

THE OMBUDSMAN, PETITIONER, VS. BEN C. JURADO, RESPONDENT.

G.R. No. 154155. August 06, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

NO less than Our Constitution guarantees the right not just to a speedy trial but to the speedy disposition of cases.[1] However, it needs to be underscored that speedy disposition is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[2]

This is a petition for review on certiorari of the Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 58925. The CA reversed and set aside the decision and resolution of the Ombudsman finding respondent Bureau of Customs Division Chief administratively liable for neglect of duty, penalizing him with suspension for six months without pay.

The Facts

Sometime in 1992, Maglei Enterprises Co., (Maglei), a partnership owned by Rose Cuyos and John Elvin C. Medina, filed an application before the Bureau of Customs for the operation of a Customs Bonded Warehouse (CBW)-Manufacturing Warehouse. As part of the evaluation of Maglei's application, CBW Supervisor Juanito A. Baliwag conducted an inspection of Maglei's compliance with structural requirements. Baliwag submitted a report[4] recommending approval of the application.

On March 16, 1992, respondent Jurado, who was then the Chief of the Warehouse Inspection Division, adopted the recommendation of Baliwag. Then he indorsed the papers of Maglei to the Chief of the Miscellaneous Manufacturing Bonded Warehouse Division (MMBWD). The indorsement letter, in full, reads:

1[st] Indorsement

16 March 1992

Respectfully forwarded to the Chief, MMBWD, This Port, the within papers relative to the request of MAGLEI ENTERPRISES CO., to establish and operate a Customs Manufacturing Bonded Warehouse, pursuant to CMO 39-91, to be located at 129 Jose Bautista St., Caloocan City, together with the attached report submitted by CBW Supervisor J. A.

Baliwag of this Office, inviting attention to the recommendation stated therein to which the undersigned concurs.

(Sgd.)

Atty. Ben C. Jurado

Chief

Warehousing Inspection Division[5]

Maglei's application was submitted to Rolando A. Mendoza, Chief of the MMBWD for his comment and

recommendation. In a Memorandum (for the District Collector of Customs) dated March 20, 1992, Mendoza reported that Maglei has substantially complied with the physical and documentary requirements relative to their application for the operation of a Customs Bonded Warehouse. Mendoza further recommended that Maglei's application be approved. Following the indorsements of the different divisions of the Bureau of Customs - Emma M. Rosqueta (District Collector of Customs); Titus B. Villanueva (Deputy Commissioner for Assessment and Operations); and Atty. Alex Gaticales (Executive Director of the Customs - SGS Import Valuation and Classification Committee) - Maglei's application was recommended for approval.

On June 25, 1992, Maglei was finally granted the authority to establish and operate CBW No. M-1467 located at 129 J. Bautista, Caloocan City. By virtue of such authority, Maglei imported various textile materials which were then transferred to the said warehouse. The textiles were to be manufactured into car covers for exportation.

Subsequently, on July 8 and 22, 1992, MMBWD Senior Storekeeper Account Officer George O. Dizon was tasked by MMBWD Chief Mendoza to check and verify the status of Maglei's CBW. Dizon reported that the subject CBW was existing and operating. However, upon further verification by the Bureau of Customs, it was discovered that the purported CBW of Maglei did not exist at the alleged site in Caloocan City. Rather, what was reported located at the site was a School of the Divine Mercy. Only a small signboard bearing the name "Maglei Enterprises Company" was posted inconspicuously in the corner of the lot. Further investigation revealed that Maglei's shipment of textile materials disappeared, without proof of the materials being exported or the corresponding taxes being paid.

Ombudsman Disposition

On August 11, 1992, the Bureau of Customs initiated a complaint against George P. Dizon, Rose Cuyos and John Elvin C. Medina for prosecution under the Tariff and Customs Code. After receiving a copy of the resolution, the Ombudsman conducted the investigation on the complaint.

On February 13, 1996, the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman (OMB) recommended that the Resolution of the Bureau of Customs be reversed. The EPIB further recommended that the complaint against George P. Dizon be dismissed and another one be filed against Emma Rosqueta and Atty. Rolando Mendoza, subject to further fact-finding investigation by the Fact Finding Bureau (FFB) of the OMB. With regard to the case against Rose Cuyos and John Medina, the EPIB recommended that the charges be taken up together with those of Rosqueta and Atty. Mendoza. The case was then forwarded to the FFB.

