

**DEPUTY DIRECTOR GENERAL ROBERTO LASTIMOSO, ACTING
CHIEF PHILIPPINE NATIONAL POLICE (PNP), DIRECTORATE FOR
PERSONNEL AND RECORDS MANAGEMENT (DPRM), INSPECTOR
GENERAL, P/CHIEF SUP...**

G.R. NO. 154243. March 06, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Review on Certiorari assailing the Resolutions dated March 8, 2002[1] and July 4, 2002,[2] respectively, issued by the Court of Appeals (CA).

The antecedent facts, as gathered from the records, are as follows.

Sometime in 1997, a certain Delia Buño (Buño) filed with the Office of the Inspector General of the PNP an administrative complaint for abuse of authority/harassment against P/Senior Inspector Jose J. Asayo (respondent). The latter allegedly obstructed police officers from arresting his brother Lamberto Asayo, one of the suspects in the shooting of Buño's son.

The complaint was referred to the Inspector General for pre-charge investigation. When summoned, respondent did not appear but filed a motion to dismiss, arguing that it was the People's Law Enforcement Board (PLEB) which had jurisdiction over the case.

On September 23, 1998, the Inspector General submitted a report to the PNP Chief recommending the commencement of summary dismissal proceedings against respondent. Upon approval of said recommendation, the administrative complaint was referred to the PNP Legal Service for summary hearing. At the hearing before the designated summary hearing officer, respondent was furnished with copies of the pre-charge investigation report of the Inspector General and the affidavits of Buño and her witnesses. Thereafter, respondent submitted his counter-affidavit and a rejoinder. Respondent was asked by the hearing officer if he wanted to cross-examine Buño and her witnesses but he declined and instead agreed to submit the case for resolution based on the pleadings.

On December 28, 1998, the hearing officer recommended that respondent be dismissed from police service for grave misconduct. On January 22, 1999, the PNP Chief, then Deputy Director General Roberto Lastimoso, rendered a decision dismissing respondent from police service. Respondent filed a motion for reconsideration of the PNP Chief's Decision but withdrew the same and instead filed a petition for certiorari and prohibition, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction with the Regional Trial Court of Manila (RTC).

On August 27, 1999, the RTC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the subject petition of petitioner Asayo is GRANTED. The assailed decision of the public

respondents dated 22 January 1999 (Exhibit J) is annulled and set aside for having been rendered with grave abuse of discretion amounting to lack and or excess of jurisdiction. Consequently, public respondents, their subordinates, agents, representatives and successors are permanently enjoined from enforcing or causing the execution in any manner of the aforesaid decision against herein petitioner Jose J. Asayo.

Pursuant to Section 9 of Rule 65, a certified true copy of this decision should be served by personal service on the public and private respondents, on the Office of the Solicitor General and on the counsel for the petitioner.[3]

Herein petitioners then appealed the case to the CA. On August 17, 2001, the CA promulgated its Decision[4] nullifying the RTC Decision and holding that (1) the PNP Chief had jurisdiction to try the civilian complaint filed against respondent; and, (2) respondent's failure to exhaust the administrative remedy of filing an appeal with the National Appellate Board was fatal to his cause. Respondent moved for reconsideration thereof.

On March 8, 2002, the CA issued the herein assailed Resolution reversing its Decision. The CA ruled that since the offense charged is punishable by dismissal, then it was the PLEB which had jurisdiction over the case. The CA further held that the principle of exhaustion of administrative remedies was not applicable to the case since the issue involved was purely legal in nature. The RTC Decision was then affirmed. The CA denied petitioners' motion for reconsideration per its Resolution dated July 4, 2002.

Hence, herein petition to set aside the aforementioned CA Resolutions on the following grounds:

I

RESPONDENT FAILED TO EXHAUST ALL THE AVAILABLE ADMINISTRATIVE REMEDIES PRIOR TO THE FILING OF HIS PETITION BEFORE THE COURT A QUO.

II

THE CHIEF OF THE PHILIPPINE NATIONAL POLICE HAS THE AUTHORITY OR JURISDICTION UNDER REPUBLIC ACT NO. 6975 TO HEAR AND TRY THE CITIZEN'S COMPLAINT AGAINST RESPONDENT.[5]

With regard to the first issue, the respondent rightfully invoked the jurisdiction of the courts without first going through all the administrative remedies because the principle of exhaustion of administrative remedies admits of exceptions, such as when the issue involved is a purely legal question.[6] The only issue presented by respondent in his petition for certiorari and prohibition before the RTC was whether or not the PNP Chief had jurisdiction to take cognizance of the complaint filed by a private citizen against him. Said issue being a purely legal one, the principle of exhaustion of administrative remedies did not apply to the case.

However, as to the question of whether the PNP Chief had jurisdiction to act on a private citizen's complaint against respondent, the Court finds merit in petitioners' position.

