geocadin), a security guard of United Field Sea Watchmen and Checkers Agency (UFSWCA), officially assigned at the National Power Corporation (Napocor) in Bacolod City, at the same time submitted a Daily Time Record (DTR) at PPA-PMO but did not report to the said office.[4] He received a second anonymous letter on December 16, 1997 stating that Mr. Geocadin was receiving double salary from Napocor and PPA-PMO, and implicating the petitioner, who was then the Acting Station Commander, Port Police Division, and Winfred Elizalde (Mr. Elizalde), the Port Manager, both of the PPA-PMO. The said letter specifically claimed that petitioner and Mr. Elizalde were each receiving shares in the security guards' salary.[5] In short, the letters charged that Mr. Geocadin was a ghost employee.

On the strength of the two anonymous letters, Mr. Caigoy recommended the filing of criminal and administrative charges against petitioner and Mr. Elizalde in their capacities as Acting Port Police Division Commander and Port Manager, respectively.[6] The administrative case was docketed as OMB-VIS-ADM-97-0565 and was assigned to Graft Investigation Officer I Helen Catacutan-Acas.

From the affidavits and counter-affidavits of the parties and witnesses, as well as their testimonies and the documentary evidence presented, it appears that Mr. Geocadin was officially assigned at the Napocor with the following areas of supervision:

- Bacolod Sub-Station in Mansilingan;
- Engineering Office in Bacolod City;
- Tumonton Cable Station which is more or less twenty-two (22) km. away from Bacolod Station;

- Bulata Sipalay small stockyard which is more or less 20 km. away from Bacolod City.[7]

At Napocor, petitioner was required to report for duty from 8:00 in the morning until 4:00 in the afternoon, from April 16, 1996 until April 16, 1997. Covering almost the same period from April 16, 1996 until November 30, 1996, Mr. Geocadin, who was also appointed as the Station Commander of the security guards of PPA-PMO, filled up Civil Service Form No. 48 (DTR) allegedly for services rendered for PPA-PMO from 8:00 in the morning until 5:00 in the afternoon. The DTRs he submitted for seven (7) months were certified correct by petitioner being Mr. Geocadin's immediate superior.[8]

For his part, petitioner denied that Mr. Geocadin was a ghost security guard. He alleged that Mr. Geocadin was designated by UFSWCA as Detachment Commander who was tasked to supervise the security guards posted at PPA-PMO Bacolod City and Pulupandan and to inspect their security equipment. Apart from these, Mr. Geocadin was assigned to issue mission orders; prepare duty schedules; and act as paymaster and liaison officer. He, likewise, did clerical work and prepared memoranda on disciplinary actions taken against erring security guards.[9] To justify his lack of knowledge of Mr. Geocadin's fraudulent acts, petitioner explained that because PMO-Pulupandan was then in the process of reorganization, Mr. Geocadin was initially tasked to conduct security inspection of the posts in Bacolod City and random inspections in other stations.[10] In other words, petitioner was not expected to see Mr. Geocadin the whole day as he could be in another station. Mr. Elizalde, on the other hand, claimed that whenever he needed Mr. Geocadin, the latter was always available.

During the hearing of the case, Mr. Geocadin admitted that he was assigned both to Napocor and PPA-PMO with 16-hour duty everyday.[11]

On May 31, 1999, the Office of the Ombudsman (Visayas) issued a Resolution[12] against petitioner, the pertinent portion of which reads:

WHEREFORE, in the light of all the foregoing, this Office finds Ruben Galero guilty of Dishonesty, for Falsifying Official Documents, and for causing undue injury to the government, thus metes upon him, the penalty of DISMISSAL FROM SERVICE, FORFEITURE OF ALL BENEFITS, and PERPETUAL DISQUALIFICATION TO PUBLIC OFFICE in accordance with Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission.[13]

SO RESOLVED.

