CARLOS R. GONZALES, PETITIONER, VS. CIVIL SERVICE COMMISSION AND PHILIPPINE AMUSEMENT AND GAMING CORPORATION,[] RESPONDENTS.

G.R. NO. 156253. June 15, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the May 29, 2002 decision[1] and November 18, 2002 resolution of the Court of Appeals (CA) in CA-G.R. SP No. 51736. The challenged decision affirmed resolution nos. 981738[2] and 990479[3] of the Civil Service Commission dismissing the appeal of petitioner Carlos R. Gonzales from the decision of the board of directors of the Philippine Amusement and Gaming Corporation (PAGCOR) finding him guilty of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service, and ordering his dismissal from the service.

Petitioner was the casino operations manager of PAGCOR's Casino Filipino-Heritage in Pasay City. He was administratively charged for dishonesty, misconduct and violation of company rules and regulations on the basis of the following:

> Summary description of charge(s):
>
> - Unauthorized playing in [Casino Filipino]-Heritage [on] October 8 [and] 9, 1997, i.e., playing in [his] own branch and playing beyond 6:00 a.m. of the day after an occasion.
>
> - Unauthorized playing at the big tables [on October 9, 1997].
>
> - Exceeding the table limit of P5,000 per deal set by management for playing officers.
>
> - Borrowing about P2.9 [m]illion from financiers.
>
> - Conspiring with [his] capital partners, composed of a guest [branch manager] and a small-time financier/player, in conceiving and executing a nefarious scheme to draw P7 [m]illion from the casino treasury against personal checks issued by the small-time financier/player who had only P20,000 in her bank account.
>
> [He] personally facilitated with the casino treasury the personal checks of [his] capital partner without the authority of the Senior Branch Manager for Operations and while [he was] not on duty.[4]

The charges arose from the irregularities that transpired during the opening of the expanded VIP gaming area at the Casino Filipino-Heritage on October 8, 1997. Petitioner, in connivance with Richard Syhongpan, branch manager of Casino Filipino-Davao City, concocted a scheme to draw P7 million from the casino treasury against the personal checks of Corazon Castillo, a small-time financier and player who only had P20,000 in her account.

To circumvent casino regulations prohibiting PAGCOR officers from playing at the big tables, placing bets exceeding P5,000 per deal and playing beyond 6:00 of the following morning, Syhongpan and petitioner employed Castillo as their "gunner" to proxy for them in betting at the VIP area of the Casino Filipino-Heritage

with bets ranging from P100,000 to P300,000 per deal. On Syhongpan's instruction, petitioner approached various financiers to borrow money whenever they needed additional capital. In the process, they incurred a total indebtedness of P2.7 million. When they could no longer borrow from the financiers, they utilized one Quintin Llorente whom they falsely presented as an applicant for the accommodation of checks. In truth, the applicant/owner of the checks was Castillo. Taking advantage of his position and influence, petitioner, who at that time was supposed to be off-duty, accompanied Llorente to the treasury window and made his co-employees there believe that the check accommodations were all cleared by the senior branch manager or the branch manager for operations when in fact they were not. This enabled Syhongpan, petitioner and Castillo to borrow a total of P7 million from the treasury of Casino-Filipino-Heritage. When they were through playing, they had P600,000 in total winnings from which petitioner received P250,000 as his share.

PAGCOR had the matter probed by a panel of investigators which conducted hearings thereon. On December 2, 1997, PAGCOR dismissed petitioner from the service for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and for loss of confidence. It denied his motion for reconsideration.

In resolution no. 981738 dated July 2, 1998, petitioner's appeal to the Civil Service Commission was dismissed for lack of merit. He sought the reconsideration thereof but it was likewise denied in resolution no. 990479 dated February 17, 1999.

Undeterred, petitioner elevated his case to the CA. He contended that the Commission failed to appreciate that the facts of the case did not support the charges against him. He also claimed that the Commission violated his right to due process.

The appellate court, however, dismissed petitioner's appeal. It ruled that the Commission did not err in upholding petitioner's dismissal from the service and that its factual findings, duly supported by evidence, were conclusive on the court. It also held that petitioner was given reasonable opportunity to present his case and, hence, his assertion that he was deprived of due process was untenable. Petitioner's motion for reconsideration was denied by the CA. Hence, this petition.

Petitioner challenges the CA decision on the ground that he was denied due process. He also claims that the CA ruled erroneously that the factual findings of PAGCOR, as affirmed by the Commission, were conclusive on it. Finally, he faults the CA for its failure to appreciate circumstances that would mitigate his liability.

This Court is not persuaded.

Where the opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process.[5] Here, petitioner was heard through the written statement he submitted in response to the memorandum of charges against him. He was given the opportunity to testify during the marathon hearings conducted by a panel of investigators. He was also able to participate in all stages of the administrative proceeding as shown by the appeal he filed with the Commission.

The essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[6] Any seeming defect in its observance is cured by the filing of a motion for reconsideration.[7] Thus, denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[8]

In this case, petitioner filed a motion for reconsideration of the decision of PAGCOR as well as the Commission's resolution dismissing his appeal and affirming the decision of PAGCOR in toto. In this light, his protestations that he was deprived of due process does not hold water.