The Court has previously ruled on this issue in *Quiambao v. Court of Appeals*,[7] to wit:

Republic Act (R.A.) No. 6975 or the Department of the Interior and Local Government Act of 1990, which took effect on 1 January 1991, x x x delineates the procedural framework in pursuing administrative complaints against erring members of the police organization. Section 41 of the law enumerates the authorities to which a complaint against an erring member of the PNP may be filed, thus;

Section 41. (a) Citizen's Complaints. - Any complaint by an individual person against any member of the PNP shall be brought before the following:

(1) Chiefs of police, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period not exceeding fifteen (15)

days;

(2) Mayors of cities or municipalities, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period of not less than sixteen (16) days but not exceeding thirty (30) days;

(3) People's Law Enforcement Board, as created under Section 43 hereof, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding thirty (30) days; or by dismissal. . . . (Emphasis added)

It is readily apparent that a complaint against a PNP member which would warrant dismissal from service is within the jurisdiction of the PLEB. However, Section 41 should be read in conjunction with Section 42 of the same statute which reads, thus:

Sec. 42. Summary Dismissal Powers of the PNP Chief and Regional Directors. - The Chief of the PNP and regional directors, after due notice and summary hearings, may immediately remove or dismiss any respondent PNP member in any of the following cases:

(a) When the charge is serious and the evidence of guilt is strong;

(b) When the respondent is a recidivist or has been repeatedly charged and there are reasonable grounds to believe that he is guilty of the charges; and

(c) When the respondent is guilty of conduct unbecoming of a police officer. (Emphasis ours)

Evidently, the PNP Chief and regional directors are vested with the power to summarily dismiss erring PNP members if any of the causes for summary dismissal enumerated in Section 42 is attendant. Thus, the power to dismiss PNP members is not only the prerogative of PLEB but concurrently exercised by the PNP Chief and regional directors. This shared power is likewise evident in Section 45.

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

Once a complaint is filed with any of the disciplining authorities under R.A. No. 6975, the latter shall acquire exclusive original jurisdiction over the case although other disciplining authority has concurrent jurisdiction over the case. Paragraph (c) of Section 41 explicitly declares this point.

(c) Exclusive Jurisdiction - A complaint or a charge filed against a PNP member shall be heard and decided exclusively by the disciplining authority who has acquired original jurisdiction over the case and notwithstanding the existence of concurrent jurisdiction as regards the offense; Provided, That offenses which carry higher penalties referred to a disciplinary authority shall be referred to the appropriate authority which has jurisdiction over the offense. (Emphasis ours)

Clearly, the PLEB and the PNP Chief and regional directors have concurrent jurisdiction over administrative cases filed against members of the PNP which may warrant dismissal from service.

x x x The Court further declared that R.A. No. 6975 defines the summary dismissal powers of the PNP Chief and

regional directors, among others in cases, "where the respondent is guilty of conduct unbecoming of a police officer."

Memorandum Circular No. 92-006 prescribes the rules and regulations in the conduct of summary dismissal proceedings against erring PNP members and defines conduct unbecoming of a police officer under Section 3(c), Rule II, as follows:

Conduct unbecoming of a police officer refers to any behavior or action of a PNP member, irrespective of rank, done in his official capacity, which, in dishonoring or otherwise disgracing himself as a PNP member, seriously compromise his character and standing as a gentleman in such a manner as to indicate his vitiated or corrupt state of moral character; it may also refer to acts or behavior of any PNP member in an unofficial or private capacity which, in dishonoring or disgracing himself personally as a gentleman, seriously compromises his position as a PNP member and exhibits himself as morally unworthy to remain as a member of the organization.[8] (Underscoring supplied)

Petitioners maintain that the charge against respondent, which is grave misconduct for preventing responding policemen from apprehending suspects and threatening one of the witnesses, constitutes conduct unbecoming a police officer, one of the cases under Section 42 of R.A. No. 6975, hence, the case falls within the summary dismissal powers of the PNP Chief. The Court agrees with petitioner on this point.

The allegations in the complaint-affidavit,[9] i.e., that respondent gave refuge to the suspects in the shooting of complainant's son, and intimidated and harassed complainant's witness, are "acts or behavior of any PNP member in an unofficial or private capacity which, in dishonoring or disgracing himself personally as a gentleman, seriously compromises his position as a PNP member and exhibits himself as morally unworthy to remain as a member of the organization," which constitute conduct unbecoming a police officer as defined under Section 3(c), Rule II, of Memorandum Circular No. 92-006.

In *Zacarias v. National Police Commission*,[10] the Court discussed the meaning of "conduct unbecoming," in this wise:

Webster defines "unbecoming" conduct as "improper" performance. Such term "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method." Obviously, the charges of neglect of duty, inefficiency and incompetence in the performance of official duties fall within the scope of conduct unbecoming a police officer. Thus, we agree with the Court of Appeals when it ruled:

Even assuming that the charge against petitioner is not serious within the contemplation of paragraph (a) of Section 42 above quoted, or that he is not a recidivist within the context of paragraph (b), he could nonetheless fall within the ambit of paragraph (c) thereof, in that, because of his laxity and inefficiency in the performance of his duties, he is guilty of conduct unbecoming of a police officer.[11]

Clearly, the charges against respondent in this case are also covered by paragraph (c), Section 42 of R.A. No. 6975, vesting the PNP Chief with jurisdiction to take cognizance of the complaint against respondent.

