

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS AND LOREÑA L. SANTOS, RESPONDENTS.

G.R. NO. 167844. November 22, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 31 January 2005 and the Resolution dated 12 April 2005 of the Court of Appeals finding respondent Loreña L. Santos ("respondent") guilty of neglect of duty and "recommending" to the Land Transportation Franchising and Regulatory Board (LTFRB) respondent's suspension from service for six months.

The Facts

Respondent belonged to the clerical staff of the Director of LTFRB Region VII, Mandaue City, Cebu. In November 1998, respondent was designated as concurrent acting "Special Collection/Disbursing Officer."

On 21 June 1999, the Commission on Audit (COA) audited respondent's cash and accounts. After inspecting respondent's records, the COA's examining auditors noted a shortage of P33,925.99 in respondent's accounts. Although respondent acknowledged the shortage, she failed to explain the same. On 28 June 1999, respondent remitted the missing amount. On 29 July 1999, the COA required respondent to explain the discrepancy. Instead of explaining, respondent merely confirmed the cash shortage.

In August 2001, the COA charged respondent in the Office of the Ombudsman, Visayas ("Ombudsman Visayas") with Dishonesty ("OMB-VIS-ADM -2001-0412"). In her counter-affidavit, respondent claimed that the missing funds comprised her collections for 11 June 1999. Respondent stated that during the auditing on 21 June 1999, she kept the collections, which allegedly included two fake P500 bills, in her vault. Respondent explained, for the first time, that she did not turn over the collections to the COA auditors because of the fake bills. Respondent added that had the COA auditors asked, she would have produced the funds.

The Ruling of the Ombudsman Visayas

In its Decision dated 28 October 2002, the Ombudsman Visayas found respondent guilty as charged and dismissed her from service. The Ombudsman Visayas held:

Ms. Santos' argument that she did not malverse anything because during the audit examination, her June 11, 1999 collections were just in her vault for deposit but were allegedly not included by the examining auditors, is highly unbelievable, in view of the unexplained delay of [17] days between the day of collection and the day of the actual deposit thereof. If only to protect and save her from being accused of Malversation of Public Funds, she should have insisted in presenting her June 11, 1999 collections if indeed, the same were just in her vault as claimed by her. Also, if indeed there were two (2) fake five hundred peso bills in her June 11, 1999 collections which she has to replace yet [sic], why didn't she surrender to the auditors her collections that were

not fake when she was demanded to do so by virtue of the Cash Production Notice?

While it is true that Ms. Santos had fully restituted the shortage by way of depositing her June 11, 1999 collections on June 28, 1999 in the amount of P33,925.99, this Office, however, finds the same[] not an exculpatory circumstance but only a mitigating one.

On the other hand, considering that the herein respondent had been previously adjudged of being guilty of Simple Misconduct per the Decision of this Office in the case of OMB-VIS-ADM-2001-0037 (COA-7 VS. LORENA L. SANTOS), dated September 6, 2001, the present case constitutes therefore, a second offense of the herein respondent.

IN VIEW of the foregoing, this Office finds Ms. Lorena L. Santos, Special Collection Officer/Disbursing Officer of the LTFRB, Region-7, guilty of DISHONESTY, [and] thus, metes the penalty of DISMISSAL from the service with forfeiture of all benefits and perpetual disqualification to hold public office, as this case is the second offense which she was found to be guilty of, the first one was in relation to OMB-VIS-ADM-2001-0037 (COA-7 VS. LORENA L. SANTOS).[3]

Respondent sought reconsideration but the Ombudsman Visayas denied her motion in its Order of 25 March 2003.

Respondent filed a petition for review in the Court of Appeals, raising the following contentions: (1) there is no prima facie case for Malversation as the COA auditors never asked for the missing funds; (2) the Ombudsman Visayas' ruling was not supported by substantial evidence; (3) in conducting the audit, the COA auditors did not follow proper procedure; (4) the penalty of dismissal from service is too harsh considering her recent appointment as Acting Special Collection/Disbursing Officer, her full restitution of the missing funds, and the fact that OMB-VIS-ADM-2001-0037 involved acts she committed after the 21 June 1999 audit; and (5) at any rate, the Ombudsman Visayas can only recommend but not impose penalties in administrative cases filed before it.

