

PRUDENCIO M. REYES, JR., PETITIONER, VS. SIMPLICIO C. BELISARIO AND EMMANUEL S. MALICDEM, RESPONDENTS.

G.R. No. 154652. August 14, 2009

Ponente: BRION, J.

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BRION, J.:

This petition for review on certiorari[1] challenges the Court of Appeals (CA) decision of November 27, 2001[2] and resolution of August 1, 2002[3] that commonly reversed the Office of the Ombudsman Decision of July 19, 2000.[4] The petitioner imputes error on the CA for entertaining the respondents' appeal of the Ombudsman's decision, and for the reversal that followed. He maintains that the Ombudsman's decision was final and unappealable under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (the Ombudsman Rules)[5] and the CA should not have entertained it on appeal.

THE FACTS

The factual antecedents, based on the records before us, are summarized below.

On March 3, 2000, respondents Deputy Administrators Simplicio Belisario, Jr. and Emmanuel B. Malicdem[6] (respondents), along with Daniel Landingin and Rodolfo S. De Jesus, all officers of the Local Water Utilities Administration (LWUA), filed before the Office of the Ombudsman a criminal complaint against LWUA Administrator Prudencio M. Reyes, Jr. (petitioner) for violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

On March 16, 2000, or only 13 days after the filing of the graft charge, the petitioner issued Office Order No. 69 reassigning respondents together with De Jesus from the offices they then held to the Office of the Administrator. Supposedly, the reassigned officers were to act as a core group of a LWUA Task Force and their specific assignments were to be given by petitioner; Officers-in-Charge (OICs) were designated for the offices they vacated.

The following day, March 17, 2000 - a Friday, the OIC for Administration issued a directive to the Magilas Security Agency to bar the respondents from using the rooms and facilities they occupied prior to their reassignments.

On Monday, March 20, 2000, the petitioner, through Office Order No. 82, further directed the respondents to "vacate [their] offices and remove [their] personal belongings and transfer the same to the former PROFUND Office which has been designated as the Office of the Special Task Force."

On March 24, 2000, Atty. Arnaldo M. Espinas, LWUA corporate legal counsel, sought the opinion of the Civil Service Commission (CSC) regarding the regularity of the reassignments of respondents and of De Jesus.

On March 30, 2000, the petitioner, via Office Order No. 99, directed the respondents to "desist in performing and exercising the functions and activities pertaining to [their] previous positions" and relieved them of their

designations or assignments as 6[th] Member and interim Directors of the Water Districts under their responsibility. To implement this latest Office Order, and in the respondents' absence, entry was effected into their respective rooms with the help of police officers; their room locks were replaced with new ones; and their cabinet drawers were sealed with tapes.[7]

The CSC responded on April 3, 2000 through a legal opinion (CSC legal opinion) issued by Assistant Commissioner Adelina B. Sarmiento. It categorically ruled that the reassignments were not in order, were tainted with bad faith, and constituted constructive dismissal.[8] The legal opinion stated:

Worthy of note is the provision of Section 6a of CSC MC No. 40, s. 1998 which provides that:

a. Reassignment - movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. If reassignment is without the consent of the employee being reassigned it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal.

On the basis thereof, although the reassignment is presumed regular and made in the interest of public service, there is an iota of bad faith attendant to the herein case evidenced by the fact that the reassignment was issued barely ten days after the reassigned officials filed a criminal complaint against the Administrator for violation of the Anti-Graft and Corrupt Practices Act. Moreover, while the reassigned officials used to head their specific departments, being Deputy Administrators at that, their reassignment resulted to a diminution of their respective ranks. To apply the ruling of the Court of Appeals in the Fernandez case to the herein case, it is clear that there was such a diminution in rank because the reassignment order "did not state any justifiable reason for the reassignment, has no specificity as to the time, functions, duties and responsibilities, making it a floating assignment, and removes from their supervision employees who are part of their staff and subordinates." And more importantly, the recent development wherein the reassigned officials were directed to desist from performing and exercising the functions of their respective positions constituted constructive dismissal x x x.

x x x (Emphasis supplied.)

