

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ANTONIO T. REYES, RESPONDENT.

G.R. No. 170512. October 05, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated July 4, 2005 and the Resolution[3] dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 70571. The judgment of the appellate court reversed and set aside the Decision[4] dated September 24, 2001 and the Joint Order[5] dated February 15, 2002 of the Office of the Ombudsman for Mindanao in OMB-MIN-ADM-01-170; while the appellate court's resolution denied the motion for reconsideration[6] assailing its decision.

On January 11, 2001, Jaime B. Acero executed an affidavit against herein respondent Antonio Reyes and Angelito Peñaloza, who were the Transportation Regulation Officer II/Acting Officer-in-Charge and Clerk III, respectively, of the Land Transportation Office (LTO) District Office in Mambajao, Camiguin. Acero narrated thus:

That, on January 10, 2001, at about 2:00 o'clock P.M. I went to the Land Transportation Office, at Mambajao, Camiguin to apply for a driver's license;

That, I was made to take an examination for driver's license applicants by a certain Tata Peñaloza whose real name is Angelito, a clerk in said office;

That, after the examination, [Peñaloza] informed me that I failed in the examination; however if I am willing to pay additional assessment then they will reconsider my application and I am referring to [Peñaloza] and [Reyes];

That, I asked how much will that be and [Peñaloza] in the presence of [Reyes] answered P680.00, so I agreed;

That, I then handed P1,000.00 to [Peñaloza] and [Peñaloza] handed it to the cashier;

That, [Peñaloza] in turn handed to me the change of P320.00 only and a little later I was given the LTO Official Receipt No. 62927785 (January 10, 2001) but only for P180.00 which O.R. serves as my temporary license for 60 days; and the balance of P500.00 was without O.R. and retained by Peñaloza;

That, I feel that the actuation of Antonio Reyes and Angelito Peñaloza are fraudulent in that they failed to issue receipt for the extra P500.00 paid to them; and [Reyes] know that I am with [the Commission on Audit];

That, I execute this affidavit to file charges against the guilty parties.[7]

Attached to Acero's affidavit was the LTO Official Receipt No. 62927785, showing his payment of P180.00.[8]

The above affidavit was apparently filed with the Office of the Provincial Prosecutor in Camiguin, but the same was later referred[9] to the Office of the Ombudsman-Mindanao. The latter office thereafter ordered[10] Reyes and Peñaloza to submit their counter-affidavits within ten days from notice.

On June 19, 2001, Peñaloza filed his Counter-Affidavit.[11] He denied telling Acero that if the latter were willing to pay additional costs, Reyes and Peñaloza would reconsider his application. Peñaloza stated that he did administer the examination to Acero but since he was very busy, he requested their security guard, Dominador Daypuyat, to check the answers of Acero using their answer guide. After Daypuyat checked Acero's paper, Peñaloza noted the score of 22/40. Peñaloza informed Acero of the failing grade and told him that it was up to Reyes to decide on the matter. Acero then went to the office of Reyes and after a few minutes, he came back and returned his application documents to Peñaloza. After examining the application form, Peñaloza saw that the same did not contain Reyes' signature but a plus sign (+) and the number 27 beside the score of 22/40. Peñaloza knew that it was Reyes who wrote the "+ 27" and the same indicated that Acero had to pay additional costs in order to pass the examination, as was done in the past.

Thereafter, when Peñaloza allegedly informed Reyes that Acero was an auditor, the latter was summoned into Reyes' office. Reyes asked if Acero wanted to retake the examination or just pay the additional costs. Acero eventually said "yes" and Peñaloza inferred that the former agreed to pay Reyes the extra costs. Peñaloza recounted that Reyes instructed him to prepare the driver's license of Acero. Peñaloza gave Acero's application documents to Lourdes Cimacio, the senior statistician, who processed the driver's license. When the cashier asked for Acero's payment, the latter gave Peñaloza a one-thousand-peso bill. The cashier, in turn, handed to Peñaloza a change of P820.00. From the said amount, Peñaloza gave to Acero P320.00, while P500.00 was given to Reyes. Acero soon left the office. Peñaloza said that Acero called their office not long after, asking for a receipt for the P500.00. Peñaloza then asked if Acero had not come to an understanding with Reyes that a receipt would not be issued for the additional cost. Acero insisted on a receipt then hanged up. Peñaloza told Reyes of Acero's demand and Reyes told him to cancel the driver's license. When told that the same could not be done anymore, Reyes allegedly gave Peñaloza P500.00, instructing the latter to return the money to Acero under circumstances where nobody could see them. Peñaloza stated that he waited for Acero to come back to their office but the latter did not do so anymore.