The Ruling of the Court of Appeals

In its Decision dated 31 January 2005, the Court of Appeals, while finding respondent liable for "malversation of funds," lowered respondent's administrative offense to Neglect of Duty due to attendant "mitigating circumstances." Further, the Court of Appeals sustained respondent's contention on the Ombudsman's powers and held that the latter's "jurisdiction and authority in administrative cases is only recommendatory." Thus, the Court of Appeals "recommended" to the LTFRB respondent's suspension from service for six months. The Court of Appeals held:

In the first ground, petitioner argued that there was no prima facie case of Malversation since [the] COA's examining team never made a demand on petitioner regarding the shortage which when duly ascertained sometime early July, accountable officer petitioner had already covered it by the deposit on June 28, 1999. x x x x

From a meticulous scrutiny of the records of the case, it is clear to our mind that indeed petitioner only had P37,820.55 in cash during the cash examination on June 21, 1999 but her accountabilities of P71,746.54 was not ascertained on the same date but much later as attested to by COA's examining team who had difficulty in establishing petitioner's total accountability due to the neglect in timely cashbook entries compounded by the non-closing of the cashbook at every month-end. Thus, there is some discrepancy with the Report of Cash Examination dorsal side where petitioner's accountability and shortage were indicated but such was attested to by State Auditor Uy on June 21, 1999 when the accountability was not determined. Be that as it may, what is undisputed is that on the examination date and reckoned thereon petitioner was short of her forthcoming accountabilities. Thus the late deposit of the shortage is nothing but a restitution which will not exculpate petitioner.

x x x x

[A]rticle 217 the Revised Penal Code on Malversation of public funds or property is very clear in providing pertinently thus -

Art. 217. - Malversation of public funds or property — Presumption of Malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, [x x x x]

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act No. 1060)

Thus, where there is a shortage or disappearance of public funds in the hands of an accountable public officer it constitutes prima facie evidence of their conversion or misappropriation.

x x x x

Thus, when examining officers demanded from petitioner all her cash and accountabilities, she was duly bound to present all of it. She cannot give any excuse that she has other cash somewhere else for it is her duty to present all upon due examination. When petitioner could not present the shortage during the examination, she was properly deemed to have embezzled and misappropriated the lacking accountability despite her restitution which would only be a mitigating circumstance.

In the second ground, petitioner asseverated that the assailed decision was not based on substantial evidence. We are likewise not persuaded. It is indubitable that petitioner acknowledged the shortage through her undated letter and the Audit Observation Memorandum. Moreover, the Report of Cash Examination ineluctably established she only had the cash and accounts as reflected thereon. Petitioner's belated excuse of the two (2) fake P500 bills is totally bereft of credence. As aptly pointed out by the Reply-Affidavit of [the] examining officials, petitioner only brought out this alleged reason in her Counter-Affidavit when she had three (3) opportunities to bring it up, to wit: on the actual examination, the exit conference and her written explanation.

In her third assigned ground, petitioner assailed the regularity of the audit conducted by [the] examining officers x x x who allegedly did not follow their own rules of procedure. We are likewise not convinced of this imputation. It is clear to our mind that petitioner was duly accorded due process since she did sign and receive a copy of the Audit Observation Memorandum which is the result of the examination and audit. Thus, with that memorandum, it was petitioner's right to question it and avail of all the remedies she has belatedly invoked now. As is apparent, petitioner chose not to avail of any of these remedies. x x x x

Anent the last ground raised, petitioner asseverated that there is misapprehension of the restitution and her newly designated additional work for which she was unfamiliar with as mitigating circumstances in her favor. Moreover, considering that her previous conviction [in OMB-VIS-ADM-2001-0037] was for an offense subsequent to the subject matter of the instant case, petitioner questions the Ombudsman's consideration of such conviction as an aggravating circumstance of recidivism. There is merit in this argument.