The Office of the Ombudsman declared that Mr. Geocadin was officially assigned at Napocor and was not tied to only one post as he was then tasked to supervise four stations. Making use of this set-up to his advantage, Mr. Geocadin took undeclared undertime with Napocor which enabled him to accept his appointment with PPA-PMO. Though it may have been possible for Mr. Geocadin to accept dual positions, it is impossible for him to be at different work stations at the same time, as reflected in his DTRs both with Napocor and PPA-PMO. Considering that Mr. Geocadin repeatedly committed the fraudulent act for a continuous period of seven (7) months, the Office of the Ombudsman concluded that the petitioner, being his immediate superior who verified his DTRs, was aware of such irregularity.[14] Hence, the extreme penalty of dismissal as to the petitioner. Mr. Elizalde, on the other hand, was exonerated for lack of evidence to show conspiracy. Petitioner's motion for reconsideration was also denied on December 10, 1999.[15]

Petitioner likewise failed to obtain a favorable judgment from the CA when his petition for review was denied.[16] The appellate court declared that petitioner's verification of Mr. Geocadin's DTRs was sufficient to hold him guilty as charged. His verification, according to the court, enabled Mr. Geocadin to receive from the government such amounts not due him. The court did not give credence to the affidavits of some security guards that Mr. Geocadin was indeed their station commander. Neither did the appellate court consider the affidavit of

retraction executed by one of the witnesses.[17] In conclusion, the court said that there was substantial evidence to establish petitioner's guilt.

Aggrieved, petitioner comes before this Court in this petition for review raising the following errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE FINDINGS OF THE OMBUDSMAN WHICH FINDING IS GROUNDED ENTIRELY ON SPECULATION, SURMISES OR CONJECTURES.

II.

THE HONORABLE COURT OF APPEALS FAILS (SIC) TO NOTICE CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION.

III.

THE FINDINGS OF THE HONORABLE COURT OF APPEALS AS TO THE VALIDITY OF PETITIONERS' DISMISSAL FROM SERVICE ARE CONTRADICTED BY THE EVIDENCE ON RECORD.[18]

Before we rule on these assigned errors, we note that petitioner belatedly questioned in his Reply[19] the scope of the Ombudsman's power and authority to dismiss government employees. If only to erase doubts as to the Ombudsman's power to impose the penalty of dismissal, we would like to stress the well-settled principle laid down in the two *Office of the Ombudsman v. Court of Appeals*[20] cases and in *Estarija v. Ranada*.[21]

The powers, functions and duties of the Ombudsman are set forth in Section 15(3) of Republic Act No. 6770 (R.A. 6770) otherwise known as the "Ombudsman Act of 1989" which substantially restates Section 13(3),[22] Article XI of the 1987 Constitution, thus:

SEC. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act; Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.[23]

The restrictive interpretation of the word "recommend" had long been rejected by this Court for being inconsistent with the wisdom and spirit behind the creation of the Office of the Ombudsman.[24] Instead, to be faithful to the constitutional objective, the word has been construed to mean that the implementation of the Ombudsman's order of dismissal, suspension, etc., is mandatory but shall be coursed through the proper officer.[25]

We have already ruled that although the Constitution lays down the specific powers of the Ombudsman, it likewise allows the legislature to enact a law that would grant added powers to the Ombudsman. To be sure, the provisions of R.A. 6770, taken together, reveal the manifest intent of the lawmakers to bestow the Office of the Ombudsman full administrative disciplinary authority. Specifically, it is given the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the

production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty.[26] Clearly, the Office of the Ombudsman was given teeth to render this constitutional body not merely functional but also effective.[27]

We now proceed to the meat of this petition on the validity of petitioner's dismissal from service.

The CA affirmed the Office of the Ombudsman's conclusion that petitioner was guilty of dishonesty for falsifying official documents and causing undue injury to the government. Both the CA and the Ombudsman anchored such finding on the alleged collusion between petitioner and Mr. Geocadin which enabled the latter to receive compensation from the government for services not actually rendered.

We would like to reiterate at this point the undisputed facts material to the determination of petitioner's guilt. First, per UFSWCA records, Mr. Geocadin was officially assigned at the Napocor, supervising the security guards of four stations. Second, though earlier branded as a ghost employee, Mr. Geocadin was established to be the Station Commander of all the security guards assigned at the PPA-PMO. Third, as Acting Station Commander, Port Police Division, petitioner was the immediate superior of Mr. Geocadin whose duty was to supervise the security guards and to certify to the truth of the entries they made in their DTRs. Fourth, Mr. Geocadin was an employee of UFSWCA which had a contract with the government for security services. Fifth, the payment of the security guards' salaries was based on the DTRs they prepared as certified by petitioner. Lastly, Mr. Geocadin's DTRs submitted to Napocor and PPA show that he was reporting for duty at the two offices at the same time, which is physically impossible.