Peñaloza also submitted in evidence the affidavit[12] of Rey P. Amper. Amper narrated that he started working at the LTO in Mambajao, Camiguin in September 1988 as a driver-examiner. In February 1994, Reyes became the acting Head of Office, and eventually the Head of Office, of the LTO in Mambajao. About four months thereafter, Reyes verbally instructed Amper to send to him (Reyes) all the applicants for driver's licenses who failed the examinations. In case Reyes was absent, the applicants were to wait for him. Subsequently, Reyes gave Amper a piece of paper containing the rates to be charged to the "applicant-flunkers" in addition to the legal fees. Amper was also told to deliver the additional payments to Reyes. Amper stated that his office table and that of Reyes were located in one room. Reyes would allegedly tell the applicant-flunkers to either re-take the examinations or pay additional costs. In most cases, Amper said that the applicant-flunkers would only be too willing to pay the extra costs. Reyes would then instruct Amper to add more points to applicant-flunkers' scores, which meant that Reyes and the applicants concerned had come to an agreement for the payment of additional costs. Amper added that the said practice of Reyes was a "goad to his conscience" and he talked about it to Peñaloza. They allegedly reported the matter to their District Representative Pedro Romualdo, but the latter could only express his regrets for having recommended Reyes to his position. The practice of Reyes of claiming additional costs continued up to the time Amper left the LTO. Amper declared that he knew that it was Reyes alone who took and benefitted from his illegal exactions. The employees of the LTO in Mambajao were purportedly aware of the practice of Reyes but they were afraid to come out against their Head of Office.

The affidavit[13] of Margie B. Abdala was also presented by Peñaloza. Abdala stated that she accompanied Peñaloza and the latter's wife, Ebony, to the house of Acero on January 13, 2001. Ebony urged Acero not to include Peñaloza anymore in the complaint. Acero assured them that his complaint was principally directed

against Reyes for requiring him (Acero) to pay additional costs for which he was not issued any official receipt. Peñaloza brought with him Acero's application form for a driver's license, which had already been approved by Reyes, and he asked the latter to complete the same. Peñaloza also tried to return the P500.00 from Reyes that was not covered by a receipt. Acero, however, refused to fill up the application form and to accept the money. When Ebony asked why Acero agreed to pay the additional cost required by Reyes, the latter answered that he did not understand what was meant by additional cost.

On June 19, 2001, Reyes manifested^[14] that, for purposes of the instant case, he was adopting the counter-affidavit he filed in another Ombudsman case, docketed as OMB-MIN-01-0090,^[15] as both cases involved the same parties and the same incident.

In his counter-affidavit,^[16] Reyes claimed that Acero's complaint was a "blatant distortion of the truth and a mere fabrication of the complainant."^[17] Reyes asserted that a perusal of the affidavit-complaint revealed that the only imputation against him was that Peñaloza allegedly told Acero to pay P680.00 in his (Reyes') presence. The affidavit revealed that it was Peñaloza who processed the application of Acero; the money was allegedly given to Peñaloza and it was he who handed the change back to Acero; and he had no participation and was not present when the money changed hands. Reyes stated that when he conducted an informal investigation on the complaint, Peñaloza admitted to having pocketed the extra P500.00. Reyes allegedly reprimanded Peñaloza and ordered the latter to return the money to Acero. Based on the receipt submitted by Acero, the same proved that as far as the LTO and Reyes were concerned, what was received by the office was only P180.00. Reyes contended that he did not ask or receive money from Acero and it was Peñaloza who pocketed the P500.00.

In an Order^[18] dated June 20, 2001, the Office of the Ombudsman-Mindanao directed the parties to appear before its office on July 11, 2001 for a preliminary conference. The parties were to consider, among others, the need for a formal investigation or whether the parties were willing to submit their case for resolution on the basis of the evidence on record and such other evidence as they will present at the conference.

On July 6, 2001, Acero sent the Office of the Ombudsman-Mindanao a telegram,^[19] stating that he was waiving his right to avail of the preliminary conference.

On July 11, 2001, the Office of the Ombudsman-Mindanao issued an Order,^[20] stating that none of the parties appeared in the preliminary conference scheduled for that day. In view of the non-appearance of the respondents therein, they were considered to have waived their right to a preliminary conference. The case was then deemed submitted for decision.