On September 29, 1997, the FFB submitted its report with the following recommendations:

WHEREFORE, premises considered; the undersigned investigators respectfully recommend the following:

- That criminal charges for violation of Section 3(e) of RA 3019 and Section 3081 of the Tariff and Customs Code be filed against the following officials namely:

- Emma M. Rosqueta
Director Collector, Port of Manila

- Rolando A. Mendoza
Chief, Miscellaneous Manufacturing
Bonded Warehouse Division

- Alex Gaticales
Executive Staff, Deputy Commissioner

- Ben C. Jurado

Chief, Warehouse Inspection Division
CBW Supervisor

- Juanito A. Baliwag
CBW Supervisor

- George P. Dizon
Senior Storekeeper

All of the Bureau of Customs, and

- Rose Cuyos and John Elvin C. Medina
Owner, Maglei Enterprises
Private Respondents

- That records of this case be forwarded to the EPIB, this Office for the conduct of the required preliminary investigation

- That administrative charges for dishonesty and gross misconduct be likewise filed against the above-named BOC officials before the AAB, this Office.[6]

On October 17, 1997, the OMB approved the above recommendation.

On August 2, 1999, the OMB dismissed the criminal complaint for falsification of public documents and violation of Section 3(e) of Republic Act (R.A.) No. 3019 and Section 3601 of the Tariff and Customs Code filed against respondent. The complaint was dismissed on the ground of lack of prima facie evidence to charge respondent of the crime.

On the other hand, on August 16, 1999, the Administrative Adjudication Bureau (AAB) of the OMB rendered judgment finding respondent administratively liable, penalizing him with suspension for six (6) months without pay. Respondent's motion for reconsideration of his suspension was likewise denied by the Ombudsman.

Aggrieved, respondent appealed to the CA. In his appeal, respondent argued, among others, that his right to a speedy disposition of his case had been violated; that the administrative case against him should have been dismissed following the dismissal of the criminal charges against him; and that there is no substantial evidence on record to make him administratively liable.

CA Disposition

In a Decision dated July 3, 2002, the CA reversed and set aside the questioned decision and resolution of the OMB. The dispositive part of the CA decision runs in this wise:

Foregoing premises considered, the Petition is GIVEN DUE COURSE. Resultantly, the challenged Decision/Resolution of the Ombudsman is hereby REVERSED and SET ASIDE. No costs.

SO ORDERED.[7]

In ruling in favor of respondent, the appellate court ratiocinated:

Indeed, we are in accord with Petitioner's arguments that his right to speedy disposition of cases had been violated. To be sure, Section 16, Article III of the 1987 Constitution provides thus:

"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

x x x x

In the case at bench, the incident which gave rise to the complaint against Petitioner happened on March 16, 1992. And yet it was only on November 20, 1997 or a lapse of more than five (5) years that the case relative to the said incident was filed against him. Records disclose that on August 11, 1992, the complaint only charged George O. Dizon and 2 others. Then on February 13, 1996 or after almost 4 years, the Evaluation and Preliminary Investigation Bureau of the OMB made another recommendation which ultimately included Petitioner as among those to be charged. From February 13, 1996 to November 20, 1997 or a period of more than one (1) year, what took them so long to decide that Petitioner be included in the charges?

From the foregoing unfolding of events, it is quite clear that it took the Ombudsman almost six (6) years to decide that a case be filed against Petitioner. Under such circumstances, We cannot fault Petitioner for invoking violation of his right to speedy disposition of his case.

More importantly, We do not agree that Petitioner, under attendant facts and circumstances can be held liable for negligence. First of all, Petitioner as, Deputy Commissioner for Assessment and Operation, did not have the duty to make inspection on the alleged warehouse. Such duty belongs to other personnel/officers. Secondly, in Petitioner's 1[st] Indorsement dated March 22, 1992, he merely stated thus:

"Respectfully forwarded to the Chief, MMBWD, This Port, the within papers relative to the request of MAGLEI ENTERPRISES CO., to establish and operate a Customs Manufacturing Bonded Warehouse, pursuant to CMO 39-91, to be located at 129 Jose Bautista St., Caloocan City, together with the attached report submitted by CBW Supervisor J.A. Baliwag of this Office, inviting attention to the recommendation stated therein to which the undersigned concurs." (p. 185, Rollo)

A careful reading of said 1[st] Indorsement undoubtedly shows that Petitioner invited attention to the inspector's (Supervisor Baliwag) qualified recommendation, to wit:

"Approval respectfully recommended, subject to re-inspection, before transfer of imported goods."
(Underscoring for emphasis.)