It is undeniable that petitioner only received her additional designation as acting Disbursing and Special Collecting Officer on November 24, 1998 or barely seven (7) months before the subject examination and audit. Indeed, the LTFRB Regional Director has conceded in the exit conference that petitioner is overburdened or overworked. The findings embodied in the Cash Examination Report and the Audit Observation Memorandum showed that petitioner needed to comply with many fiscal procedures. These constitute clear ineptitude of petitioner in fiscal matters. We refuse to impute malice or ill-intent on petitioner's neglect in updating the cashbook as well as the non-closing of the cashbook at month-end. We see it as a product of her ineptitude

coupled with too much work. Thus, such should be appreciated as mitigating on her part.

x x x x

As to the ground of prior conviction or recidivism considered against petitioner, we disagree with the Ombudsman's consideration thereof as aggravating circumstance. Whilst there was a prior conviction of petitioner in OMB-VIS-ADM-2001-0037, such should not have been considered as an aggravating circumstance of recidivism. x x x x

[T]here is no aggravating circumstance of recidivism in the case at bar since petitioner's conviction herein is for an offense committed before the offense involved in [OMB-VIS-ADM-2001-0037].

In fine, the two (2) mitigating circumstances of voluntary restitution as well being overworked and quite new and inept in her new fiscal assignments should have been properly appreciated to petitioner's benefit. Moreover, no aggravating circumstance should be considered against petitioner.

Lastly, petitioner raised the question of the Ombudsman's authority and jurisdiction to directly impose a penalty in the instant administrative case. We agree with petitioner.

The 200[2] case of Tapiador vs. Office of the Ombudsman, et al. has at least rendered a ruling in this issue albeit only in an obiter dictum. We have made an assiduous study on this issue and we also arrive at the conclusion that the Ombudsman cannot directly enforce its disciplinary authority upon its findings pursuant to an administrative investigation.

Firstly, [Section 13, Article XI of the 1987 Constitution] unequivocally uses the word "recommend" thus effectively proscribing or limiting the powers to be granted the Office of the Ombudsman in administrative cases.

Secondly, a close scrutiny of Section 15, (3) of R.A. 6770 otherwise known as the Ombudsman Act, taken and read, as a whole, clearly grants the Ombudsman only recommendatory powers in administrative cases and must direct the officer concerned to take action against the erring public officer or employee in accordance with its recommendation. It is only upon failure of said officer concerned to act that the Ombudsman is empowered to enforce and can compel such officer to take action. If the intent of R.A. 6770 was to grant the Ombudsman power to directly enforce penalties in administrative cases, the proviso using the verb enforce should have been placed at the start of the section. x x x x Therefore, we hold that the Ombudsman's jurisdiction and authority in administrative cases is only recommendatory.

Thus, the undeniable conclusion is that the Ombudsman has jurisdiction, authority and power only to recommend the penalties it imposes in administrative matters, as in the instant case.

Therefore, premises considered, we find the Ombudsman to have committed reversible error in rendering the assailed Decision dated October 28, 2002 [and in] considering the aggravating circumstance of previous conviction while failing to properly appreciate the mitigating circumstances. Thus, we find petitioner only guilty of Neglect of Duty instead of Dishonesty and, accordingly, should be penalized with suspension from office for six (6) months without pay.

WHEREFORE, the instant Petition is partially GRANTED, and the assailed Order [dated 25 March 2003] of the Office of the Ombudsman (Visayas), Cebu City, in administrative case OMB-VIS-ADM-2001-0412, [is] NULLIFIED and SET ASIDE. And the assailed Decision [dated 28 October 2002] is hereby MODIFIED in that petitioner is hereby found guilty of NEGLIGENCE OF DUTY and thus meted the penalty of SUSPENSION FROM OFFICE for SIX (6) MONTHS without pay which imposable penalty is hereby DECLARED only recommendatory and should be directed to the proper officer or authority concerned, in the Land Transportation

Franchis[ing] and Regulatory Board (LTFRB), for its enforcement and implementation. No pronouncement as to costs.[4] (Emphasis in the original)

The Office of the Ombudsman ("petitioner") sought intervention in the Court of Appeals and moved for reconsideration of that portion of the Court of Appeals' ruling finding petitioner without power to impose sanctions in cases falling under its disciplinary authority.

In its Resolution dated 12 April 2005, the Court of Appeals granted petitioner's request for intervention but denied the motion for reconsideration.

