

RENATO F. HERRERA, petitioner, vs. PLARIDEL ELMER J. BOHOL, respondent.

G.R. No. 155320. February 05, 2004

Ponente: PUNO, J.

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PUNO, J.:

Before us is a petition for review under Rule 45 assailing the Decision dated March 15, 2002 of the Court of Appeals in CA-G.R. SP No. 63873[1] which affirmed the decision of the Ombudsman in OMB-ADM-0-99-0027[2] finding petitioner guilty of simple misconduct and suspending him for one (1) month without pay as well as its Resolution dated September 19, 2002 which denied petitioner's motion for reconsideration.

Petitioner Renato F. Herrera was a former Director III at the Department of Agrarian Reform (DAR) Central Office, now DAR Regional Director at San Fernando, Pampanga. He approved in January 1997 a request for shift of item number of respondent Plaridel Elmer J. Bohol, Senior Agrarian Reform Program Officer at the Bureau of Agrarian Reform Information and Education (BARIE) of the DAR, from Item 577-1 of Fund 108 to 562-3 of Fund 101. Respondent then drew his salary under Fund 101 until April 17, 1997 when he was informed by the Department Cashier that he may no longer draw his salary thereunder because his item had been recalled and given to one Gregoria Ancheta. Respondent protested to petitioner but the latter referred him to BARIE Director Sharon Joy Berlin-Chao, respondent's immediate supervisor, who allegedly was the one who caused the recall. Respondent subsequently charged the petitioner in the Office of the Ombudsman with Grave Misconduct for allegedly giving unwarranted benefit to Gregoria Ancheta and/or Inefficiency and Incompetence for illegally recalling his item.

On June 11, 1999 the Ombudsman rendered a decision,[3] the dispositive portion of which reads —

WHEREFORE, PREMISES CONSIDERED, this Office finds respondent RENATO F. HERRERA guilty of Simple Misconduct and is hereby meted the penalty of Suspension for One (1) Month Without Pay to take effect immediately upon receipt of this Decision by the respondent, the same being final and executory in accordance with Sections 7 and 10 of Administrative Order No. 07, in relation to Section 25 (sic) of Republic Act No. 6770.

Petitioner appealed to the Court of Appeals contending that the decision of the Ombudsman was premature, and contesting some of its factual findings. The Court of Appeals denied the appeal.[4] It ruled that the questioned decision of the Ombudsman is unappealable citing *Lapid v. Court of Appeals*. [5] It also debunked petitioner's defense of prematurity and his claim that he did not fail to take measures to correct respondent's recall. Petitioner's motion for reconsideration was denied in the Resolution dated September 19, 2002.[6]

In this petition for review, petitioner contends: First, that the penalty imposed upon him by the Ombudsman, that is, suspension for one (1) month without pay, is appealable because it is not among those enumerated as final and unappealable under Sec. 27 of Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, viz:

x x x 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. x x x

Petitioner insists that "suspension for one (1) month without pay" imposed upon him by the Ombudsman, and "suspension of not more than one month's salary" stated in the above law are different. To support his argument, petitioner cites the following excerpt from *Lapid v. Court of Appeals*[7] —

It is clear from the above provisions that the punishment imposed upon petitioner, i.e., suspension without pay for one month, is not among those listed as final and unappealable x x x (underscoring ours)

Second, petitioner contends that the Court of Appeals erred in affirming the finding of the Ombudsman that respondent was not informed beforehand of the recall of his item, and that petitioner did not take any corrective measure to address respondent's complaint. Petitioner insists that he was assured by BARIE Director Chao that she had informed respondent of the impending recall of his item as proven by Director Chao's letter to him dated March 12, 1997.[8] In addition, he claims he immediately directed Director Chao to act on the problem through the BARIE Local Selection Board after respondent and his lawyer wrote to him protesting the recall.

Third, petitioner contends that the Court of Appeals erred in finding him guilty of misconduct despite lack of proof that he acted deliberately and with evil intent.[9]

We deny the appeal.

In enumerating the penalties which are final and unappealable, Sec. 27 of R.A. No. 6770 states: "[a]ny order, directive or decision imposing the penalty of public censure, reprimand, suspension of not more than one month's salary shall be final and unappealable." We hold that the phrase "suspension of not more than one month's salary" includes that imposed upon petitioner, i.e., suspension for one month without pay. There is no penalty as suspension of salary in our administrative law, rules and regulations. Salaries are simply not suspended. Rather it is the official or employee concerned who is suspended with a corresponding withholding of salaries following the principle of "no work, no pay." Or, an official or employee may be fined an amount equivalent to his or her monthly salary as penalty without an accompanying suspension from work.

In truth, the Office of the Ombudsman, pursuant to its authority to promulgate rules to implement R.A. No. 6770, has clarified this ambiguity of its Sec. 27. Sec. 7, Rule III of its Rules of Procedure, Administrative Order No. 7, provides, viz:

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 x x x (underscoring ours)

The cited excerpt in the *Lapid* decision that "the punishment imposed upon petitioner, i.e., suspension without pay for one month, is not among those listed as final and unappealable" is of no comfort to the petitioner. A reading of the decision will show that the penalty imposed upon the petitioner therein, Gov. Manuel M. Lapid of Pampanga, was not suspension for one month but suspension for one year. In fact, in the statement immediately preceding the dispositive portion of the decision, the Court, after applying Sec. 27 of R.A. No. 6770 and Sec. 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, ruled that "the decision imposing a penalty of one year suspension without pay on petitioner Lapid is not immediately executory."

Indeed, in the later case of *Lopez v. Court of Appeals*,[10] the Court, again citing Sec. 27 of R.A. No. 6770, Sec. 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and *Lapid v. Court of Appeals*, reiterated that decisions of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine equivalent to one month salary shall be final and unappealable.

The penalty imposed upon herein petitioner being suspension for one month without pay, we hold the same final and unappealable, as correctly ruled by the Court of Appeals.

We shall refrain from delving into the merits of petitioner's other contentions as they present factual issues not reviewable on appeal via certiorari.[11] This Court has always accorded due respect and weight to the factual findings of the Office of the Ombudsman[12] especially when such findings have been affirmed by the Court of Appeals, as in the instant case.

IN VIEW WHEREOF, the petition is DENIED. The questioned Decision dated March 15, 2002 of the Court of Appeals in CA-G.R. SP No. 63873 as well as its Resolution dated September 9, 2002 denying petitioner's motion for reconsideration are AFFIRMED.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Entitled "Renato F. Herrera, Director III, Department of Agrarian Reform v. Plaridel Elmer J. Bohol."

[2] Entitled "Plaridel Elmer J. Bohol v. Renato F. Herrera, Director III, Department of Agrarian Reform."

[3] Rollo, pp. 58-64; Original Record, pp. 0121-0127.

[4] Decision dated March 15, 2002; Rollo, pp. 84-91.

[5] 334 SCRA 738 (2000).

[6] Id., p. 103.

[7] Supra, note 5.

[8] Rollo, p. 73.

[9] U.P. v. Civil Service Commission, 228 SCRA 207, 213 (1993).

[10] 389 SCRA 570 (2002).

[11] Bank of the Philippine Islands v. Leobreba, 375 SCRA 81, 87 (2002); Reyes, Jr. v. Court of Appeals, 374 SCRA 86, 92 (2002).

[12] Young v. Office of the Ombudsman, 228 SCRA 718, 722 (1993).

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