

ROMEO E. CABALITAN, PETITIONER, VS. DEPARTMENT OF AGRARIAN REFORM AND CIVIL SERVICE COMMISSION, RESPONDENTS.*G.R. NO. 162805. January 23, 2006*

Ponente: QUISUMBING, J.

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This is a petition for review seeking reversal of (1) the Decision[1] dated September 30, 2003 of the Court of Appeals in CA-G.R. SP No. 75354, and (2) the Resolution[2] dated March 11, 2004 denying reconsideration. The Court of Appeals had affirmed the decision of the Civil Service Commission that: (1) the petitioner actively engaged in the sale and distribution of fake Unified Vehicular Volume Reduction Program (UVVRP) exemption cards; (2) the petitioner used official time to peddle the cards to his co-employees; and (3) the petitioner is guilty of conduct prejudicial to the best interest of the service for which should be imposed on him the penalty of nine months suspension from the service.

Officemates of petitioner in the Department of Agrarian Reform (DAR) filed a complaint alleging that the petitioner sold to them, for five hundred pesos (P500.00), a card ostensibly exempting the holder from the Unified Vehicular Volume Reduction Program (UVVRP), a scheme of the Metropolitan Manila Development Authority (MMDA) to decongest traffic by prohibiting motor vehicles on certain days from traversing the streets. The exemption cards sold by petitioner were all a sham. Hence, they demanded reimbursement but the petitioner made all kinds of excuses to avoid their demand.

The DAR Secretary formally charged petitioner with grave misconduct and found petitioner guilty. Petitioner asked for reconsideration, which was denied.

Petitioner then appealed to the Civil Service Commission (CSC) and assailed the sufficiency of the evidence establishing his guilt. Petitioner claimed that it was his acquaintance, Joseph Tan, who sold him the UVVRP exemption card. When his officemates saw his card, they told him that they also want to acquire one. Hence, he set a meeting where Tan personally received payment for the exemption cards.

In Resolution No. 020465 dated March 25, 2002,[3] the CSC found petitioner guilty of grave misconduct and ordered his dismissal from the service. The CSC observed that the evidence on record fully established that petitioner actively engaged and showed extraordinary eagerness in selling the UVVRP exemption cards to his officemates, right in their offices and during office hours[4] in violation of civil service laws which require a government employee to devote his entire working time to the performance of his official functions and duties and not perform other activities for his personal interest.[5]

Upon petitioner's motion for reconsideration, however, the CSC modified its ruling in Resolution No. 030021 dated January 8, 2003,[6] and found petitioner guilty only of conduct prejudicial to the best interest of the service and imposed on him the penalty of suspension. More particularly, the modified CSC resolution reads as follows:

WHEREFORE, the motion for reconsideration of Romeo E. Cabalitan is hereby DENIED for lack of merit. Accordingly, CSC Resolution No. [020465] dated March 25, 2002 is affirmed but with the modification that Romeo E. Cabalitan is found guilty only of Conduct Prejudicial to the Best Interest of the Service for which he (sic) is imposed the penalty of nine (9) months suspension from the service. Considering, however, that his appointment as Legal Officer II under temporary status had already expired on December 31, 2000 and that the same was never renewed, the penalty herein imposed is deemed served.[7]

In modifying its earlier ruling, the CSC said that the sale of spurious exemption cards is alien and unrelated to the official functions and duties of the petitioner; hence, he did not commit grave misconduct, a serious offense punishable by dismissal from the service. The CSC added, however, that it cannot be said that the petitioner was entirely free from any administrative liability since the sale of exemption cards during office hours violated the Civil Service Law and constituted the offense of conduct prejudicial to the best interest of the service.[8]

Petitioner sought review of the CSC resolution by the Court of Appeals which, however, affirmed the CSC ruling. Still dissatisfied, the petitioner filed the instant petition, raising the following issues:

- WHETHER THE COURT OF APPEALS GRAVELY MISAPPREHENDED THE EVIDENCE AND MISAPPRECIATED THE FACTS WHEN IT RULED THAT THE EVIDENCE POINTED TO PETITIONER AS RESPONSIBLE FOR THE SALE AND DISTRIBUTION OF FAKE UNIFIED VEHICULAR VOLUME REDUCTION PROGRAM (UVVRP) EXEMPTION CARDS DESPITE THE FACT THAT THE SUBJECT TRANSACTION CONCERNING THE EXEMPTION CARDS WAS BETWEEN COMPLAINANT DAR'S WITNESSES AND MR. JOSEPH TAN, AND NOT WITH PETITIONER.
- WHETHER THE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE PENALTY OF SUSPENSION IMPOSED BY THE CIVIL SERVICE COMMISSION ON PETITIONER IS NOT COMMENSURATE WITH THE ALLEGED OFFENSE COMMITTED BY HIM.
- WHETHER THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT PETITIONER IS ENTITLED TO HIS BACK SALARIES AND/OR BACKWAGES NOT ONLY AS A RESULT OF THE WRONGFUL CHARGE AGAINST HIM BUT ALSO BECAUSE INCONTROVERTIBLE EVIDENCE EXISTS THAT PETITIONER WAS ALLOWED BY HIS SUPERIORS TO PERFORM SERVICES AND HAD ACTUALLY DISCHARGED SUCH SERVICES FOR THE PERIOD JANUARY 1, 2001 TO JULY 31, 2001 AND THAT HIS CONTRACT OF EMPLOYMENT FOR SUCH PERIOD HAD BEEN RENEWED.[9]

After considering these issues, we find that the instant petition lacks merit.

Firstly, petitioner urges this Court to review the rulings of the DAR, the CSC, and the Court of Appeals, all finding him administratively liable for selling and distributing spurious exemption cards during office hours. He contends that these fact-finding administrative and judicial entities failed to appreciate his defense that the sale and distribution of the UVVRP exemption cards was actually between the complainants and Joseph Tan. In effect, the petitioner asks us to scrutinize once again the weight and veracity of the testimonies of the parties.

Time and again, we have said that a petition under Rule 45 is limited only to questions of law. We could not entertain factual questions already submitted to and ruled upon by the trial courts. Moreover, in a petition for certiorari, normally we review only those committed by the Court of Appeals, and not directly those of the trial court or a quasi-judicial agency, tribunal or officer which rendered the decision in the first instance.[10]

As repeatedly held, we accord great respect to the findings of administrative agencies because they have acquired expertise in their jurisdiction, and we will refrain from questioning their findings, particularly when these are affirmed by the appellate tribunal. We are not inclined to re-examine and re-evaluate the probative value of the evidence proffered in the concerned forum, which had formed the basis of the latter's impugned decision,

resolution or order, absent a clear showing of arbitrariness and want of any rational basis therefor.[11]

In any event, as observed by the DAR, the positive declaration of the complainants that the petitioner was the one who approached them and received their money, undermines the petitioner's bare denials.[12]

In its Resolution affirming the Decision of the DAR, the CSC further ruled that the evidence on record fully established that it was the petitioner himself who sold the UVVRP exemption cards to his officemates. He transacted business with his officemates right in their offices and during office hours. Two witnesses for the prosecution, Messrs. Jose Marie Hernando and Gemino Villangca, testified on these points.[13] We are not persuaded by petitioner's plea to reverse these factual findings.

On the second issue, Section 46, Chapter 6, Subtitle A, Title I, Book V of Executive Order No. 292,[14] provides that the offense of conduct prejudicial to the best interest of the service is a ground for disciplinary action. Further, CSC Memorandum Circular No. 19-99[15] classifies it as a grave offense which carries the penalty of suspension (6 mos. 1 day to 1 year) for the first offense, and dismissal for the second offense.[16]

Moreover, we agree with the appellate court's findings that petitioner's contract of employment was not renewed for the period January 1 to July 31, 2001. It appears that his appointment was not validly and effectively renewed due to the following circumstances:

First, although the period of appointment was from January 1 to July 31, 2001, Undersecretary Rolando Ll. Querubin signed the appointment paper only on July 26, 2001. The appointment could not be considered to retroact to January 1, 2001 when the petitioner assumed his duty, since such retroactive effect is not confirmed by the express phraseology of the appointment itself, which states:

Kayo ay nahirang na LEGAL OFFICER II – SG 17 na may katayuang TEMPORARY sa DEPARTMENT OF AGRARIAN REFORM sa pasahod na ONE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED EIGHTY-FOUR PESOS (P170,784.00 P/A) piso. Ito ay magkakabisa sa petsa ng pagganap ng tungkulin subali't di aaga sa petsa ng pagpirma ng puno ng tanggapan o appointing authority.[17]

More importantly, CSC Resolution No. 91-1631[18] expressly provides that in no case shall an appointment take effect earlier than the date of its issuance.[19]

Second, the appointment was not approved by the CSC.[20] No proof was presented to show that the appointment paper was even transmitted to the CSC. The appointment thus fell short of a legal requirement under Section 12 of the Administrative Code of 1987[21] and its Implementing Rules and Regulations. The law requires that the appointment be submitted to the CSC, which will ascertain, in the main, whether the proposed appointee is qualified to hold the position, and whether the rules pertinent to the process of appointment were observed.[22] Thus, it is essential that the appointing officer and the CSC acting together, though not concurrently but consecutively, make an appointment complete. In acting on the appointment, the CSC determines whether the appointee possesses the appropriate civil service eligibility or the required qualifications. If the appointee is qualified, the appointment should be approved. If not, it should be disapproved.[23]

In the present case, the petitioner had been issued a retroactive appointment, but said appointment never became effective. The result is that petitioner could not be entitled to back salaries for the period January 1 to July 31, 2001. CSC Resolution No. 91-1631[24] provides that the appointing authority shall be liable for the salaries of the appointee whose appointment became ineffective. Hence, the person from whom he can demand accountability for the payment of his back salaries, if any, is the appointing authority who allowed him to report for work, for the cited period, if indeed he was so allowed.

Finally, the Court of Appeals did not err in holding that since the petitioner's contract of employment already

expired, his suspension should be already deemed served.[25] The purpose of such suspension, in our view, was already accomplished – that is, to keep him out of office for the stated period of time, not only as a punishment but to prevent further mischief in the office.

In sum, we find no justifiable reason to reverse the findings and conclusions of the DAR and the CSC, as affirmed by the Court of Appeals.

WHEREFORE, the petition is DENIED. The assailed Decision dated September 30, 2003, and the Resolution dated March 11, 2004, of the Court of Appeals in CA-G.R. SP No. 75354 are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 38-46. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. Del Castillo, and Rosalinda Asuncion-Vicente concurring.

[2] Id. at 48.

[3] CA Rollo, pp. 112-119.

[4] Id. at 116.

[5] Id. at 118.

[6] Id. at 39-42.

[7] Id. at 42.

[8] Id. at 41-42.

[9] Rollo, p. 17.

[10] Sebastian v. Morales, G.R. No. 141116, 17 February 2003, 397 SCRA 549, 562.

[11] Jacinto v. Court of Appeals, G.R. No. 124540, 14 November 1997, 281 SCRA 657, 676.

[12] CA Rollo, pp. 64-65.

[13] Id. at 116-117 (Jose Mari L. Hernando and Gimeno C. Vallangca III, respectively, in other parts of the records).

[14] Instituting the Administrative Code of 1987, 25 July 1987.

[15] Revised Uniform Rules on Administrative Cases in the Civil Service per Resolution No. 991936 dated 31 August 1999 effective on 27 September 1999.

[16] Id. at Rule IV, Section 52(A).

[17] CA Rollo, pp. 162-163. "The effectivity date of this appointment shall be the date of actual assumption by the appointee but not earlier than the date of issuance of the appointment which is the date signing of the appointing authority."

[18] Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, 27

December 1991.

[19] Id. at Rule V, Section 10.

[20] Supra, note 17.

[21] SEC. 12. Powers and Functions. – The Commission shall have the following powers and functions:

...

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

...

[22] Civil Service Commission v. Tinaya, G.R. No. 154898, 16 February 2005, 451 SCRA 560, 566-567; See Abella, Jr. v. Civil Service Commission, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 515; Tomali v. Civil Service Commission, G.R. No. 110598, 1 December 1994, 238 SCRA 572, 575.

[23] Civil Service Commission v. Tinaya, id. at 567; See Abella, Jr. v. Civil Service Commission, id. at 516-517.

[24] Rule V, Section 11.

[25] Rollo, p. 45.

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