Hence, this petition. Petitioner questions the Court of Appeals' ruling depriving it of the power to impose penalties in administrative cases under its jurisdiction. Petitioner contends that under the Constitution and Republic Act No. 6770 (RA 6770),[5] it has "full and complete administrative and disciplinary power and duty," including the power to impose penalties. Petitioner prays for a reversal of the Court of Appeals' ruling.

The Issues

The petition raises the following issues:

- (1) Whether petitioner has the power to impose penalties in administrative cases under its jurisdiction, and, if so,
- (2) Whether petitioner correctly imposed on respondent the penalty of dismissal from service.

The Ruling of the Court

The petition has merit.

Petitioner has the Power to Impose, and not only Recommend, Penalties in Administrative Cases

The Court of Appeals ruled that in administrative cases against officials subject to petitioner's disciplinary authority,[6] petitioner could only recommend but not impose penalties. The Court of Appeals based its ruling on a literal interpretation of Section 13 (3), Article XI of the 1987 Constitution, which provides:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

x x x x

- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

Section 15 (3) of RA 6770 substantially reiterates this constitutional provision, thus:

Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

- (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer[.]

Giving a literal interpretation to the word "recommend" in these provisions, the Court of Appeals concluded that petitioner could do no more.

This is error.

In *Ledesma v. Court of Appeals*,^[7] we rejected such interpretation as unduly restrictive and not "consistent with the wisdom and spirit behind the creation of the Office of the Ombudsman." Instead, we held that "[b]y stating x x x that the Ombudsman ['recommends'] the action to be taken against an erring officer or employee, the provisions in the Constitution and in RA 6770 intended [only] that the implementation of the order be coursed through the proper officer x x x [,]" thus:

Section 15 is substantially the same as Section 13, Article XI of the Constitution which provides for the powers, functions and duties of the Ombudsman. We draw attention to subparagraph 3, to wit:

SEC. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

[x x x x]

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer; (Emphasis supplied)

We note that the proviso above qualifies the "order" "to remove, suspend, demote, fine, censure, or prosecute" an officer or employee x x x. That the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action, is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law. This should not be interpreted as usurpation by the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in RA 6770 intended that the implementation of the order be coursed through the proper officer x x x.

x x x x

The foregoing interpretation is consistent with the wisdom and spirit behind the creation of the Office of the Ombudsman. The records of the deliberations of the Constitutional Commission reveal the following:

MR. MONSOD:

Madam President, perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, The Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO:

Madam President, what I am worried about is if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD:

I agree with the Commissioner.

MR. RODRIGO:

Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD:

Yes, because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law — the last one, P.D. No. 1630 — did not follow the main thrust; instead it created the Tanodbayan, x x x x

MR. MONSOD: (reacting to statements of Commissioner Blas Ople):

May we just state that perhaps the honorable Commissioner has looked at it in too much of an absolutist position. The Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We did not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, his is a reversible disability, unlike that of a eunuch; it is not an irreversible disability. (*Italicization and underlining in the original; boldfacing supplied*)

In our recent ruling in *Office of the Ombudsman v. Court of Appeals*,^[8] we reiterated *Ledesma* and expounded that taken together, the relevant provisions^[9] of RA 6770 vested petitioner with "full administrative disciplinary authority" including the power to "determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty," thus:

[The] provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.^[10] (*Italicization in the original; boldfacing supplied*)

We see no reason to deviate from these rulings. They are consistent with our earlier observation that unlike the "classical Ombudsman model" whose function is merely to "receive and process the people's complaints against corrupt and abusive government personnel," the Philippine Ombudsman —

as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions.[11] (Emphasis supplied)

Respondent is Guilty of Dishonesty which is Punishable by Dismissal from Service

We sustain petitioner's finding that respondent is guilty of Dishonesty. Neglect of Duty, for which the Court of Appeals held respondent liable, implies the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference.[12] The facts of this case show more than a failure to mind one's task. Rather, they show a failure by an accountable officer to make available upon demand public funds in her custody. In *Belleza v. Commission on Audit*, [13] where we found an accountable officer guilty of Dishonesty, we held that "[n]o evidence of personal misappropriation of the missing funds x x x is needed x x x. That there was shortage of funds and [the officer's] failure to satisfactorily explain the same would suffice."