On April 13, 2000, the respondents filed before the Office of the Ombudsman an administrative complaint[9] for Oppression and Harassment against the petitioner and the OICs. The petitioner duly filed a counter-affidavit raising as defense his authority to terminate the respondents' employment and forum shopping. The petitioner denied as well that force and intimidation were used in taking over the respondents' offices.

The Office of the Ombudsman resolved the administrative case through a decision dated July 19, 2000.[10] The Ombudsman desisted from ruling on the validity of the respondents' reassignments, acknowledging the primary jurisdiction of the CSC over the issue:

The CSC is the central personnel agency of the government and as such it is the Office tasked with the duty of rendering opinions and rulings

on all personnel and other civil service matters which shall be binding on all heads of departments, offices and agencies. x x x.

Hence, this Office can hardly arrogate unto itself the task of resolving the said issue. As stated by the Supreme Court, the doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. x x x (Emphasis supplied.)

but at the same time denied weight to the CSC legal opinion, contending that it was "not a final and categorical

ruling" on the validity of the reassignments. On this premise, the Ombudsman declared that the reassignments enjoyed the presumption of regularity and were thus considered valid. For this reason and for lack of evidence of force or intimidation on the part of the petitioner and co-defendant OICs in the implementation of the reassignments, the Ombudsman exonerated the petitioner and his co-defendants and dismissed the administrative case against them.

Meanwhile, the CSC en banc rendered Resolution No. 001729[11] dated July 26, 2000 fully affirming the CSC opinion earlier given by Asst. Commissioner Sarmiento. By this action, the CSC en banc declared the reassignments invalid, tainted with bad faith, and constitutive of the respondents' constructive dismissal. The CSC en banc emphasized that the LWUA Administrator has no authority under the law to issue the questioned reassignment order, and ordered the respondents' reinstatement.

The petitioner responded by filing a motion for reconsideration of CSC Resolution No. 001729 and thus avoided the implementation of the respondents' reinstatement.

In the administrative case before the Ombudsman, the respondents moved for the reconsideration of the Ombudsman's 28 July 2000 decision, attaching to their motion a copy of CSC Resolution No. 001729. Nevertheless, the Ombudsman denied the requested reconsideration,[12] stressing that CSC Resolution No. 001729 was not yet final in view of the petitioner's pending motion for reconsideration. The pertinent part of the Ombudsman resolution of denial reads:

While it is true that the CSC en banc thru the aforecited resolution appears to have affirmed the earlier opinion of Assistant Commissioner ADELINA B. SARMIENTO that the reassignment of the complainants by respondent REYES is not in order, the same is not yet final considering the timely filing before the said Commission of a Motion for Reconsideration by respondent REYES on August 29, 2000 x x x. Certainly, this is not the final and categorical ruling which this Office had in mind when it issued the questioned DECISION. (Emphasis supplied.)

The same order expressed that under Section 7, Rule III of the Ombudsman Rules, the Ombudsman's July 28, 2000 decision thus affirmed should now be final and unappealable.

The CSC en banc denied the petitioner's motion for reconsideration of Resolution No. 001729 through CSC Resolution No. 002348[13] dated October 17, 2000, and thus affirmed the illegality of the reassignments and the reassignment order.

On October 31, 2000, the respondents challenged the Ombudsman's rulings through a petition for review[14] filed with the CA, citing among others the Ombudsman's grave abuse of discretion in issuing its rulings.

The CA ruled in the respondents' favor in its decision of November 27, 2001 and thus reversed the assailed Ombudsman's July 28, 2000 decision.[15] The appellate court observed that the "Ombudsman did not decide the [respondents'] complaint for Harassment and Oppression on its merits, but relied on the non-finality of the Resolution of the Civil Service Commission." [16] It also found the Ombudsman's decision incongruous, as the Ombudsman recognized the CSC's jurisdiction to determine the legality of the reassignments, but did not pursue this recognition to its logical end; he simply "ignored the legal premises" when he applied the presumption of regularity to the petitioner's reassignment orders and, on this basis, absolved the petitioner and his co-defendants of the administrative charge. To quote the CA rulings on this regard:

[The Ombudsman] was right the first time when it ruled in the assailed Decision that it can "hardly arrogate unto itself the task of resolving the issue" of whether the personnel actions ordered by [the petitioner] against [the respondents] were within the scope of the former's authority. It correctly ruled that the CSC is tasked with the "duty of rendering opinions and rulings on all personnel and other civil service matters." It then ruled that

"unless there is a final and categorical ruling of the CSC that the reassignment of the complainants by [petitioner] Administrator Reyes is not valid, the said Order of Reassignment enjoys the presumption of regularity."