Mr. Geocadin's assignment and actual service at the PPA-PMO Pulupandan was sufficiently established. This is shown by the communications he signed in his capacity as station commander. He was not, therefore, a ghost employee as initially claimed by the concerned citizens. This is bolstered by the Office of the Ombudsman's finding that the coverage of Mr. Geocadin's assignment with Napocor, where he was not tied to his post, enabled him to hold such two positions.[28] Clearly, the Office of the Ombudsman itself recognized that Mr. Geocadin rendered service at the PPA. Whether he rendered the 8-hour service as reflected in his DTR is another matter which will be discussed below.

It is well to note that Mr. Geocadin was not a government employee, having been employed only by UFSWCA, a private company supplying security services for both Napocor and PPA. He was, however, required to submit his DTR which the government used to verify the correctness of UFSWCA's billing with PPA-PMO. Like any other DTR, Mr. Geocadin's DTR was certified by him as reflecting his true attendance at the office, and verified by petitioner, the latter being his immediate supervisor. The submission of another DTR stating that Mr. Geocadin was rendering service at the Napocor at exactly the same time on the same dates makes his DTR with PPA false. As pointed out by the Office of the Ombudsman, the fact remains that it would be physically impossible for him to be simultaneously rendering services with Napocor and PPA-PMO as reflected in his DTRs.[29]

In finding petitioner guilty of dishonesty, falsification of document and causing injury to the government, the Office of the Ombudsman, as affirmed by the CA, ratiocinated, thus:

It is the finding of this office that respondent Geocadin cannot possibly do it alone without [the] knowledge and consent of his most immediate superior - Ruben Galero. It is unthinkable for this fact to be kept known by respondent Geocadin alone, because it has been repeatedly done by him for a period of about seven (7) months. Thus, respondent Ruben Galero cannot feign of having no knowledge on what Geocadin was doing during said period because the latter is under his direct and immediate supervision. Accordingly, a government official or officer is presumed to have knowledge of the commission of any irregularity or offense, when the irregularities or illegal acts have been repeatedly or regularly committed within his official area of jurisdiction.[30]

While not totally exonerating petitioner from the charges filed against him, a modification of the nature of petitioner's administrative liability as well as the penalty that was correspondingly imposed, is in order. The only basis of petitioner's liability for dishonesty, etc., was the presumed collusion between him and Mr. Geocadin. This stemmed from the unproven fact that Mr. Geocadin was a ghost employee and that petitioner was receiving part of his (Mr. Geocadin) salary. There was nothing in the record which establishes petitioner's collusion or conspiracy with Mr. Geocadin to defraud the government. For the purpose of sustaining the Ombudsman's findings, it would have been necessary that the alleged conspiracy or collusion be established by independent, competent and substantial evidence. Since the records are bereft of this evidence, what remains is only petitioner's verification of Mr. Geocadin's false DTR. With this as sole basis, petitioner can be held administratively liable only for simple neglect of duty --- not for dishonesty, for falsification of official document, or for causing undue injury to the government.

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[31] Had petitioner performed the task required of him, that is, to monitor the employees' attendance, he would have discovered that indeed Mr. Geocadin was dividing his time between PPA and Napocor. Though not required to know every detail of his subordinates' whereabouts, petitioner should have implemented measures to make sure that the government was not defrauded. As he was required to sign Mr. Geocadin's DTR, petitioner should have verified the truthfulness of the entries therein. Indeed, petitioner neglected his duty which caused prejudice to the government in that Mr. Geocadin was paid twice for his services. These facts, taken together, are sufficient to make petitioner liable for simple neglect of duty, but insufficient to make him answer for charges of dishonesty and falsification of document.