After Petitioner made the indorsement, he no longer had any participation nor was he under obligation or duty to make a re-inspection. If afterwards damage was suffered, Petitioner cannot be faulted but rather only those who had the duty to make re-inspection. It is precisely because of such fact that the criminal complaint filed against Petitioner did not prosper. Where there is no duty or responsibility, one should not be held liable for neglect, as what has been done to Petitioner.[8]

Issues

Petitioner Ombudsman now comes to this Court, raising twin issues:

I.

WHETHER OR NOT RESPONDENT'S RIGHT TO SPEEDY TRIAL WAS VIOLATED;

II.

WHETHER OR NOT RESPONDENT WAS NEGLIGENT IN THE PERFORMANCE OF HIS DUTY, AS THE CHIEF OF THE WAREHOUSING INSPECTION DIVISION, DESPITE THE FACT THAT HE DID NOT ENSURE THAT THE SUPPOSED WAREHOUSE WAS NOT IN EXISTENCE.[9]

Our Ruling

No violation of respondent's right to speedy disposition of cases.

We shall first tackle the issue on speedy disposition of cases.

Article III, Section 16 of the Constitution provides that, all persons shall have the right to a speedy disposition of

their cases before all judicial, quasi-judicial, or administrative bodies. The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.[10]

It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[11] Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.[12]

In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[13]

Gleaned from the foregoing, We find that respondent's right to the speedy disposition of cases has not been violated.

First. It is undisputed that the FFB of the OMB recommended that respondent together with other officials of the Bureau of Customs be criminally charged for violation of Section 3(e) of R.A. No. 3019 and Section 3601 of the Tariff and Customs Code. The same bureau also recommended that respondent be administratively charged. Prior to the fact-finding report of the FFB of the OMB, respondent was never the subject of any complaint or investigation relating to the incident surrounding Maglei's non-existent customs bonded warehouse. In fact, in the original complaint filed by the Bureau of Customs, respondent was not included as one of the parties charged with violation of the Tariff and Customs Code. With respect to respondent, there were no vexatious, capricious, and oppressive delays because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB.

Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of - he was not made the subject of any complaint or made to undergo any investigation. As held in *Dimayacyac v. Court of Appeals*: [14]

In the *Tatad* case, there was a hiatus in the proceedings between the termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985. The Court found that "political motivations played a vital role in activating and propelling the prosecutorial process" against then Secretary Francisco S. Tatad. In the *Angchangco* case, the criminal complaints remained pending in the Office of the Ombudsman for more than six years despite the respondent's numerous motions for early resolution and the respondent, who had been retired, was being unreasonably deprived of the fruits of his retirement because of the still unresolved criminal complaints against him. In both cases, we ruled that the period of time that elapsed for the resolution of the cases against the petitioners therein was deemed a violation of the accused's right to a speedy disposition of cases against them.

In the present case, no proof was presented to show any persecution of the accused, political or otherwise, unlike in the *Tatad* case. There is no showing that petitioner was made to endure any vexatious process during

the two-year period before the filing of the proper informations, unlike in the Angchangco case where petitioner therein was deprived of his retirement benefits for an unreasonably long time. Thus, the circumstances present in the Tatad and Angchangco cases justifying the "radical relief" granted by us in said cases are not existent in the present case." [15] (Emphasis supplied)

Second. Even if We were to reckon the period from when respondent was administratively charged to the point when the Ombudsman found respondent administratively liable, We still find no violation of the right to speedy disposition of cases.

In making a determination of what constitutes a violation of the right to the speedy disposition of cases, this Court has time and again employed the balancing test. The balancing test first adopted by the United States Supreme Court in *Barker v. Wingo* [16] was crucial in the Court's resolution of the recent case of *Perez v. People*: [17]

The Court went on to adopt a middle ground: the "balancing test," in which "the conduct of both the prosecution and defendant are weighed." Mr. Justice Powell, ponente, explained the concept, thus:

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown. [18] (Underscoring supplied)

The Court likewise held in *Dela Peña v. Sandiganbayan*: [19]

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[20]

To reiterate, there is a violation of the right to speedy disposition of cases when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried.[21]

In *Tatad v. Sandiganbayan*,[22] this Court found the delay of almost three (3) years in the conduct of the preliminary investigation violative of the rights of the accused to due process and speedy disposition of cases. Said the Court:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and 1987 Constitution), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstances obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True - but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of the preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.[23]

Too, in *Angchangco v. Ombudsman*,[24] this Court ruled that the delay of almost six (6) years in resolving the criminal charges constitutes a violation of the right of the accused to due process and speedy disposition of the cases against them.