Unfortunately, however, without pursuing its initial ruling to its logical conclusion, the Ombudsman ultimately ignored the legal premises presented before it and acted to absolve the [petitioner and his co-defendants], thereby sustaining the illegal reassignments of the [complainants], which only the LWUA Board of Trustees as the proper appointing power was authorized to do pursuant to Section 3.1 of Executive Order No. 286, s. 1995. (Emphasis supplied.)

The CA likewise declared that the Ombudsman's exoneration of the petitioner could not have become final and unappealable pursuant to Section 7, Rule III of the Ombudsman Rules because it is void for lack of substantial evidentiary basis. Again, to quote the appellate court:

[W]e cannot consider the Decision of the Ombudsman as valid. Section 27 of Republic Act 6770 otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman" provides that findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive.

However, per our examination of the evidence on hand, the findings of fact and conclusion by the Office of the Ombudsman in the questioned Decision are not supported by substantial evidence, and in fact, have deviated from the correct ruling it earlier made as to the proper body to determine the validity of the reassignments of petitioners, which is the Civil Service Commission. Consequently such findings are not binding and the decision it rendered has not attained finality. (Emphasis supplied.)

The appellate court denied the petitioner's motion for reconsideration in its Resolution[17] of August 1, 2002.

The petitioner lodged before this Court the present petition for review on certiorari[18] on the sole ground that the Ombudsman's July 28, 2000 decision exonerating him of the administrative charge is final and unappealable under the express terms of Section 7, Rule III of the Ombudsman Rules. The petitioner thus argues that the CA erred in taking cognizance of the appeal and in reversing the Ombudsman's decision.

The Court's Ruling

The Propriety of the Recourse Taken Before the CA

The threshold issue in this petition is the procedural question of whether a complainant in an administrative case before the Office of the Ombudsman has the right to appeal a judgment exonerating the respondent from liability.

By statute and regulation, a decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable. Section 7, Rule III of the Ombudsman Rules provides:

SECTION 7. Finality of decision. -- Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him (referring to the respondent) as prescribed in Section 27 of RA 6770. (Emphasis and insertion supplied.)

This rule is based on Section 27 of Republic Act No. 6770[19] (RA No. 6770) or the Ombudsman Act, that in turn states:

SECTION 27. Effectivity and Finality of Decisions. -- (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.[20] (emphasis supplied).

Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos*,[21] if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.[22]

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.

The absence of any statutory right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. Over and above our statutes is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for certiorari that Rule 65 of the Rules of Court provides. A petition for certiorari is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (i.e., without the appropriate legal power to resolve a case), or in excess of jurisdiction (i.e., although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of jurisdiction).[23] The Rules of Court and its provisions and jurisprudence on writs of certiorari fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules.[24] The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.

In the present case, the respondents did not file a Rule 65 petition for certiorari, and instead filed a petition for review under Rule 43 of the Rules of Court. A Rule 43 petition for review is effectively an appeal to the CA that RA 6770 and the Ombudsman Rules do not allow in an exoneration situation as above discussed. The respondents' petition for review, however, addressed the grave abuse of discretion that the Ombudsman committed in exonerating the present petitioner. This appeal to our overriding constitutional duty and the results of our own examination of the petition compel us to exercise our liberality in applying the Rules of Court and to recognize that the recourse made to the CA had the effect of a Rule 65 petition. We consider, therefore, the respondents' petition before the CA as properly filed.

The Grave Abuse of Discretion

a. Effect of Grave Abuse of Discretion

We fully support the finding of the CA that grave abuse of discretion attended the Ombudsman's decision. As discussed above, grave abuse of discretion is a circumstance beyond the legal error committed by a decision-making agency or entity in the exercise of its jurisdiction; this circumstance affects even the authority to render judgment. Grave abuse of discretion shares this effect with such grounds as the lack of substantial

supporting evidence,[25] and the failure to act in contemplation of law,[26] among others.