This is not the first time that we hold an immediate superior administratively liable for neglect of duty for obvious lack of care in verifying his subordinate's DTR. In *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City*[32] and *Amane v. Atty. Mendoza-Arce*,[33] the Court found the Branch Clerk of Court, the Presiding Judge and the OIC Philja Director liable because of their acts of tolerating their subordinates' absences. In the said cases, which involved court employees, the Court concluded that there was a relaxation and too much leniency in the implementation of the rules on attendance which thus resulted in the unauthorized absences of employees not being reflected in their DTRs. The Court said:

We find the inclination of the respondent judge to leniency in the administrative supervision of his employees an undesirable trait. Oftentimes, such leniency provides the court employees the opportunity to commit minor transgressions of the laws and slight breaches of official duty ultimately leading to vicious delinquencies. The respondent judge should constantly keep a watchful eye on the conduct of his employees. He should realize that big start small. His constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. Then, his subordinates would know that any misdemeanor will not remain unchecked.[34]

Applying the aforesaid pronouncement by analogy, petitioner in the instant case was indeed lenient in the implementation of the rules on attendance. Mr. Geocadin took advantage of this leniency by taking unauthorized undertime with PPA in order to attend to his duties with Napocor. Since such act remained unchecked for almost seven (7) months, Mr. Geocadin was not deterred from continuing his unlawful act, to the prejudice of the government and the taxpayers.

It must be remembered that public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, government employees must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times

be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[35]

As to the proper penalty imposable, simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one (1) month and one (1) day to six (6) months.[36] The circumstances surrounding the instant case, considering that it appears to be petitioner's first offense, warrant the imposition of suspension without pay for one (1) month and one (1) day.

WHEREFORE, the Decision of the Court of Appeals dated April 26, 2001 and its Resolution dated December 21, 2001 in CA-G.R. SP No. 57397 are hereby MODIFIED. We find petitioner GUILTY of Simple Neglect of Duty instead of Dishonesty, Falsification of Official Documents, Causing Undue Injury to the Government, and is meted the penalty of suspension without pay for one (1) month and one (1) day, instead of dismissal from service, forfeiture of all benefits and perpetual disqualification from public office.

SO ORDERED.

Quisumbing, Ynares-Santiago, (Chairperson), Austria-Martinez, and Reyes, JJ., concur.

* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508, dated June 25, 2008.

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring; rollo, pp. 39-52.

[2] CA rollo, pp. 20-28.

[3] Rollo, p. 64.

[4] CA rollo, p. 32.

[5] Id. at 31.

[6] Id. at 35.

[7] Id. at 26.

[8] Id.

[9] Id. at 23.

[10] Id.

[11] Id. at 25.

[12] Id. at 20-28.

[13] Id. at 28.

[14] Id. at 26-27.

[15] Id. at 29-30.

[16] Rollo, pp. 39-52.

[17] Id. at 49-51.

[18] Id. at 12.

[19] Id. at 337-349.

[20] G.R. No. 167844, November 22, 2006, 507 SCRA 593; G.R. No. 160675, June 16, 2006, 491 SCRA 92.

[21] G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[22] Section 13. The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

[23] Emphasis supplied.

[24] Office of the Ombudsman v. Court of Appeals, supra note 20, at 604, citing Ledesma v. Court of Appeals, 465 SCRA 437 (2005).

[25] Id.

[26] Office of the Ombudsman v. Court of Appeals, supra note 20, at 116.

[27] Estarija v. Ranada, supra note 21, at 674.

[28] CA rollo, p. 26.

[29] Id.

[30] Id. at 26-27.

[31] Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City, A.M. No. 2004-35-SC, January 23, 2006, 479 SCRA 343, 349.

[32] Id.

[33] 376 Phil. 575 (1999).

[34] Concerned Litigants v. Araya, Jr., A.M. No. P-05-1960, January 26, 2007, 513 SCRA 9, 21; Judge Lacurom v. Magbanua, 443 Phil. 711, 720 (2003), citing Buenaventura v. Hon. Benedicto, 148 Phil 63, 71 (1971).

[35] Concerned Litigants v. Araya, Jr., supra, at 20.

[36] Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City, supra note 31, at 349; Philippine Retirement Authority v. Rupa, 415 Phil. 713, 722 (2001); De la Victoria v. Mongaya, 404 Phil. 609, 618 (2001).

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