

OFFICE OF THE OMBUDSMAN AND THE NATIONAL BUREAU OF INVESTIGATION, PETITIONERS, VS. JENNIFER R. ANGELES, RESPONDENT.

G.R. No. 152244. September 27, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61667, finding the respondent not guilty of simple neglect of duty, and its Resolution denying the petitioners' motion for reconsideration of the said decision.

The Antecedents

The CA set forth the antecedents in its assailed decision, thus:

The genesis to this instant petition can be traced from the July 9, 1999 resolution of Graft Investigation Officer I Emora C. Pagunuran as follows:

“This pertains to the sworn complaint filed by the National Bureau of Investigation (NBI) against JENNIFER RAMOS ANGELES, Acting Immigration Officer (Salary Grade III) of the Bureau of Immigration assigned at the Travel Control Service, Departure Area of the Ninoy Aquino International Airport (NAIA) for alleged violation of Section 3(e), R.A. No. 3019.

“Complainant alleged that on January 23, 1996, one Myrna Arcilla Llaneta departed for New York, USA using Passport No. N348389; that on January 25, 1996, said Ms. Llaneta was refused entry in the USA and deported back to the Philippines because it was discovered that the passport she was using was issued in Bonn, Germany on September 28, 1994 to one Dessie S. Cadornigara; that Immigration Departure Stamp No. 332 which was imprinted on the said passport was issued to respondent on January 6, 1996; that had respondent exercised reasonable diligence, she could have detected that the passport Ms. Llaneta was using does not belong to her considering the difference between the subject passenger's physical appearance and the picture in the passport.

“In her counter-affidavit, respondent pointed out that the same charge based on the same facts and circumstances has been subject of complaint filed before the Office of the City Prosecutor, Pasay City docketed as I.S. No. 98-B 0792; that the said complaint was dismissed in a Resolution dated April 7, 1998; and that the said resolution has already become final as no Motion for Reconsideration was filed therefrom. Respondent adopted and adduced in evidence a copy of her counter-affidavit in the said case.

“In that counter-affidavit which forms an integral part of respondent's present counter-affidavit, respondent alleged, among others, that per Disposition Form of the NBI, there are no indications of alterations on the questioned passport; that on January 23, 1996 while she was on duty at the Travel Control Service, Departure Area, NAIA, a certain Dessie S. Cadornigara presented to her Passport No. N348389 issued in Bonn, Germany together with a ticket boarding pass and a departure card; that following the normal procedure, she checked the passenger's name in the Derogatory Book and after finding that the passenger's name was not in the Hold Departure List and that her passport bears several stamps of arrivals and departure and appears to be in order,

she had the said passport and the boarding pass stamped; that departing passengers have already been cleared by several check-in points by the time they reach her counter, to wit: (1) by the PASSCOR on duty to whom tickets and passports are first presented, (2) by the airline counter to whom the same documents are presented and cleared including baggage after which a boarding pass and a departure card are issued, (3) by the NAIA police which checks again if the passenger was already issued a boarding pass, and (4) by the Immigration Departure Clearance counter which checks and clears the passenger's documents after which a second clearing will again be conducted before the passenger proceeds to the gate for the final departure area and a double checking by the Immigration Enforcement Unit; that even at the gate, several checking officers roam around and check passenger's documents; that she exercised due diligence and judicious efforts to verify and check the departure documents of the passenger in question; and that the charge against her is based on "speculation" and founded on imagined irregular acts or omissions." (Pages 26 to 28, Rollo)

After careful consideration of the evidence on hand, the said [I]nvestigator recommended the dismissal of the complaint for insufficiency of evidence after reasoning in this manner, to wit:

"Be that as it may, the undersigned investigator finds the evidence against respondent weak and conjectural. Surmises and conjectures have no place in a judicial inquiry and are especially anathema in a criminal prosecution. (People v. Furugganan, 193 SCRA 471).

"As borne by the NBI Questioned Documents Report No. 173-296 dated 29 February 1996 (pp. 0021-0022, Records), there are no evidences/indications of alterations on the questioned passport that could have aroused respondent's suspicion.

"Respondent should be accorded the presumption of regularity in the performance of her official functions (Section 3[m], Rule 131, Rules of Court).

