REPUBLIC OF THE PHILIPPINES, REPRESENTED BY HON. SIMEON V. MARCELO, IN HIS CAPACITY AS FORMER OMBUDSMAN; AND HON. PRIMO C. MIRO, IN HIS CAPACITY AS DEPUTY OMBUDSMAN, VISAYAS, PE...

G.R. No. 172729. June 08, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari[1] assails the January 21, 2005 Decision[2] of the Court of Appeals in CA-G.R. SP No. 76625 which reversed and set aside the June 27, 2002 Decision[3] of the Office of the Ombudsman-Visayas in OMB-VIS-ADM 2000-0200 finding respondents guilty of Simple Neglect of Duty; and its May 5, 2006 Resolution[4] denying petitioner's motion for reconsideration.

On August 6, 1996, the Commission on Audit-8 conducted an ocular inspection in the province of Northern Samar and found six units of heavy equipment[5] left idle and unattended in the island municipality of San Antonio. These equipment units were allegedly left in a place open to the saline sea breeze and sea vapor causing it to deteriorate and become unserviceable. Furthermore, the said equipment units were not booked up or included in the Inventory Report as of April 1, 1999.[6]

Consequently, an administrative complaint was filed before the Office of the Deputy Ombudsman for the Visayas charging respondents Woodrow Canastillo and Allan G. Valenciano, Provincial Engineer and General Services Officer of Northern Samar, respectively, with neglect of duty for failure to exercise diligence in the care and custody over the said units of heavy equipment.

Respondents alleged that the equipment units were old but still serviceable when acquired by the province in the early 80's. In 1991, the equipment units were brought to San Antonio to be used for the repair, rehabilitation and construction of its provincial and barangay roads. After three years, the equipment units, except for one payloader and dump truck, deteriorated beyond economic repair and were reported to COA-8 for their disposal.[7]

On June 27, 2002, the Office of the Ombudsman rendered its Decision finding respondents guilty of Simple Neglect of Duty, to wit:

> The facts set forth show that the subject heavy equipments were already unserviceable at the time the COA-8 conducted an ocular inspection of the same on August 6, 1996. The contention of respondents is believed meritorious, for while subject heavy equipment deteriorated beyond economic repair, but the same is attributable to the fact that they were second hand when acquired by the Provincial Government in the early eighties, not to mention the fact that they had been used in the daily maintenance of the roads of the province for about 10-14 years, beyond their serviceable life.
>
> The undersigned is convinced that respondents did endeavor to dispose of said heavy equipments after finding that the same could no longer be of further use to the province. However, this fact does not in any way absolve

> respondents from liability therefor as the subject heavy equipments, albeit unserviceable, are still under their direct supervision and accountability. Respondents should have still exercised reasonable precautions and such care as custodian of said equipments in order to obviate further deterioration of the same, pending approval by COA-8 of their request for their disposal. Evidently, the equipments were just left in a place open to saline sea breeze and sea vapor, causing the same to deteriorate further. Had there been careful and efficient supervision and diligent action on the part of respondents for the safekeeping and proper disposition of said equipments, the conditions depicted in the report of COA-8 could have been averted or remedied and the resulting perception of prejudice to the public interest could have been avoided. This, respondents failed to do and hence, they must bear the consequence of their neglect.
>
> Wherefore, respondents Woodrow Canastillo and Allan G. Valenciano are found guilty of Simple Neglect of Duty for which they are hereby fined equivalent to their one (1) month's pay and warned that commission by them of a similar offense will be dealt with more severely.
>
> SO ORDERED.[8]

Respondents appealed the decision before the Court of Appeals which reversed the decision of the Office of the Ombudsman[9] ruling that the finding of neglect of duty lacks substantial evidence and that respondents exercised due diligence in utilizing all measures and resources available to them in supervising the condition, state and use of the equipment.

Petitioner filed a Motion for Reconsideration, however, same was denied; hence, the instant petition.

Petitioner contends that the assailed Decision of the Ombudsman imposing the penalty of fine equivalent to one month salary is final and unappealable, hence, immediately executory pursuant to Section 27[10] of Republic Act No. 6770 (RA 6770), otherwise known as "The Ombudsman Act of 1989" and Section 7,[11] Rule III of Administrative Order No. 7 or the "The Rules of Procedure of the Office of the Ombudsman." As such, the Court of Appeals had no appellate jurisdiction to review, rectify or reverse the same.

Petitioner likewise argues that there is substantial evidence to hold respondents guilty of simple neglect of duty since the findings of the Office of the Ombudsman was anchored on the report of the Audit Team and on the ocular inspection it conducted. Further, the respondents did not controvert the findings that the equipment units were virtually abandoned and unduly exposed to the damaging effects of the saline sea breeze and sea vapor.[12]

Indeed, Section 27 of RA 6770 provides that any order, directive, or decision of the Office of the Ombudsman imposing the penalty of public censure or reprimand, and suspension of not more than one month's salary, shall be final and unappealable. In the instant case, the penalty imposed by the Office of the Ombudsman after finding herein respondents guilty of simple neglect of duty was "fine equivalent to their one (1) month's pay."[13] Following our ruling in Herrera v. Bohol,[14] the penalty imposed upon respondents, which is fine equivalent to one (1) month salary, is included in the phrase "suspension of not more than one month's salary," thus:

> There is no penalty as suspension of salary in our administrative law, rules and regulations. Salaries are simply not suspended. Rather it is the official or employee concerned who is suspended with a corresponding withholding of salaries following the principle of "no work, no pay." Or, an official or employee may be fined an amount equivalent to his or her monthly salary as penalty without an accompanying suspension from work.
>
> In truth, the Office of the Ombudsman, pursuant to its authority to promulgate rules to implement R.A. No. 6770, has clarified this ambiguity of its Sec. 27. Sec. 7, Rule III of its Rules of Procedure, Administrative Order No. 7, provides, viz:
> Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable x x x x (Emphasis supplied.)[15]

However, it is also settled that decisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings.[16]

In the instant case, respondents' recourse from the adverse decision of the Office of the Ombudsman would have been to file a petition for certiorari, instead of a petition for review under Rule 43 of the Rules of Court before the Court of Appeals. Considering, however, that the arguments in the said petition alleged grave abuse of discretion on the part of the Office of the Ombudsman, we shall treat the said petition as one for certiorari under Rule 65 of the Rules of Court. [17]

The Decision of the Office of the Ombudsman on respondents' administrative liability was primarily based on the audit report and ocular inspection conducted by the COA-8 finding that the equipment units were left in a place open to saline sea breeze and sea vapor causing it to deteriorate further.

It is well settled that only substantial evidence is required to sustain a finding of guilt in an administrative case,[18] and findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence.[19] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[20]

In the instant case, we find that a review of the factual findings of the Office of the Ombudsman is necessary. When administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse its factual findings.[21] A reading of the assailed Decision shows that respondents were able to controvert the allegations of negligence and have shown that they exercised such diligence and prudence required of them in the care and custody of the subject equipment. In fact, the Office of the Ombudsman stated in its Decision that the contention of respondents was meritorious; that the unserviceability and deterioration beyond economic repair of the equipment units were attributable to the fact that they were purchased second hand; and that they had been used in the daily maintenance of the roads of the province for about 10-14 years, which is way beyond their serviceable life.

After finding the equipment units useless, respondents still exerted efforts to maximize their utility. Respondent Canastillo instructed a mechanic from the Provincial Engineering Office to salvage the usable parts as reserve replacement parts for other heavy equipment owned by the province which explains why there are missing parts. On the part of respondent Valenciano, he prepared and submitted in July 1994 an Inventory and Inspection Report of Unserviceable Property and other documents necessary to effect its disposal through public auction; however, it was not acted upon by COA until 1996.[22]

The facts clearly show that respondents exercised due care and diligence in the custody and disposition of the unserviceable equipment, thus negating the imputation of simple neglect of duty which, as defined, is the failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference."[23]

In the discharge of his duties, a public officer is to use that prudence, caution, and attention which careful men use in the management of their affairs.[24] Under the circumstances, there is nothing more that respondents can do to protect and preserve the worn-out and useless equipment but to dispose of the same in the way they deem best. The diligence and prudence exercised by respondents in maximizing the utility of the equipment negate any imputation of neglect of duty.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 76625 reversing the Decision of the Office of the Ombudsman in OMB-VIS-ADM 2000-0200 finding respondents guilty of Simple Neglect of Duty and its Resolution denying petitioner's motion for reconsideration, are AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, pp. 11-27.

[2] Id. at 32-38. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Mercedes Gozo-Dadole and Vicente L. Yap.

[3] Id. at 41-43.

[4] Id. at 39-40. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Isaias P. Dicdican and Vicente L. Yap.

[5] Namely: 1) Grader Mitsubushi, Md 1 LG2-H; 2) Road Roler, Ingerso 11-Rand, Md1 SP-48DD; 3) Payloader, Komatsu WA 200-1; 4) Dump Truck, ISUZU TDJ50; 5) Dump Truck, ISUZU TDJ50, and 6) Crawler Tractor, Komatzu.

[6] Rollo, p. 41.

[7] Id.

[8] Id. at 41-43.

[9] Id. at 63.

[10] Section 27. Effectivity and Finality of Decisions.– (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

x x x x

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

[11] Section 7. Finality of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.

[12] Rollo, pp. 21-22.

[13] Id. at 43.

[14] G.R. No. 155320, February 5, 2004, 422 SCRA 282.

[15] Id. at 285-286.

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[16] Id.

[17] See Flores v. Office of the Ombudsman, 437 Phil. 684, 690 (2002). In determining the nature of an action, it is not the caption but the averments in the petition and the character of the relief sought that are controlling.

[18] Office of the Ombudsman v. Santos, G.R. No. 166116, March 31, 2006, 486 SCRA 463, 470.

[19] Rep. Act No. 6770, Sec. 27.

[20] Montemayor v. Bundalian, 453 Phil. 158, 167 (2003).

[21] Republic v. Francisco, G.R. No. 163089, December 6, 2006.

[22] Rollo, pp. 41-42.

[23] Dajao v. Lluch, 429 Phil. 620, 626 (2002).

[24] Farolan v. Solmac Marketing Corporation, G.R. No. 83589, March 13, 1991, 195 SCRA 168, 177-178.

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