Here, the circumstance attendant in *Tatad* and *Angchangco* are clearly absent. Records reveal that on September 29, 1997, the FFB of the OMB recommended that respondent be criminally and administratively charged. Subsequently, the OMB approved the recommendation on October 17, 1997. Respondent submitted his counter-affidavit on February 2, 1998 and motion to dismiss on October 8, 1998 before the Administrative Adjudication Bureau of the OMB. On August 16, 1999, the AAB rendered a decision finding petitioner administratively liable for neglect of duty. More or less, a period of two (2) years lapsed from the fact-finding

report and recommendation of the FFB until the time that the AAB rendered its assailed decision.

To our mind, the time it took the Ombudsman to complete the investigation can hardly be considered an unreasonable and arbitrary delay as to deprive respondent of his constitutional right to the speedy disposition of his case. Further, there is nothing in the records to show that said period was characterized by delay which was vexatious, capricious or oppressive. There was no inordinate delay amounting to a violation of respondent's constitutional rights. The assertion of respondent that there was a violation of his right to the speedy disposition of cases against him must necessarily fail.

Respondent administratively
liable for neglect of duty.

It is elementary that the dismissal of criminal charges will not necessarily result in the dismissal of the administrative complaint based on the same set of facts.[25] The quantum of evidence in order to sustain a conviction for a criminal case is different from the proof needed to find one administratively liable. Rule 133, Section 2 of the Rules of Court provides that for criminal cases, conviction is warranted only when the guilt is proven beyond reasonable doubt. Proof beyond reasonable doubt is defined as moral certainty, or that degree of proof which produces conviction in an unprejudiced mind.[26] On the other hand, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Rule 133, Section 5 of the Rules of Court states:

Sec. 5. Substantial evidence. - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Underscoring supplied)

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.[27]

In *Office of the Court Administrator v. Enriquez*,[28] the Court ruled:

x x x Be that as it may, its dismissal of the criminal case on the ground of insufficiency of evidence was never meant, as respondent doggedly believed and arrogantly asserted, to foreclose administrative action against him or to give him a clean bill of health in all respects. The Sandiganbayan, in dismissing the same, was simply saying that the prosecution was unable to prove the guilt of the respondent beyond reasonable doubt, a condition sine qua non for conviction because of the presumption of innocence which the Constitution guarantees an accused. Lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then too, there is the "substantial evidence" rule in administrative proceedings which merely requires in these cases such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29]

Verily, respondent can still be held administratively liable despite the dismissal of the criminal charges against him.

We now discuss the administrative liability of respondent for neglect of duty. We opt to reexamine the records considering the divergent findings of the Ombudsman and the CA.

It is undisputed that respondent was the Chief of the Warehousing Inspection Division (WID) of the Bureau of Customs. The WID is the inspection and audit arm of the District Collector of Customs.

On March 16, 1992, CBW Inspector Baliwag submitted a report to respondent showing the result of the ocular

inspection of the proposed warehouse of applicant Maglei. The report stated: "approval respectfully recommended subject to re-inspection before transfer of imported goods is allowed." [30]

On March 16, 1992, respondent, as Chief of the WID, issued a 1st Indorsement [31] concurring with the recommendation of CBW Inspector Baliwag that the application of Maglei be approved.

Respondent's indorsement was then submitted to the Chief of the MMBWD for comment and recommendation. The Chief of the MMBWD eventually recommended that Maglei's application be approved since it has complied with all the necessary physical and documentary requirements. Following the indorsements of the different divisions of the Bureau of Customs, Maglei was eventually granted the authority to operate a CBW despite the fact that the records disclose that there was no actual warehouse to speak of.

Respondent posits that since he was not the approving officer for application for CBWs nor was it his duty or obligation to conduct re-inspection of the subject warehouse premises, he cannot be held liable for neglect of duty.

The CA, in its decision, declared that respondent cannot be held liable for negligence for the simple reason that it was not respondent's duty to make the inspection and verification of Maglei's application.

We cannot agree.