In the absence of any authority to take cognizance of a case and to render a decision, any resulting decision is necessarily null and void. In turn, a null decision, by its very nature, cannot become final and can be impugned at any time.[27] In the context of the Ombudsman operations, a void decision cannot trigger the application of Section 7, Rule III of the Ombudsman Rules.

This is the step-by-step flow that arises from a finding of grave abuse of discretion, in relation with the finality and uappealability of an Ombudsman decision involving the penalties o exoneration, censure, reprimand, and suspension for not more than one month.

b. The Grave Abuse of Discretion in the Context of the Case

The factual starting point in the consideration of this case is the propriety of the reassignments that the petitioner, as the LWUA Administrator, ordered; this event triggered the dispute that is now before us. The reassignments, alleged to be without legal basis and arbitrary, led to the highhanded implementation that the respondents also complained about, and eventually to the CSC rulings that the respondents were constructively dismissed. They led also to the charge of harassment and oppression filed against the petitioner, which charge the Ombudsman dismissed. This dismissal, found by the CA to be attended by grave abuse of discretion, is the primary factual and legal issue we have to resolve in passing upon the propriety of the actions of the Ombudsman and the CA in the case.

As the CSC and Ombudsman cases developed, the validity of the reassignments was the issue presented before CSC; the latter had the authority to declare the reassignments invalid but had no authority to penalize the petitioner for his acts. The character of the petitioner's actions, alleged to be harassments and to be oppressive, were brought to the Ombudsman for administrative sanctions against the petitioner; it was the Ombudsman who had the authority to penalize the petitioner for his actions against the respondents.

Under this clear demarcation, neither the CSC nor the Ombudsman intruded into each other's jurisdictional domain and no forum shopping issue could have succeeded because of simultaneous recourses to these agencies. While both entities had to examine and to rule on the same set of facts, they did so for different purposes and for different resulting actions.

The CSC took the graft charges the respondents brought against the petitioner into account, but this was for purposes of looking at the motive behind the reassignments and of viewing the petitioner's acts in their totality. The same is true in viewing the manner of the implementation of the reassignments. Largely, however, the CSC based its ruling on a legal point - that the LWUA Board, not the LWUA Administrator, can order reassignments. Thus, the CSC ruled that the reassignments constituted constructive dismissal.

On the other hand, the Ombudsman, also relying on the events that transpired, should have judged the petitioner's actions mainly on the basis of whether they constituted acts of harassment and oppression. In making this determination, the Ombudsman could not have escaped considering the validity of the reassignments made - a determination that is primarily and authoritatively for the CSC to make. The charge of harassment and oppression would have no basis if the reassignments were in fact valid as they were alleged to be the main acts of harassment and oppression that drove the commission of the petitioner's other similarly-motivated acts. In this sense, the validity of the reassignments must necessarily have to be determined first as a prior question before the full consideration of the existence of harassment or oppression could take place. Stated otherwise, any finding of harassment and oppression, or their absence, rendered without any definitive ruling on the validity of the

reassignments would necessarily be premature. The finding would also suffer from the lack of factual and legal bases.

We note that the Office of the Ombudsman duly noted in its decision that the CSC has primary jurisdiction over the issue of the reassignments' validity, declaring that it "can hardly arrogate unto itself the task of resolving the said issue." This is a correct reading of the law as the CSC is the central personnel agency of the government whose powers extend to all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.[28] Constitutionally, the CSC has the power and authority to administer and enforce the constitutional and statutory provisions on the merit system; promulgate policies, standards, and guidelines for the civil service; subject to certain exceptions, approve all appointments, whether original or promotional, to positions in the civil service; hear and decide administrative disciplinary cases instituted directly with it; and perform such other functions that properly belong to a central personnel agency.[29] Pursuant to these powers, the CSC has the authority to determine the validity of the appointments and movements of civil service personnel.