Here, respondent's belated claim that she had in her custody the missing funds but did not produce them because they included two fake P500 bills does not convince us. Respondent was duty-bound to turn-over to the examining auditors all her collections during the auditing on 21 June 1999 regardless of whether the collections included fake bills. Indeed, considering the large amount involved, respondent should have, at the very least, mentioned to the auditors her alleged safekeeping of the 11 June 1999 collections, if only to dispel any notion that she did not have them in her custody. Respondent's failure to do so casts doubt on the veracity of her claim.

Under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292[14] ("Omnibus Rules"), Dishonesty is classified as a grave offense punishable by dismissal from service on the first offense. Section 9, Rule XIV of the Omnibus Rules also provides that the penalty of dismissal from service carries with it the cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in the government service. Neither restitution of the missing funds[15] nor the fact of recent designation as an accountable officer[16] serves to prevent the imposition of this penalty.

Contrary to respondent's claim, the Court of Appeals' ruling finding her guilty of Neglect of Duty and suspending her from service for six months has not become final. Although in the Court of Appeals, petitioner sought reconsideration only as to the Court of Appeals' ruling on its authority to impose disciplinary sanctions, in this petition, petitioner seeks the reversal of the Decision dated 31 January 2005 and the Resolution dated 12 April 2005 of the Court of Appeals. Indeed, petitioner's imposition of the penalty of dismissal[17] on respondent is inextricably linked to the question of whether petitioner has the power to do so. [18]

WHEREFORE, we GRANT the petition. We SET ASIDE the Decision dated 31 January 2005 and the Resolution dated 12 April 2005 of the Court of Appeals. We REINSTATE the Decision dated 28 October 2002 and the Order dated 25 March 2003 of the Office of the Ombudsman Visayas.

SO ORDERED.

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

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

[2] Penned by Associate Justice Vicente L. Yap with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos, concurring.

[3] Rollo, pp. 141-142.

[4] Rollo, pp. 84-90.

[5] The Ombudsman Act of 1989.

[6] Section 21, of RA 6770 provides: "Officials Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary."

[7] G.R. No. 161629, 29 July 2005, 465 SCRA 437, 449-452 (internal citations omitted).

[8] G.R. No. 160675, 16 June 2006.

[9] Sections 13, 15 (3), 19, 21, 22, 23, 24, 25, and 27 which provide:

SEC. 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.

SEC. 19. Administrative Complaints. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

SEC. 21. Officials Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have

disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

SEC. 22. Investigatory Power. — The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

SEC. 23. Formal Investigation. — (1) Administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.

(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be terminated within the period prescribed in the civil service law. Any delay without just cause in acting on any referral made by the Office of the Ombudsman shall be a ground for administrative action against the officers or employees to whom such referrals are addressed and shall constitute a graft offense punishable by a fine of not exceeding five thousand pesos (P5,000.00).

(3) In any investigation under this Act the Ombudsman may (a) enter and inspect the premises of any office, agency, commission or tribunal; (b) examine and have access to any book, record, file, document or paper; and (c) hold private hearings with both the complaining individual and the official concerned.

SEC. 24. Preventive Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

SEC. 25. Penalties. — (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

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

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed

within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

- (1) New evidence has been discovered which materially affects the order, directive or decision;
- (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

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.

x x x x

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[10] Supra note 8.

[11] Uy v. Sandiganbayan, G.R. Nos. 105965-70, 20 March 2001, 354 SCRA 651, 666.

[12] Añonuevo v. Rubio, A.M. No. P-04-1782, 30 July 2004, 435 SCRA 430.

[13] 428 Phil. 76, 81 (2002).

[14] The Administrative Code of 1987.

[15] Belleza v. Commission on Audit, supra note 13.

[16] Office of the Court Administrator v. Macutob, A.M. No. P-94-1014, 11 March 1994, 231 SCRA 83.

[17] Through the Office of the Ombudsman Visayas.

[18] Significantly, respondent filed a motion in the Court of Appeals for a partial entry of judgment as to that portion of the Court of Appeals' Decision finding her guilty of Neglect of Duty. The motion remained unacted.

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