

BOARD OF DIRECTORS OF THE PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE COURT OF APPEALS AND OSCAR C. MELLA, RESPONDENTS.

G.R. No. 16518. May 31, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of Appeals (in CA-G.R. No. 22887-R) ordering the reinstatement to his former position, with back salaries, of dismissed employee Oscar C. Mella, the Board of Directors of the Philippine National Bank (PNB) interposed an appeal by way of the instant petition for certiorari.

As contained in the decision of the Court of Appeals, it appears that Oscar C. Mella first entered employment in the PNB in 1937, working in various capacities until, after the war, he was promoted to the position of paying teller.

In 1949, one Jose D. Cortes, allegedly in connivance with certain employees of the Bank, succeeded in effecting fraudulent withdrawals in the Savings Account Division through the use of fictitious ledger cards. The paying tellers from whom the withdrawals were made, the bookkeepers who initialed the withdrawal slips and verified the balances as well as the chief and assistant chief of the division, who acted on said withdrawals, were placed under suspicion. One of the paying tellers so affected was Oscar C. Mella.

On March 21, 1949, the Bank's cashier and auditor interrogated Mella on the fraudulent withdrawals. The questions and his answers thereto which were reduced to writing, contained specific denial that he knew Jose D. Cortes and the various names the latter had assumed in the fictitious ledger cards, and a statement that the withdrawal slips were previously approved by the bookkeeper and chief of the Savings Division. On the following day, Mella was suspended, and the matter of the fraudulent withdrawals was referred to the National Bureau of Investigation, (NBI).

On April 9, Mella was interrogated by two NBI agents, before whom he signed a sworn statement admitting his initials on the questioned withdrawal slips, after they were duly approved by the bookkeeper and the division chief, and denying personal knowledge of the depositors. On June 24 of the same year, Mella was requested to appear, as he did appear, before a special committee composed of members of the PNB Board of Directors, created to inquire into these irregular transactions. The questions asked Mella, as well as his answers thereto, which were along the same line as those given in the previous interrogations were also reduced to writing.

On June 29, 1949, the Board of Directors promulgated Resolution No. 758 ordering the immediate reinstatement of Mella "in view of the findings of the Committee that there is no ground whatsoever for the action taken by the Management in suspending Tellers * * * Oscar Mella of the said Division since March 23rd this year, and that the NBI report makes no charges against them". However, the Board directed that he be transferred to another position where he will have no cash responsibility.

Later, on September 11, 1951, he was again re-assigned to the position of paying teller.

On April 15, 1952, Mella was again notified that he was being suspended from the service, effective at the close of business hours of that day, in connection with the same case of *People vs. Jose D. Cortes, et al.*, then pending investigation in the City Fiscal's Office.

On April 30, 1952, Mella addressed a letter to the President of the Bank calling the latter's attention to the fact that he (Mella) was never required to answer any specific charge or charges before his suspension, and requesting the Bank to specify the cause of his said suspension to enable him to defend himself. This letter was answered by the Bank President, informing him that as the case was already under consideration by the City Fiscal, the matter was no longer within the power of the Board to pass upon.

Mella once more wrote to said Bank official, but he did not receive any reply.

On May 28, 1953, he was notified of Board Resolution No. 557, adopted on May 27, 1953, approving his dismissal for cause effective April 16, 1952 (date of the suspension), without prejudice to the Bank's instituting the corresponding civil or criminal action independently of administrative proceedings. Said resolution was based on the report by NBI Agent No. 13, gathered during the investigation conducted on March 30, 1953, allegedly impugning the honesty and integrity of five bank employees, one of them was Mella. Said report by the NBI, however, was not presented in court because neither the NBI-copy nor that of the Bank could be found in their respective files.

On June 10, 1953, Mella wrote to the President of the Bank professing his innocence and requesting for a hearing, to no avail.

Thereafter or on July 7, 1953, and not knowing that his dismissal was based on a report by NBI Agent No. 13, he submitted to the interrogations of said NBI Agent, before whom he maintained his ignorance of the identity of Jose D. Cortes. He also sent several letters to the Board of Directors on various dates, without receiving any reply. Finally, on April 12, 1955, Mella instituted in the Court of First Instance of Manila the present action for mandamus to compel the Board of Directors to reinstate him to his former position, on the ground that his dismissal was arbitrary and unwarranted, amounting to a deprivation of his property without due process of law.

After trial, the lower court declared the dismissal of petitioner improper and without justifiable cause, and ordered his reinstatement, with back salaries. Petitioner was further awarded moral damages in the sum of P5,000.00 and P3,000.00 as attorney's fees. On appeal by the Bank, the Court of Appeals affirmed the aforesaid decision, except as to that portion awarding moral damages and attorney's fees which were eliminated. From this decision of the Court of Appeals, the Philippine National Bank has interposed the instant petition for review by certiorari.

It is clear from the foregoing facts, that no formal or specific charges were formulated against herein respondent Oscar C. Mella, much less has there been a hearing before he was dismissed from employment. What were conducted were mere interrogations or inquiries primarily for the purpose of eliciting facts or information about the fraudulent withdrawals. These are the factual findings of both the trial and the appellate courts, which can not be reviewed by us. Certainly, such inquiries cannot take the place of an investigation and due hearing wherein the suspected erring employee is given opportunity to defend himself against certain specified charges.