"WHEREFORE, premises considered, the complaint is dismissed for insufficiency of evidence." (Pages 29 to 30, Rollo)

Unfortunately, while Assistant Ombudsman Abelardo L. Aportadera, Jr. recommended approval of the findings of GIO Pagunuran, Overall Deputy Ombudsman Margarito P. Gervacio, Jr. disagreed and had the findings reversed by Graft Investigator II, Julita M. Calderon, who, in a memorandum dated October 18, 1999 (pp. 50-51, Rollo) made the following recommendation, which was approved by ODO Gervacio, to wit:

"WHEREFORE, foregoing premises being considered, we most respectfully recommend that the herein Resolution be MODIFIED so as to include further recommendations that the administrative aspect of the case be referred to AAB for proper disposition and there being no evidence sufficient to indict respondent for the crime charged, the criminal aspect of the case be considered as DISMISSED as previously recommended." (Page 51, Rollo)

The Administrative Adjudication Bureau, to whom the administrative aspect was assigned for investigation, acting through Helen M. Acuña, GIO-I in a decision dated June 26, 2000 (pp. 44 to 48, Rollo) made the following conclusion, thus:

"Moreover, as borne by the NBI Questioned Document Report No. 173-296 dated 28 February 1996 (pp. 032-033), there are no evidences/indications of alteration on the questioned passport that could have aroused respondent's suspicion, much less, doubt its authenticity. Thus, the presumption of regularity in the performance of her duties have not been overturned by the complainant." (Page 48, Rollo)

Sadly, ODO Gervacio again disagreed with the findings and recommendation and had the matter again investigated by GIO II Julita M. Calderon, who issued the assailed memorandum (pp. 27 to 35, Rollo) with the following recommendations, approved by the Ombudsman upon recommendation alone of the Overall Deputy Ombudsman, to wit:

“WHEREFORE, in the light of the foregoing discussions, this office finds respondent JENNIFER R. ANGELES be GUILTY OF SIMPLE NEGLIGENCE OF DUTY thereby imposing on her the maximum penalty of six (6) months suspension pursuant to Section 22(a), Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.

“Accordingly, the herein Decision of GIO Acuña is therefore SET ASIDE.

“RESPECTFULLY SUBMITTED.” (Page 25, Rollo)

The motion for reconsideration of petitioner having been denied, this instant petition was resorted to on the theory “that the Honorable Ombudsman, with wanton and palpable disrespect and disregard of the law and the Constitutional right of the Petitioner to security of tenure, acted, in the manner hereinafter described, with grave abuse of discretion amounting to lack of jurisdiction in imposing upon petitioner the undeserved and unwarranted penalty of six (6) months suspension merely on the basis of the unaffirmed and unsubstantiated report of the respondent NBI’s agent, a certain investigator by the name of Carpeso Jr. (1[st] par., Petition, p. 8, Rollo).[2]

On September 28, 2001, the CA rendered a decision granting the petition and exonerating the respondent of the charge. The fallo of the decision reads:

WHEREFORE, foregoing premises considered, the petition, having merit in fact and in law, is hereby GIVEN DUE COURSE. Resultantly, the assailed orders are hereby NULLIFIED and SET ASIDE and a new one issued finding petitioner NOT GUILTY OF SIMPLE NEGLIGENCE, as charged. No costs.

SO ORDERED.[3]

The CA held that the respondent was denied due process. It noted that Carpeso Jr., who signed the NBI report, did not appear before the Office of the Ombudsman, and that no witness testified on and explained the said report.[4] It concluded that the Overall Deputy Ombudsman committed grave abuse of discretion when he insisted on the finding of guilt despite the two earlier recommendations of Graft Investigation Officers to exonerate the respondent. Moreover, the Overall Deputy Ombudsman arrived at his findings without any valid or competent evidence to support the same, in derogation of the respondent's right to due process.[5]

On February 13, 2002, the CA denied a motion for reconsideration of the said decision filed by the petitioners.

Hence, this petition for review.

The petitioners, through the Office of the Solicitor General (OSG), rely on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED IN ANNULING THE OMBUDSMAN'S MEMORANDUM SIGNED ON AUGUST 18, 1999 FOR THE MERE REASON THAT THE NBI REPORT WHICH FORMED THE BASIS OF THE OMBUDSMAN'S MEMORANDUM WAS NOT SUBSCRIBED BY A COMPLAINANT OR ANY WITNESS;

II.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DECLARE THAT THE ISSUE OF THE INSUFFICIENCY OF THE COMPLAINT HAS BECOME MOOT AND ACADEMIC;

III.

THE COURT OF APPEALS GRAVELY ERRED IN SUBSTITUTING ITS FINDINGS OF FACTS FOR THE FINDINGS OF FACTS OF THE OMBUDSMAN.[6]

The OSG argues that a complaint filed before the Office of the Ombudsman need not be accompanied by any subscribed affidavit executed by the complaining party or any witnesses, as it is within the competence and authority of the Ombudsman to undertake its own investigation after the complaint is filed.[7] The OSG contends that Section 15 of Republic Act No. 6770, the Ombudsman Act of 1989, is clear and categorical that the Ombudsman need not wait for any complaint before it may act or investigate a public servant whose act appears to be illegal, unjust, improper, or inefficient.[8] It posits that the respondent's filing of her counter-affidavit rendered moot and academic any issue on the insufficiency in form of the complaint.[9]