Along the way, however, the Ombudsman's decision diverged from its basic legal premise when it refused to apply the rule it had acknowledged - that the CSC is the "administrative body of special competence" to decide on the validity of the reassignments; it refused to accord due respect to the CSC opinion and, later, to the CSC Resolution No. 001729 on the flimsy ground that these were not yet final and conclusive. On the strength of this "non-finality" argument, the Ombudsman proceeded to declare the reassignments presumptively regular and, finding insufficient evidence of force and intimidation in the implementation of the reassignments by the petitioner and the OICs, sustained the invalid reassignments and their complementary acts. The effect, of course, was the exoneration of the petitioner and his co-defendants of the administrative charge of oppression and harassment. To the respondents and to the CA as well, the exoneration was attended by grave abuse of discretion.

c. Prematurity and Arbitrariness

After due consideration reflected in the discussions below, we find the Ombudsman's decision fatally flawed for prematurity and arbitrariness, particularly for its lack of legal and factual bases.

As discussed above, a CSC determination of the validity of the reassignments is a ruling that the Ombudsman must consider in reaching its own conclusion on whether the reassignments and their implementation were attended by harassment or oppression. With the CSC rulings duly pleaded, the Ombudsman should have accorded these rulings due respect and recognition. If these rulings had not attained finality because of a properly filed motion for reconsideration, the Ombudsman should have at least waited so that its own ruling on the allegations of harassment and oppression would be grounded on the findings of the governmental agency with the primary authority to resolve the validity of the reassignments.

An alternative course of action for the Ombudsman to ensure that his decision would have legal and factual bases and would not be tainted with arbitrariness or abuse of discretion, would have been to undertake its own examination of these reassignments from the perspective of harassment and oppression, and to make its own findings on the validity of the petitioner's actions. It should have explained in clear terms and on the basis of substantial evidence on record why no harassment or oppression attended the reassignments and their implementation. Given the duly-pleaded CSC rulings, the Office of the Ombudsman should have explained why it did not need the CSC's pronouncements in making its determination, or if needed, why they should not be followed, stating clearly what exactly was wrong with the CSC's reasoning and why, contrary to the CSC's pronouncement, the reassignments were in fact valid and regular.

Unfortunately, no such determination was ever made. Instead, the Office of the Ombudsman simply relied on the

presumption of regularity in the performance of duty that it claimed the petitioner enjoyed, and from this premise, ruled that no harassment or oppression transpired in the absence of force or intimidation that attended the implementation of the reassignments.

As a general rule, "official acts" enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary.[30] When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly. But not all acts of public officers are "official acts," i.e., acts specified by law as an official duty or as a function attached to a public position, and the presumption does not apply when an official's acts are not within the duties specified by law,[31] particularly when his acts properly pertain or belong to another entity, agency, or public official.

In the present case, the CSC had spoken by way of an en banc resolution, no less, that the petitioner LWUA Administrator's reassignment orders were illegal because, by law, the authority to reassign officers and employees of the LWUA lies with the LWUA Board; the LWUA Administrator's authority is merely to recommend a reassignment to the Board. For reason of its own, the Office of the Ombudsman disregarded this clear statement of the legal allocation of authority on the matter of reassignments. This omission cannot but have fatal consequences for the Ombudsman's decision, anchored as it is on the presumption that the petitioner regularly performed his duty. For, shorn of any basis in law, the petitioner could not have acted with official authority and no presumption of regularity could have been applied in his behalf. Without a valid presumption of regularity, the major linchpin in the Ombudsman's decision is totally removed and the decision is left with nothing to support itself.

An administrative decision, in order to be valid, should have, among others, "something to support itself." [32] It must be supported by substantial evidence, or that amount of relevant evidence adequate and acceptable enough for a reasonable mind to justify a conclusion or support a decision,[33] even if other minds equally reasonable might conceivably opine otherwise.[34]

We note in this regard that the Office of the Ombudsman, other than through its "non-finality" argument, completely failed to explain why the reassignment orders were valid and regular and not oppressive as the respondents alleged. Effectively, it failed to rebut the CSC's declaration that a constructive dismissal took place. This omission is critical because the constructive dismissal conclusion relates back to the filing of graft charges against the petitioner as motive; explains why the respondents were transferred to ad hoc positions with no clear duties; and relates forward to the manner the respondents were ejected from their respective offices.