On July 23, 2001, the counsel for Peñaloza informed the Office of the Ombudsman-Mindanao that his client was waiving his right to a formal investigation and was willing to submit the case for resolution on the basis of the evidence on record. Peñaloza also submitted the additional affidavit of one of their witnesses, Rickie Valdehueva.

In his affidavit,^[21] Valdehueva stated that on January 5, 2001, he applied for a driver's license with the LTO in Mambajao, Camiguin. He took an examination on that day, which was conducted by an employee he later came to know as Dominador Daypuyat. After the latter checked his test paper, Valdehueva was told that he got a failing score. His application was then turned over to Peñaloza, who told him to see Reyes. Valdehueva said that Reyes advised him not to retake the examination anymore and just pay P1,500.00. Valdehueva bargained for P1,200.00 since he had no money and Reyes agreed. Reyes then wrote the sign "+ 20" next to Valdehueva's score of 30, such that what appeared on the test paper was "30 + 20." Reyes returned the test paper and instructed Valdehueva to tell Peñaloza to add "20" to his score. Valdehueva went back to the LTO on January 10, 2001 bringing P1,200.00. Before he could go to Reyes' office, he was accosted by Daypuyat in the lobby who informed him that his license was already completed. Daypuyat also took P700.00 to give to Reyes. Valdehueva gave P500.00 to the cashier as

payment for the P240.00 license fee. He told the cashier to just give his change to Reyes.

On September 24, 2001, the Office of the Ombudsman-Mindanao rendered a Decision in OMB-MIN-ADM-01-170, adjudging Reyes guilty of grave misconduct and finding Peñaloza guilty of simple misconduct. The pertinent portion of the decision reads:

Here, as borne out of the record, there is no denying the fact that [Acero] failed in the examination given for a driver's license, yet ultimately, herein complainant was granted a temporary driver's license. It is therefore very logical to presume that something in between was agreed upon between the applicant and the person charged with the grant of license.

Based on the testimony of [Peñaloza] and corroborated by the testimonies of Rey P. Amper (Record, pp. 31-32) and Rickie Valdehueza (Record, pp. 44-45), [Reyes] would give the flunker the option of retaking the examination or to simply pay an additional cost to have a passing grade without actually re-taking the same. As testified to by Rey P. Amper, "xxx in almost all cases, the applicant-flunker would only be too willing to pay the additional costs, in which case, Mr. Reyes would instruct him to go back to my table. Then Mr. Reyes would call me, saying: 'Ray, just add more to his score.', which to me meant that he and the applicant-flunker had come to an agreement to pay the 'additional costs'." Mr. Amper testifies further that this matter of extending a passing grade to a flunker for a monetary consideration has been a system within this LTO agency perpetrated by [Reyes] since he assumed as Head of Office thereat.

Verily, [Reyes] took advantage of his position and office in exacting the so-called additional cost from those who flunked the examination. There is nowhere in the record authorizing the Head of Office of the LTO to adjust a failing grade into a passing grade. In addition, there is nowhere in the record that supports the legality of collecting additional costs over and above the legal fees. This is a pure and simple case of extortion and certainly, such act is a breach of his oath of office as well as a deliberate disregard of existing rules and regulations. Based on the foregoing, this Office finds respondent [Reyes] guilty of grave misconduct.

As regards [Peñaloza], while he may have helped or facilitated in the collection of that additional costs, he could not be as guilty as [Reyes].

Understandably, it is normal for a subordinate to keep mum while an anomaly is going on specially when the perpetrator is the Head of Office. There is fear in him and normally, such subordinate would just "ride along", so to speak. But nonetheless, [Peñaloza] has to be sanctioned. While the infraction he had helped accomplished may not have been voluntary on his part but as a public official, he should have registered his objection regardless of the consequence that may occur. Based on the foregoing, this Office finds respondent [Peñaloza] guilty of simple misconduct.