The finding of the Ombudsman in OMB-ADM-0-97-0656 is more in accord with the evidence on record:

Evidence on record shows that on 16 March 1992, respondent Juanito Baliwag (Customs Bonded Warehouse Supervisor) submitted an Inspection Report of the same date showing the result of an ocular inspection of the proposed warehouse of applicant Maglei Enterprises with the recommendation: "approval respectfully recommended subject to re-inspection before the transfer of imported goods is allowed" and with the observation that construction is going on for compartments for raw materials, finished products and wastages by products. On the same date, 16 March 1992, respondent Ben Jurado (Chief, Warehousing Inspection Division) issued 1[st] Indorsement concurring with the recommendation of CBW Inspector and co-respondent Juanito Baliwag for the approval of the application.

x x x x

On 08 July 1992, respondent Rolando Mendoza directed George Dizon (Documents Processor) to verify the existence and operation of several bonded warehouses including the warehouse of applicant Maglei Enterprises. On 23 July 1992, the same George Dizon was again directed by respondent Rolando Mendoza to verify the transfer of shipment covered Boat No. 13853454 in a container van with No. GSTV 824227 to the warehouse of Maglei Enterprises (CBW No. M-1467). In those two occasions, respondent George Dizon reported the existence of the applicant's Warehouse located at No. 129 Jose Bautista Avenue, Caloocan City.

x x x x

Evidence on records likewise revealed that No. 129 Jose Bautista Avenue, Caloocan City which was given as the location address of CBW No. M-1467 is actually the address of a school, that of the School of Divine Mercy.

x x x x

While respondent Dizon was authorized to verify the existence of Maglei Enterprises Warehouse, it is admitted that he did not even look and see the premises of the alleged warehouse. Likewise, CBW Supervisor and co-respondent Baliwag made a report on the existence of the bonded warehouse earlier on 16 March 1992 in his Compliance with Structural Requirements For Customs Bonded Warehouse Inspection Report. Both Dizon and Baliwag reported the existence of the Warehouse in their respective and separate reports.

On the basis of the foregoing undisputed facts, it is apparent that the immediate cause of the injury complained of was occasioned not only by the failure of the CBW Inspectors to conduct an ocular inspection of the premises in a manner and in accordance with the existing Customs rules and regulations as well as the failure of their immediate supervisors to verify the accuracy of the reports, but also by subverting the reports by making misrepresentation as to the existence of the warehouse.

x x x x

Respondent, Ben Jurado, the Chief of the WID, cannot likewise escape liability for Neglect of Duty since his Office is the inspection arm of the District Collector of Customs.[32]

As adverted to earlier, the Warehousing Inspection Division is the inspection and audit arm of the Bureau of Customs. Respondent Jurado, as chief of the said division, was duty-bound to verify the accuracy of the reports furnished by his subordinates. We agree with the Ombudsman that respondent failed to validate the report of Baliwag and initiate, institute or recommend the conduct of appropriate investigation immediately upon discovery of the irregularity. As a supervisor, respondent was clearly negligent in the performance of his duties.

In *Philippine Gamefowl Commission v. Intermediate Appellate Court*,[33] defined the power of supervision as "overseeing or the power or authority of an officer to see that their subordinate officials perform their duties." [34] The Court added that in case the subordinate fails or neglects to fulfill his or her duties, it is the supervisor's responsibility to take such action or steps as prescribed by law to make them perform their duties.[35] The doctrine was reiterated in *Deang v. Intermediate Appellate Court*[36] and *Municipality of Malolos v. Libangang Malolos, Inc.*[37]

It bears stressing that public office is a public trust.[38] When a public officer takes his oath of office, he binds himself to perform the duties of his office faithfully and to use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of his duties, he is to use that prudence, caution and attention which careful men use in the management of their affairs.[39] Public officials and employees are therefore expected to act with utmost diligence and care in discharging the duties and functions of their office. Unfortunately, respondent failed to measure up to this standard. Clearly, respondent should be held administratively liable for neglect of duty.

Neglect of duty is the failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference." [40] By merely acquiescing to the report and recommendation of his subordinate without verifying its accuracy, respondent was negligent in overseeing that the duties and responsibilities of the WID were performed with utmost responsibility. Respondent was likewise negligent when he failed, as supervisor, to initiate, institute, or recommend investigation and disciplinary proceedings against his subordinate Baliwag after the anomaly was discovered. Clearly, respondent failed to exercise the degree of care, skill, and diligence which the circumstances warrant.