If the Ombudsman made any factual finding at all, the finding was solely on the lack of violence or intimidation in the respondents' ejection from their offices. Violence or intimidation, however, are not the only indicators of harassment and oppression as jurisprudence shows.[35] They are not the sole indicators in the context of the Ombudsman's decision because the findings in this regard solely relate to the implementation aspect of the reassignments ordered. We take judicial notice that harassments and oppression do not necessarily come in single isolated acts; they may come in a series of acts that torment, pester, annoy, irritate and disturb another and prejudice him; in the context of this case, the prejudice relates to the respondents' work. Thus, a holistic view must be taken to determine if one is being harassed or oppressed by another. In this sense, and given the facts found by the CA, the Ombudsman ruling dwelling solely with the absence of violence and intimidation is a fatally incomplete ruling; it is not a ruling negating harassment and oppression that we can accept under the circumstances of this case. Effectively, it was an arbitrary ruling for lack of substantial support in evidence.

The other end of the spectrum in viewing the reassignments and its related events, is the position the CSC and the

CA have taken. The appellate court stated in its own decision:

We likewise agree with the Civil Service Commission that respondent Administrator acted in bad faith in reassigning the petitioners barely ten (10) days after the latter filed their complaint against him for violation of the Anti-Graft and Corrupt Practices Act. No reassignment shall be undertaken if done whimsically because the law is not intended as a convenient shield for the appointing/disciplining authority to harass or suppress a subordinate on the pretext of advancing and promoting public interest (Section 6, Rule III of Civil Service Commission Memorandum Circular No. 40. S. 1998). Additionally, the reassignments involved a reduction in rank as petitioners were consigned to a "floating assignment with no specificity as to functions, duties, and responsibilities" resulting in the removal from their supervision over their regular staff, subordinates, and even offices. Finally, the subsequent Order of respondent Administrator directing petitioners to desist from performing and exercising the functions of their respective positions constituted constructive dismissal.

We hold that, based on the evidence presented, respondent Administrator is guilty of harassment and oppression as charged, penalized as grave offense under Executive Order No. 292 (Civil Service Law), section 22 (n) with suspension for six (6) months and one (1) day to one (1) year."

We fully agree that the reassignments the petitioner ordered were done in bad faith amounting to constructive dismissal and abuse of authority. We affirm as well the CA's ruling finding that petitioner should be liable for oppression against the respondents.

d. The Appropriate Penalty

Oppression is characterized as a grave offense under Sec. 52(A)(14)[36] of the Uniform Rules on Administrative Cases in the Civil Service[37] and Sec. 22(n)[38] of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws,[39] penalized with suspension of 6 months and 1 day to 1 year on the first offense.

Considering that the oppression found was not a simple one, but was in response to the respondents' filing of an anti-graft complaint against the petitioner, the penalty we should impose should reflect the graft-related origin of this case and should be in the maximum degree. Consequently, we modify the CA decision by increasing the penalty to suspension for one (1) year, in lieu of the six (6) months and one (1) day that the appellate court imposed. If the petitioner is no longer in the service, then the suspension should automatically take the form of a fine equivalent to the petitioner's one-year salary at the time of his separation from the service.

WHEREFORE, the petition is DENIED. We AFFIRM the Court of Appeals Decision and Resolution dated November 27, 2001 and August 1, 2002, respectively, with the MODIFICATION that the penalty imposed is suspension of one (1) year, or, alternatively, a fine equivalent to one-year salary if the petitioner has been separated from the service at the time of the finality of this Decision. Costs against the petitioner.

SO ORDERED.

Carpio Morales[**], (acting Chairperson), Carpio[*], Del Castillo, and Abad, JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 671 dated July 28, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 670 dated July 28, 2009.

[1] Under Rule 45 of the Rules of Court.

[2] In CA-G.R. SP No. 61312, rendered by the Seventeenth Division of the Court of Appeals through Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justices Eriberto U. Rosario, Jr. and Amelita

G. Tolentino; rollo at 39-50.

[3] Id., p. 52.

[4] Id., pp. 78-95.

[5] Administrative Order No. 7.