WHEREFORE, there being substantial evidence, this Office finds respondent Antonio T. Reyes guilty of grave misconduct and he is hereby meted the penalty of DISMISSAL from the service pursuant to Section 23(c) [Grave Offenses], Rule XIV of the Rules Implementing Book V of Executive Order No. 292. Likewise, this Office finds respondent Angelito G. Peñaloza guilty of Simple Misconduct and he is hereby meted the penalty of SUSPENSION from office without pay for a period of Six (6) months based on Section 23(b) [Less Grave Offenses] Rule XIV of the Rules Implementing Book V of Executive Order No. 292. In both instances, the execution of the penalties imposed shall be made immediately after the same shall have been final and executory.[22]

In their bid to challenge the above ruling, Reyes filed a Motion for Reconsideration cum Motion to Set the Case for Preliminary Conference,[23] while Peñaloza filed a Motion for Reconsideration.[24] On February 15, 2002, the Office of the Ombudsman-Mindanao issued a Joint Order,[25] denying the aforesaid motions of Reyes and Peñaloza.

Reyes elevated the case to the Court of Appeals via a Petition for Review[26] under Rule 43 of the Rules of

Court, which petition was docketed as CA-G.R. SP No. 70571.

In the assailed Decision dated July 4, 2005, the Court of Appeals granted the petition of Reyes and reversed the judgment of the Office of the Ombudsman-Mindanao. The appellate court reasoned thus:

It must be pointed out that in the complaint-affidavit filed by Acero, it was only Peñaloza who received the money and the balance of P 500.00 which was without O.R. was retained by Peñaloza. Nowhere in the complaint-affidavit could one find the name of Reyes, herein petitioner, nor is it alleged there that Reyes was around when Acero handed to Peñaloza the P 1000.00. From the evidence on record, it was, clearly, only Peñaloza all along. Nowhere in the record is Reyes' complicity suggested or even slightly hinted.

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It does not appear on record that [Reyes] was the one who ordered and received the "additional assessment". Rather, it was Peñaloza alone who approached the complainant, discussed about the "additional assessment", and retained the balance of P 500 basing on the complaint-affidavit filed by Acero.

We note with sadness that the counter-affidavit of Peñaloza, of itself, was considered enough evidence by the investigation officer in finding [Reyes] guilty of grave misconduct, and dismissing him from government service. The testimony of Peñaloza is, however, a self-serving declaration considering that he is the co-respondent in the Ombudsman case filed by Acero. Such a declaration which was obviously made principally to save his own neck should have been received with caution. This vital objection to the admission of this kind of evidence is its hearsay character and to permit its unqualified introduction in evidence would open the door to frauds and perjuries.

It may be true that Reyes failed to attend the scheduled preliminary conference where he could have refuted all the hearsay evidence submitted against him. The introduction of such as evidence does not, however, give them the probative value which they did not bear in the first place. Hearsay evidence, whether objected to or not, cannot be given credence.

The self-serving evidence presented in the form of a counter-affidavit by Peñaloza should not have been taken hook, line and sinker, so to speak, for there was no way of ascertaining the truth of their contents. Moreover, in the Motion for Reconsideration dated November 13, 2001 [Reyes] claimed that he was not furnished any copy of Peñaloza's counter-affidavit. Thus, admissions made by Peñaloza in his sworn statement are binding only on him. *Res inter alios acta alteri nocere non debet*. The rights of a party cannot be prejudiced by an act, declaration or omission of another.

The charge of misconduct is a serious charge, a "capital offense" in a manner of speaking, which may cause the forfeiture of one's right to hold a public office. Therefore, said charge must be proven and substantiated by clear and convincing evidence. Mere allegation will not suffice. It should be supported by competent evidence, by substantial evidence. We find the case against [Reyes] wanting in this regard.

FOR THESE REASONS, the instant petition is GRANTED. The decision dated 24 September 2001 and the Joint Order dated 15 February 2002 are REVERSED and SET ASIDE. [Reyes] is hereby exonerated from the administrative charge for insufficiency of evidence.[27]

The Office of the Ombudsman, through the Office of the Solicitor General, filed a Motion for Reconsideration[28] of the Court of Appeals decision. The same was, however, denied in the assailed Resolution dated October 27, 2005.

Hence, the Office of the Ombudsman (petitioner) filed the instant petition, raising the following issues:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS, IN NULLIFYING THE DECISION OF THE OMBUDSMAN, DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND

APPLICABLE JURISPRUDENCE IN THAT:

- (i) It re-examined and weighed the evidence submitted in the administrative proceedings and worse, substituted its judgment for that of the Ombudsman; and,
- (ii) It made a conclusion that substantial evidence does not exist to warrant a finding of administrative culpability on the part of respondent Reyes.[29]

In essence, the fundamental issue in the instant case is whether the charge of grave misconduct against Reyes was sufficiently proven by substantial evidence. Petitioner settled this issue in the affirmative, while the Court of Appeals ruled otherwise.