But this notwithstanding, herein petitioner Board of Directors now claims that under the Charter of the Philippine National Bank[1] it has broad and plenary power to suspend or remove any of its employees, with or without cause, with or without prior investigation, citing as source of this power, section 23 of Act No. 2612, as amended, which, in pertinent part reads:

"SEC. 23. Other officers and employees, appointment and removal—Salaries—Non-applicability of the Civil

Service Law.—All the other officers and employees of the Bank shall be appointed and removed by the Board of Directors, on recommendation of the President. Said officers and employees shall not be subject to the Civil Service Law, and their duties and compensation shall be fixed by the President with the approval of the board of directors; * * *."

It is claimed that the Charter specifically excludes PNB employees from the operation of the Civil Service Law, and consequently they are not protected by the provisions thereof. While this may be true, still the Bank's Board of Directors itself, in the exercise of its power to adopt internal rules and regulations, has expressly promulgated RULES AND REGULATIONS FOR THE GUIDANCE OF OFFICERS AND EMPLOYEES OF THE PHILIPPINE NATIONAL BANK, Article V, Section 2 of which provides:

"The following offenses if found to have been committed by any officer or employee after proper investigation shall be sufficient ground for dismissal from the service of the Bank:

- Violation of the provisions of the Bank's charter, special attention is invited to Sections 26, 29, 36 and 43 thereof.
- Dishonesty and infidelity in the handling of Bank's funds and properties.
- Immorality.
- Incurable gambling and drinking habits.
- Grave misconduct towards customers and officers of the Bank.
- Insubordination or refusal to obey lawful orders from superiors.
- Receiving tips, gifts, favors, and soliciting business, from customers of the Bank." (Emphasis supplied.)

These Rules and Regulations, which the PNB Board has wisely promulgated, as it should, for the exercise of its power of removal, are binding upon itself while in force and can not be disregarded. They are a salutary implementary complement of the provisions of the charter intended to guard against arbitrariness. Petitioner contends, however, that since Mella's dismissal was for lack of confidence, a cause not included in the enumeration, the provision therein requiring prior investigation is not applicable to Mella.

The contention is devoid of merit. A reading of the above-quoted regulation shows that the enumeration therein of offenses that may serve as basis for separation is inclusive. The position of a paying teller does not involve any confidence apart from the fact that he handles the bank's funds and deals with its customers. Consequently, the loss of confidence to be a ground of dismissal necessarily is in connection with the handling of the bank's funds and his dealings with the bank's customers. And it is admitted by petitioner that the dismissal of Mella was in relation to the fraudulent withdrawals by Jose D. Cortes, a relation bearing on offenses b and g of the enumeration (see *infra*).

Petitioner next contends that the petition for mandamus having been filed only on April 12, 1955 or after the lapse of more than one year from the date of his separation, Mella has already lost the right to question the legality of such dismissal, by inaction or laches.

Suffice it for us to state that the ruling invoked by petitioner applies only to public officers and employees. The reason for fixing a short duration, i.e., one year, within which the matter of the legality of a dismissal or separation from public employment may be brought in court, is given when we said:

"* * *. There are weighty reasons of public policy and convenience that demand the adoption of a similar period (one year) for persons claiming rights to positions in the civil service. There must be stability in the

service so that public business may not be unduly retarded; delays in the settlement of the right to position in the service must be discouraged." (*Unabia vs. City Mayor*, 99 Phil., 253; 53 Off. Gaz. 132; (Italics supplied.)

Admittedly, positions in the PNB are not governed by Civil Services Law; that employment in the said institution can not definitely be said to be a public office. Consequently, the ruling invoked by petitioner, which we have consistently applied only in cases of public offices, can not be applied herein.

Moreover, the records disclose that after Mella was advised of the resolution of May 27, 1953 dismissing him for cause, he wrote to the President of the bank requesting for a formal hearing. Then in July, 1953, he was again subjected to interrogations by NBI Agent No. 13 before whom he maintained his ignorance of the identity of Cortes. He repeated his request for a hearing in several letters to the Board on various dates, without receiving any reply. Hence, on April 12, 1955 he finally filed his action. Under the circumstance, we do not believe that Mella is guilty of laches.

This decision, it is to be noted, as well as that of the Court of Appeals and the trial court, determines the right of the employee Mella to a formal investigation of whatever specific charges the PNB has against him. Since he was deprived of that right, his dismissal will have to be set aside. But whether or not there are sufficient grounds for some disciplinary action, we do not here decide as this matter has not been litigated in this case. The report of the NBI agent upon which the resolution of dismissal was based is not in the record. As a consequence, all that this Court can order, in view of the conclusions reached, is the reinstatement of respondent Oscar C. Mella in the service of the Philippine National Bank, not necessarily in the same position from which he was dismissed.

Modified in the manner herein indicated, the decision of the Court of Appeals is hereby affirmed in all other respects, without pronouncement as to costs. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon and Natividad, JJ., concur.

[1] Act 2612, as amended by Acts 2747 and 2938.

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