We are of course not unaware that as a general rule, superior officers cannot be held liable for the acts of their subordinates. However, there are exceptions, viz.: (1) where, being charged with the duty of employing or retaining his subordinates, he negligently or willfully employs or retains unfit or improper persons; or (2) where, being charged with the duty to see that they are appointed and qualified in a proper manner, he negligently or willfully fails to require of them the due conformity to the prescribed regulations; or (3) where he so carelessly or negligently oversees, conducts or carries on the business of his office as to furnish the opportunity for the default; or (4) and a fortiori where he has directed, authorized or cooperated in the wrong.[41]

In *Advincula v. Dican*,[42] the Court found a provincial agriculturist liable for misconduct despite his protestations anchored on reliance to a subordinate. In finding him liable, the Court scored the said official for failing to scrutinize each and every document proffered to him by subordinates. In *Amane v. Mendoza-Arce*,[43]

respondent clerk of court was held liable for neglect of duty for failing to discipline her subordinates and make sure that they regularly and promptly performed their duties. In the case under review, respondent was careless or negligent in overseeing, conducting, or carrying on the business of his office as to furnish the opportunity for the default of a subordinate.

WHEREFORE, the petition is GRANTED and the appealed Decision REVERSED AND SET ASIDE. The Decision of the Ombudsman in OMB-ADM-0-97-0656 finding respondent guilty of neglect of duty is REINSTATED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura JJ., concur.

[1] Constitution (1987), Art. 3, Sec. 16:

"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

[2] Binay v. Sandiganbayan, G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65, 93.

[3] Rollo, pp. 34-43. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Hilarion L. Aquino and Regalado E. Maambong, concurring.

[4] Id. at 44.

[5] Id. at 45.

[6] Id. at 56-57.

[7] Id. at 42-43.

[8] Id. at 40-41.

[9] Id. at 22.

[10] Lopez, Jr. v. Office of the Ombudsman, G.R. No. 140529, September 6, 2001, 364 SCRA 569, 578.

[11] Yulo v. People, G.R. No. 142762, March 4, 2005, 452 SCRA 705.

[12] Caballero v. Alfonso, Jr., G.R. No. L-45647, August 21, 1987, 153 SCRA 153, 163.

[13] Dela Peña v. Sandiganbayan, G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485; Alvizo v. Sandiganbayan, G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63-64.

[14] G.R. No. 136264, May 28, 2004, 430 SCRA 121.

[15] Dimayacyac v. Court of Appeals, id. at 130-131.

[16] 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

[17] G.R. No. 164763, February 12, 2008.

[18] Perez v. People, id., citing Barker v. Wingo, supra note 16.

[19] Supra note 13.

- [20] Dela Peña v. Sandiganbayan, id. at 485.
- [21] Lopez, Jr. v. Office of the Ombudsman, supra note 10.
- [22] G.R. Nos. L-72335-39, March 21, 1998, 159 SCRA 70.
- [23] Tatad v. Sandiganbayan, id. at 82-83.
- [24] G.R. No. 122728, February 13, 1997, 268 SCRA 301.
- [25] Dela Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region, G.R. No. 146739, January 16, 2004, 420 SCRA 113, 124.
- [26] Rules of Court, Rule 133, Sec. 2:
- Sec. 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind.
- [27] Regalado, F.D., Remedial Law Compendium, Vol. II, p. 850.
- [28] A.M. No. P-89-290, January 29, 1993, 218 SCRA 1.
- [29] Office of the Court Administrator v. Enriquez, id. at 10.
- [30] Rollo, p. 44.
- [31] Id. at 45.
- [32] Id. at 79-84.
- [33] G.R. Nos. L-72969-70, December 17, 1986, 146 SCRA 294.
- [34] Id.
- [35] Id.
- [36] G.R. No. L-71313, September 24, 1987, 154 SCRA 250.
- [37] G.R. No. L-78592, April 8, 1988, 159 SCRA 525.
- [38] Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice and lead modest lives. (Emphasis supplied)
- [39] Farolan v. Solmac Marketing Corporation, G.R. No. 83589, March 13, 1991, 195 SCRA 168, 177-178.
- [40] Dajao v. Lluch, 429 Phil. 620, 626 (2002); Philippine Retirement Authority v. Rupa, G.R. No. 140519, August 21, 2001, 363 SCRA 480.
- [41] Cruz, C.L., The Law of Public Officers, 1999 ed., pp. 149-150.
- [42] G.R. No. 162403, May 16, 2005, 458 SCRA 696.
- [43] A.M. Nos. P-95-1080, P-95-1128 & P-95-1144, November 19, 1999, 318 SCRA 465.

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