In *Salazar v. Barriga*,[30] the Court characterized the administrative offenses of misconduct and grave misconduct as follows:

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer.

In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.[31]

Here, petitioner adjudged Reyes guilty of grave misconduct after finding that Reyes, being then the Head of Office of the LTO in Mambajao, Camiguin, illegally exacted money from Acero in exchange for the issuance of a driver's license to the latter, notwithstanding that Acero did not pass the requisite written examination therefor.

In assailing the judgment of the Court of Appeals, petitioner avers that the findings of fact of the Office of the Ombudsman are entitled to great weight and must be accorded full respect and credit as long as they are supported by substantial evidence. Petitioner argues that it is not the task of the appellate court to weigh once more the evidence submitted before an administrative body and to substitute its own judgment for that of the administrative agency with respect to the sufficiency of evidence.

Indeed, Section 27 of Republic Act No. 6770 mandates that the findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence.[32] In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[33]

Dadulo v. Court of Appeals[34] reiterates that in reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. However, while it is not the function of the Court to analyze and weigh the parties' evidence all over again, an exception thereto lies as when there is serious ground to believe that a possible miscarriage of justice would thereby result.

After carefully perusing the records of this case, we find that the above-cited exception, rather than the general rule, applies herein. Otherwise stated, the Court deems it proper that a review of the case should be made in order to arrive at a just resolution.

In the main, the evidence submitted by the parties in OMB-MIN-ADM-01-170 consisted of their sworn statements, as well as that of their witnesses. In the affidavit of Acero, he categorically identified both Reyes and

Peñaloza as the persons who had the prerogative to reconsider his failed examination, provided that he paid an additional amount on top of the legal fees. For his part, Peñaloza ostensibly admitted the charge of Acero in his counter-affidavit but he incriminated Reyes therein as the mastermind of the illicit activity complained of. To corroborate this allegation, Peñaloza submitted the affidavits of Amper and Valdehueza. Amper was a former LTO employee who allegedly had first-hand knowledge of the practice of Reyes of imposing and pocketing additional fees; while Valdehueza declared that he was an applicant for a driver's license who was likewise made to pay the said additional fees to Reyes. Upon the other hand, Reyes' counter-affidavit repudiated the allegations of Acero, insisting that it was Peñaloza who illegally took the amount of P500.00 from Acero.

Reyes faults petitioner for placing too much reliance on the counter-affidavit of Peñaloza, as well as the affidavits of Amper and Valdehueza. Reyes claims that he was not furnished a copy of the said documents before petitioner rendered its Decision dated September 24, 2001. Reyes, thus, argues that his right to due process was violated. Petitioner, on the other hand, counters that Reyes was afforded due process since he was given all the opportunities to be heard, as well as the opportunity to file a motion for reconsideration of petitioner's adverse decision.

On this point, the Court finds merit in Reyes' contention.

Ledesma v. Court of Appeals[35] elaborates on the well established doctrine of due process in administrative proceedings as follows:

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[36]

Moreover, Department of Health v. Camposano[37] restates the guidelines laid down in Ang Tibay v. Court of Industrial Relations[38] that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.[39]

In the present case, the fifth requirement stated above was not complied with. Reyes was not properly apprised of the evidence offered against him, which were eventually made the bases of petitioner's decision that found him guilty of grave misconduct.

To recall, after the affidavit of Acero was filed with the Office of the Ombudsman-Mindanao, the respondents therein, i.e., Reyes and Peñaloza, were ordered to submit their counter-affidavits in order to discuss the charges lodged against them. While Peñaloza acknowledged in his counter-affidavit his participation in the illicit transaction complained of, he pointed to Reyes as the main culprit. Peñaloza thereafter submitted the affidavits of Amper and Valdehueza as witnesses who would substantiate his accusations. However, the records reveal that only the Office of the Ombudsman-Mindanao and Acero were furnished copies of the said affidavits.[40] Thus,

Reyes was able to respond only to the affidavit of Acero. It would appear that Reyes had no idea that Peñaloza, a co-respondent in the administrative case, would point an accusing finger at him and even supply the inculpatory evidence to prove his guilt. The said affidavits were made known to Reyes only after the rendition of the petitioner's Decision dated September 24, 2001.