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Petitioner's insistence that the appellate court erred when it ruled on the conclusiveness upon it of the factual findings of PAGCOR as affirmed by the Commission is likewise incorrect. The rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority.[9] It is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses.[10] Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[11] None of these defects has been shown in this case.

Unable to convince the appellate court to disregard the findings of fact of PAGCOR as affirmed by the Commission, petitioner now wants us to open the entire records of the case and evaluate every detail of the respective versions of PAGCOR and the Commission vis-à-vis his own. It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.[12] It is not the function of this Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal or office.[13] This flows from the basic principle that the Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[14]

The appellate court held that the factual findings of PAGCOR and the Commission were supported by substantial evidence. This Court finds no reason to rule otherwise.

Through their "gunner" Castillo, Syhongpan and petitioner violated the table and time limits of PAGCOR officers. Petitioner accompanied Llorente to the treasury window as an alleged applicant for accommodation of checks despite knowing that the true applicant was Castillo who only had P20,000 in her bank account. He facilitated the accommodation of the checks by making it appear that the checks had the clearance of the proper officers. But even assuming that he had the authority to make such facilitation, he could not have validly done it since he was not on official duty at that time.

His acts thus constituted fraud or deceit. He deliberately flouted the rule of law, standards of behavior and established procedures. He used his influence and position for his own benefit and to the prejudice of PAGCOR. Hence, petitioner was correctly held liable for dishonesty and gross misconduct.

His acts warrant the supreme penalty of dismissal.

Petitioner takes the appellate court to task for not considering, in the determination of the penalty imposed on him (1) his twenty years of service and (2) the fact that it was his first offense. There is no merit in this argument.

Petitioner failed to raise this issue before PAGCOR and the Commission. He pleaded the matter only in his consolidated reply to PAGCOR's and the Commission's respective oppositions to his motion for reconsideration in the CA. Thus, the appellate court correctly disregarded his belated invocation of circumstances that could have mitigated his liability. Matters, theories or arguments not brought out in the proceedings below will ordinarily not be considered by a reviewing court as they cannot be raised for the first time on appeal.[15]

Length of service does not necessarily entitle the erring employee to a reduction of the penalty imposed on him. It is not a magical invocation that will automatically mitigate the liability of the party claiming it.[16] It is an alternative circumstance[17] which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case.

In this case, petitioner used his length of service, position and influence in carrying out the scheme which prejudiced the interests of PAGCOR. Thus, it exacerbated, rather than tempered, the seriousness of his misdeed.

Instead of exhibiting loyalty to PAGCOR which recognized and rewarded his past services by promoting him to his present position, petitioner betrayed the trust reposed on him and took advantage of his position to benefit himself. In the vernacular, this is known as bantay-salakay.

The gravity of the offense committed thus militates against his plea to treat length of service and "first offense" as mitigating circumstances.[18]

Dishonesty and grave misconduct have always been and should remain anathema in the civil service.[19] A civil servant who commits them exhibits moral obliquity and is neither fit nor worthy to remain in public office.

WHEREFORE, the petition is hereby DENIED. The assailed May 29, 2002 decision of the Court of Appeals in CA-G.R. SP No. 51736 upholding the Civil Service Commission's resolution nos. 981738 of July 2, 1998 and 990479 of February 17, 1999 is hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Ynares-Santiago, J., on leave.

[**] The petition names the Court of Appeals as one of the respondents. However, under Sec. 4, Rule 45 of the Rules of Court, the lower court need not be impleaded in petitions for review. Hence, the Court deleted it from the title.

[1] Penned by Associate Justice Eubolo G. Verzola and concurred in by Associate Justices Bernardo P. Abesamis and Josefina Guevarra-Salonga of the Third Division, Court of Appeals.[2] Dated July 2, 1998.[3] Dated February 17, 1999.[4] Memorandum of Charges, Annex "E", Petition for Review on Certiorari, rollo, pp. 54-55.[5] Liguid v. Camano, Jr., 435 Phil. 695 (2002).[6] Zacarias v. National Police Commission, G.R. No. 119847, 24 October 2003, 414 SCRA 387.[7] Abalos v. Civil Service Commission, G.R. No. 95861, 19 April 1991, 196 SCRA 81.[8] Rubenecia v. Civil Service Commission, 314 Phil. 612 (1995).[9] Bernardo v. Court of Appeals, G.R. No. 124261, 27 May 2004, 429 SCRA 285.[10] Id.[11] Id. citing Dadubo v. Civil Service Commisson, G.R. No. 106498, 28 June 1993, 223 SCRA 747. [12] Id. citing Pabu-aya v. Court of Appeals. G.R. No. 128082, 18 April 2001, 356 SCRA 651.[13] Id.[14] Id.[15] Transfield Philippines, Inc. v. Luzon Hydro Corporation, G.R. No. 146717, 22 November 2004, 443 SCRA 307.[16] Civil Service Commission v. Cortez, G.R. No. 155732, 03 June 2004, 430 SCRA 593.[17] Id.[18] Id.[19] Supra at note 15.

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