[6] Per the Records, Malicdem resigned from office on October 31, 2000.

[7] See Court of Appeals Decision of November 27, 2001, quoting the letter-opinion of Asst. Commissioner Adelina B. Sarmiento of the CSC; rollo, pp. 41-42.

[8] Id., p. 41.

[9] Docketed as OMB-ADM-0-00-0377.

[10] Supra note 4.

[11] Rollo, pp. 44-45.

[12] Id., p. 45.

[13] Id., p. 47.

[14] Under Rule 43 of the 1997 Rules of Court; id., pp. 68-76.

[15] Supra note 4.

[16] CA Decision, p. 5; rollo, p. 43.

[17] Rollo, p. 52.

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

[19] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes," otherwise known as "The Ombudsman Act of 1989."

[20] Note that in all other disciplinary cases, the respondent may appeal the order, directives or decisions of the Office of the Ombudsman to the Court of Appeals via a petition for review under Rule 43, as per the ruling in Fabian vs. Desierto, G.R No. 129742, September 16, 1998, 295 SCRA 470.

[21] Barata v. Abalos, Jr., G.R. No. 142888, June 6, 2001, 358 SCRA 575, 581

[22] Chan v. Ombudsman Marcelo, G.R. No.159298, July 6, 2007, 526 SCRA 627.

[23] Active Realty and Development Corp. v. Fernandez, G.R. No. 157186, October 19, 2007, 537 SCRA 116.

[24] Barata v. Abalos, Jr., supra; Enemecio v. Office of the Ombudsman, G.R. No. 146731, 13 January 2004, 419 SCRA 82.

[25] Tensorex Industrial Corporation v. Court of Appeals, G.R. No. 117925, October 12, 1999, 316 SCRA 471, 479, cited in Republic v. Canastillo, G.R. No. 172729, June 8, 2007, 524 SCRA 546.

[26] Grave abuse of discretion also refers to violations of the Constitution, the law and jurisprudence, or for failure or refusal to act according to the law under the facts and the circumstance, PCGG v. Desierto, February 10, 2003, 397 SCRA 171, "Without jurisdiction" refers to an absolute want of jurisdiction; "excess of jurisdiction" refers to the case where the court, office or officer has jurisdiction, but it transcended the same or acted without

any statutory authority; "grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, *Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617.

[27] *Ang Lam vs. Rosillosa*, 86 Phil. 447 (1950).

[28] CONSTITUTION, Article IX_B, Section 3.

[29] CIVIL SERVICE LAW, Article V, Section 9.

[30] *People v. Jolliffe*, 105 Phil. 677 (1959), citing *Administrative Law: Cases and Comments* by Gellhorn, pp. 315-316.

[31] *Republic v. Principalia*, G.R. No. 167639, 19 April 2006, 487 SCRA 609.

[32] *Ang Tibay v. CIR*, 69 Phil. 635 (1940).

[33] RULES OF COURT, Rule 133, Section 5.

[34] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264.

[35] "Oppression" has been defined as "an act of cruelty, severity, unlawful exaction, domination, or excessive use of authority" (*United States v. Deaver*, 14 Fed. 495), *Ochate v. Deling*, 105 Phil. 384 (1959), cited in *Buta v. Relampagos*, 279 SCRA 211 (1997); it is a demeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; *Estrada v. Badoy*, A.M. No. SB-02-10-J, January 16, 2003, 395 SCRA 231, 245; hence, like Grave Misconduct and Abuse of Authority, also classified as grave offenses under civil service laws, a finding of Oppression requires the attendance of malice and bad faith in the act complained of.

[36] Sec. 52. Classification of Offenses.--Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

x x x

14. Oppression. 1[st] Offense - Suspension for six (6) months and one (1) day to one (1) year;

2[nd] Offense - Dismissal.

x x x

[37] Resolution No. 99-1936, effective on 27 September 1999.

[38] Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects on the government service.

The following are grave offenses with [their] corresponding penalties:

x x x

(n) Oppression: 1[st] Offense - Suspension for six (6) months and one (1) day to one (1) year;

2[nd] Offense - Dismissal.

x x x

[39] Resolution No. 91-1631, dated December 27, 1991.

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