Respondent then insists that petitioners acted with grave abuse of discretion by not giving him the opportunity to cross-examine the complainant and her witnesses despite the fact that Memorandum Circular No. 94-0422, providing for rules on how the summary hearing is to be conducted, grants him such right to cross-examine. This claim is belied by the testimony of the summary hearing officer, S/Insp. Ermilando O. Villafuerte, to wit:

Q Now, after submission of these pleadings what are the other steps, if any, that you have taken, Mr. Witness?

A When he submitted his last pleading - that is the rejoinder, I asked him [herein respondent] whether he still -

he is still submitting any evidence or going to cross examine the witnesses, but he moved that the case be submitted for resolution based on the last pleading he submitted, sir.[12]

x x x

CROSS-EXAMINATION:

x x x

Q When you apprized (sic) the respondent about his right to cross-examine the complainant and her witnesses, is that in writing?

A No, sir.

Q As a matter of fact, you did that, if ever you did, without the presence of the counsel of the respondent. Is it not?

A Yes, sir.

x x x[13] (Emphasis supplied)

The foregoing testimony reveals that respondent was indeed given the opportunity to cross-examine his accusers but he chose to waive the same. The fact that the hearing officer merely orally informed respondent that he may cross-examine the complainant and her witnesses and that respondent was not assisted by counsel when he waived the right to cross-examine, does not constitute grave abuse of discretion on the part of the summary hearing officer.

In the first place, Section 4 of Memorandum Circular No. 94-0422 only provides thus:

Being summary in nature, direct examination of witnesses shall be dispensed with and the sworn statements of witnesses or their affidavits shall take the place of their oral testimony. Either party shall limit cross-examination to the sworn statements on hand. Cross-examination must be confined only to material and relevant matters. Prolonged arguments and other dilatory proceedings shall not be entertained. Insofar as may be compatible with the ends of justice, cross-examination shall be limited to not more than fifteen (15) minutes for each witness.

The foregoing rules on summary hearings do not require the summary hearing officer to even inform a party, either orally or in writing, of such right to cross-examine.

Moreover, as held in *Emin v. De Leon*,[14] to wit:

x x x in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.

Nothing on record shows he asked for cross-examination as most of the submissions were written. In our view, petitioner cannot argue that he has been deprived of due process merely because no cross-examination took place. The rule is well-established that due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or given opportunity to move for reconsideration of the action or ruling complained of. x x x[15] (Emphasis supplied)

With regard to the right to be assisted by counsel, it has been held in *Sebastian v. Garchitorena*[16] that:

While an investigation conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such a body to furnish the person being investigated with counsel. It has been held in the case of

Lumiqued v. Exevea that the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.[17] (Emphasis supplied)

Verily, the assistance of counsel was not required for respondent to validly waive his right to cross-examine the witnesses in the administrative case against him.

In sum, the charges against respondent fall well within the scope of paragraph (c), Section 42 of R.A. No. 6975, thus, the PNP Chief had jurisdiction to take cognizance of the complaint against respondent; and the summary hearing officer accorded respondent due process and never deprived respondent any of his rights.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals dated March 8, 2002 and July 4, 2002, respectively, are SET ASIDE. The Court of Appeals Decision dated August 17, 2001 is hereby REINSTATED. No costs

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., Chico-Nazario, and Nachura JJ., concur.

[1] Penned by Associate Justice Alicia L. Santos, with Associate Justices Mercedes Gozo-Dadole and Josefina G. Salonga concurring; rollo, pp. 41-46.

[2] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Josefina G. Salonga and Jose L. Sabio, Jr. concurring; id. at 47-48.

[3] Rollo, p. 117

[4] See Decision penned by Associate Justice Alicia L. Santos, with Associate Justices Ramon A. Barcelona and Mercedes Gozo-Dadole concurring, id. at 167-178.

[5] Rollo, p. 12.

[6] Estrada v. Court of Appeals, G.R. No. 137862, November 11, 2004, 442 SCRA 117, 127.

[7] G.R. No. 128305, March 28, 2005, 454 SCRA 17.

[8] Quiambao v. Court of Appeals, supra note 7, at 32-36.

[9] Rollo, p. 50.

[10] 460 Phil. 555 (2003).

[11] Id. at 562.

[12] Rollo, p. 16.

[13] Folder of TSNs, TSN of the Hearing of July 12, 1999, p. 8.

[14] 428 Phil. 172 (2002).

[15] Id. at 186.

[16] 397 Phil. 519 (2000).

[17] Sebastian v. Garchitorena case, supra note 16, at 527.

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