The OSG further avers that the Ombudsman did not commit grave abuse of discretion when he overturned the findings of his subordinates because it was done in the exercise of his power of control over them. It alleges that as long as the decision of the Office of the Ombudsman is supported by substantial evidence, the courts should not interfere with the same. According to the OSG, there was substantial evidence to support a finding that the respondent is guilty of simple neglect of duty since she failed to exercise due care in ascertaining the identity of the passport holder before affixing the immigration stamp thereon.[10] Such negligence is shown by the fact that although the person who presented passport number N348389 to the respondent was not Cadornigara but Llaneta, the respondent allowed the latter to depart for New York.[11]

For its part, the CA ruled that the respondent was denied her right to due process and that the NBI report does not constitute substantial evidence to support a finding of neglect of duty on the part of the respondent with the following ratiocination:

In the case at bench, there is no doubt in Our minds that petitioner was denied due process. It is undisputed that the basis for petitioner's alleged offense for which she was imposed the penalty of six (6) months suspension is the National Bureau of Investigation Form dated July 17, 1996, submitted allegedly by SA Sixto M. Burgos, Jr. and SI Isaac R. Carpeso Jr. but signed only by the latter.

It is also undisputed that there were two (2) earlier separate investigations done relative to the NBI report, but in both investigations, the recommendation were for finding petitioner not guilty of neglect of duty. In the first investigation cited earlier, GIO Pagunuran concluded thus:

As borne by the NBI Questioned Documents Report No. 173-296 dated 29 February 1996 (pp. 0021-0022, Records), there are no evidences/indications of alteration on the questioned passport that could have aroused respondent's suspicion. Respondent should be accorded the presumption of regularity in the performance of her official function (Sec. 3[m], Rule 131, Rules of Court). (pp. 29 to 30, Rollo, underscoring for emphasis).

As indicated earlier, the Overall Deputy Ombudsman recommended disapproval of said findings and instead ordered that another investigation be conducted by the Administrative Adjudication Bureau. Acting on said recommendation, GIO Acuña conducted another investigation and, thereafter, recommended dismissal of the administrative complaint after making the following findings and conclusion, to wit:

A careful evaluation of the evidence at hand reveals that it is not substantial to support the alleged administrative infraction being leveled against the respondent. Substantial evidence is more than a mere scintilla. It means such substantial evidence as a reasonable mind must accept as adequate to support a conclusion. Notably, no evidence was adduced to prove respondent's neglect/negligence in the performance of her duties. Negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious difference to consequence insofar as other persons may be affected (*Alejandro vs. People*, 170 SCRA 400); or want of any slight care (*Caunan vs. Compania General de Tabacos*, 56 Phil. 547) or utter disregard of consequences (*Marinduque Mines vs. WC*, 99 Phil. 485). The Supreme Court has, time and again, ruled that "mere allegation or claim is not proof." (*Sadhwani vs. Court of Appeals*, 281 SCRA 75). The burden of proof rests on the complainant. It is incumbent upon the NBI to prove its claim. He who alleges the commission of any

irregularity in the discharge of official duty must prove such allegation convincingly. This, the complainant failed to do. Hence, the instant complaint must fail.

Moreover, as borne by the NBI Questioned Document Report No. 173-296 dated 28 February 1996 (pp. 032-033), there are no evidences/indications of alteration on the questioned passport that could have aroused respondent's suspicion, much less, doubt its authenticity. Thus, the presumption of regularity in the performance of her duties have not been overturned by the complainant. (Pages 47 to 48, Rollo) (Underscoring for emphasis)

For reasons known only to himself, the Overall Deputy Ombudsman, for the second time, disapproved the finding of not guilty by the Investigating Officer and again ordered that another investigation be done. Indeed, this time, GIO Calderon made the recommendation acceptable to the Overall Deputy Ombudsman. And yet, glaringly, there was no complainant present, much less, the NBI officer who signed the report nor any witness relative thereto who could testify on and explain the report. Worse, a report which was never properly introduced as evidence, which was earlier rejected by two (2) investigators as basis for the action against petitioner, all of a sudden was given credence.

From the foregoing unfolding of events, there is no doubt in Our minds that this instant petition is clearly warranted. Indeed, there was grave abuse of discretion on the part of the Overall Deputy Ombudsman, either by reason of passion or personal hostility, that he would reject two (2) earlier recommendations of exoneration even if the said recommendations were duly substantiated by clear and convincing evidence. On the other hand, he insisted on the finding of guilt without any valid or competent evidence to support the same in derogation of petitioner's constitutionally guaranteed right to due process.[12]

The petition has no merit.