The fact that Reyes was able to assail the adverse decision of the petitioner via a Motion for Reconsideration Cum Motion to Set the Case for Preliminary Conference did not cure the violation of his right to due process in this case. Reyes filed the said motion precisely to raise the issue of the violation of his right to due process. There is nothing on record to show that Reyes was furnished with, or had otherwise received, a copy of the affidavits of Peñaloza, Amper and Valdehueza, whether before or after the Decision dated September 24, 2001 was issued. Thus, it cannot be said that Reyes had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto.

It is true that, in the past, this Court has held that the right to due process of a respondent in an administrative case was not violated if he was able to file a motion for reconsideration to refute the evidence against him. However, the instant case should be differentiated from *Ruivivar v. Office of the Ombudsman*,^[41] which likewise involved the issue of administrative due process. In the said case, *Ruivivar* was found administratively liable for discourtesy in the course of her official functions and was meted the penalty of reprimand. In her motion for reconsideration, *Ruivivar* argued that she was deprived of due process because she was not furnished copies of the affidavits of complainant's witnesses. Thereafter, the Ombudsman ordered that *Ruivivar* be furnished with copies of the affidavits of the witnesses, with the directive for her to file any pleading that she may deem appropriate. As *Ruivivar* still opted not to controvert the affidavits that were belatedly provided to her, the Ombudsman ruled that her right to due process was not violated and her administrative liability was upheld. The Court affirmed the ruling of the Ombudsman, declaring that "the law can no longer help one who had been who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance."^[42]

In the instant case, petitioner plainly disregarded Reyes' protestations without giving him a similar opportunity, as in *Ruivivar*, to be belatedly furnished copies of the affidavits of Peñaloza, Amper and Valdehueza to enable him to refute the same. As it were, petitioner rendered its Decision dated September 24, 2001 on the basis of evidence that were not disclosed to Reyes. This the Court cannot sanction. A judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process.

WHEREFORE, the Decision dated July 4, 2005 and the Resolution dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 70571, as well as the Decision dated September 24, 2001 and the Joint Order dated February 15, 2002 of the Office of the Ombudsman in OMB-MIN-ADM-01-170, are hereby REVERSED and SET ASIDE.

The records of OMB-MIN-ADM-01-170 are REMANDED to the Office of the Ombudsman, which is hereby ordered (a) to furnish respondent Antonio T. Reyes copies of the affidavits of Angelito G. Peñaloza, Rey P. Amper and Rickie Valdehueza, and (b) to conduct further proceedings in OMB-MIN-ADM-01-170 as may be appropriate.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 12-45.

[2] Id. at 46-52; penned by Associate Justice Edgardo A. Camello with Associate Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal, concurring.

[3] Id. at 53-54.

[4] Id. at 55-60; penned by Graft Investigation Officer I Quintin J. Pedrido, Jr. and approved by Deputy Ombudsman for Mindanao Antonio E. Valenzuela and Ombudsman Aniano A. Desierto.

[5] Id. at 61-65.

[6] Id. at 66-79.

[7] Id. at 123.

[8] Id. at 124.

[9] Records, p. 9.

[10] Id. at 25.

[11] Rollo, pp. 127-130.

[12] Id. at 134-135.

[13] Records, pp. 33-34.

[14] Id. at 36-37.

[15] OMB-MIN-01-0090 was the criminal case filed by Acero against Reyes and Peñaloza for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

[16] Rollo, pp. 125-126.

[17] Id. at 125.

[18] Records, p. 40.

[19] Id. at 41.

[20] Id. at 42.

[21] Rollo, pp. 131-132.

[22] Id. at 58-59.

[23] Id. at 80-85.

[24] Records, pp. 62-66.

[25] Rollo, pp. 61-65.

[26] Id. at 86-103.

[27] Id. at 49-52.

[28] Id. at. 66-79.

[29] Id. at 186.

[30] A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449.

[31] Id. at 453-454.

[32] Section 27 of Republic Act No. 6770 pertinently provides:

SEC. 27. Effectivity and Finality of Decisions. -- x x x

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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 (1) month's salary shall be final and unappealable.

[33] Bascos, Jr. v. Taganahan, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

[34] G.R. No. 175451, April 13, 2007, 521 SCRA 357, 363.

[35] G.R. No. 166780, December 27, 2007, 541 SCRA 444.

[36] Id. at 451-452.

[37] 496 Phil. 886 (2005).

[38] 69 Phil. 635 (1940).

[39] Id. at 641-644.

[40] Records, p. 26.

[41] G.R. No. 165012, September 16, 2008, 565 SCRA 324.

[42] Id. at 340.

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