We agree with the petitioners that the respondent was not denied due process. She was accorded the right to file a counter-affidavit and did file one. She agreed that the case would be resolved by the Office of the Ombudsman on the basis of the NBI Report and her counter-affidavit. However, we agree with the CA that the petitioner NBI failed to adduce substantial evidence to prove the charge. In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations of the complaint.[13] After all, public officers and employees are presumed to have performed their duties in accordance with law.

The petitioner NBI failed to prove Carpeso, Jr.'s claim that the respondent was in cahoots with Llaneta. In fact, the latter claimed that she bought the passport bearing number N348389 from a certain Gina whose full name she failed to divulge to the NBI. Neither is there evidence that the respondent knew the said person from whom Llaneta allegedly bought the passport.

Carpeso, Jr., likewise, failed to prove that the person who presented the passport to the respondent on January 23, 1996 was Llaneta and not Cadornigara, in whose name the passport was issued in Bonn, Germany, on September 28, 1994. Carpeso, Jr. merely assumed that Llaneta was the person who presented the passport to the respondent at the Travel Control Service, Departure Area at the airport simply because the latter was caught using the passport in New York on January 25, 1996. The petitioner NBI failed to present any affidavit executed by Llaneta stating that it was she who presented the passport to the respondent on her way to the departure area of the NAIA, or an affidavit executed by Cadornigara indicating that it was not she who presented the passport to the respondent on January 23, 1996. As against the mere assumption of Carpeso, Jr., the respondent's assertions in her counter-affidavit should prevail, thus:

[F]ollowing the normal procedure, she checked the passenger's name in the Derogatory Book and after finding that the passenger's name was not in the Hold Departure List and that her passport bears several stamps of

arrivals and departures and appears to be in order, she had the said passport and the boarding pass stamped; that departing passengers have already been cleared by several check-in points by the time they reach her counter, to wit: (1) by the PASSCOR on duty to whom tickets and passports are first presented, (2) by the airline counter to whom the same documents are presented and cleared including baggage after which a boarding pass and a departure card are issued, (3) by the NAIA police which checks again if the passenger was already issued a boarding pass, and (4) by the Immigration Departure Clearance counter which checks and clears the passenger's documents after which a second clearing will again be conducted before the passenger proceeds to the gate for the final departure area and a double checking by the Immigration Enforcement Unit; that even at the gate, several checking officers roam around and check passenger's documents; ...[14]

It bears stressing that the passport is not tampered. There is no evidence on record that it was lost by Cadornigara or was stolen from her.

Moreover, it is apparent that the petitioner NBI failed to prove that it was Llaneta who presented the passport to the airport personnel before she showed the same to the respondent prior to her departure, considering that it failed to present the affidavit of any of the following: (1) the PASSCOR on duty to whom the passport was first presented; (2) the airline counter personnel who issued a boarding pass to the bearer of the passport, (3) the NAIA police who checked the passport, and (4) the Immigration Departure Clearance counter personnel who cleared the bearer of the passport. If Llaneta was the bearer of the passport as claimed by the petitioners, it is incredible that the aforementioned employees would clear her and allow her to proceed to the Travel Control Service, Departure Area, where the respondent was assigned.

The possibility that Llaneta could have managed to gain entry into the pre-departure area of the airport without passing through the aforementioned employees cannot be discounted. But there is no evidence on record that that occurred.

It cannot be validly concluded that Llaneta was the one who presented the passport to the respondent in Manila on January 23, 1996 simply because she was caught in New York on January 25, 1996. The possibility that it was Cadornigara who checked in through the Travel Control Service, Departure Area at the NAIA, presented the passport to the respondent, and thereafter, gave the passport to Llaneta who used it in New York cannot be completely discounted or simply be ignored.

What is nettlesome is that after the petitioner NBI filed the complaint against the respondent, it ignored the summons from the Ombudsman and refused to attend the investigation at the Office of the Ombudsman with no valid justification.

The general rule is that the findings of facts of quasi-administrative bodies are conclusive and not subject to review by the Court. However, this rule does not apply if such findings are tainted with mistake or are not supported by substantial evidence.[15] The evidence on record is utterly insufficient to sustain a finding against the respondent warranting administrative sanction.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Cancio C. Garcia and Hilarion L.

Aquino (retired), concurring.

[2] Rollo, pp. 41-45.

[3] Id. at 48.

[4] Id. at 47.

[5] Id. at 48.

[6] Id. at 18-19.

[7] Id. at 22.

[8] Id. at 126.

[9] Id. at 128.

[10] Id. at 131.

[11] Id. at 27.

[12] Id. at 45-48.

[13] Pascual v. Dumlao, 361 SCRA 478 (2001).

[14] Rollo, p. 42.

[15] Lo v. Court of Appeals, 321 SCRA 90 (1999).

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