

CAPT. ERNESTO S. CABALLERO, PETITIONER, VS. PHILIPPINE COAST GUARD EFFICIENCY AND SEPARATION BOARD (PCG-ESB), COMM. ELPIDIO B. PADAMA, CAPT. ALEJANDRO N. FLORA, CAPT. ANTONIO LA...

G.R. No. 174312. September 22, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

BROUGHT to fore is the administrative disciplinary system of the Philippine Coast Guard (PCG) for erring members. We trace the transition of the PCG from a component of the Armed Forces of the Philippines (AFP) to an adjunct of the Department of Transportation and Communications (DOTC). We also set straight questions on administrative disciplinary procedures for uniformed personnel of the PCG.

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 92951. The CA reversed the judgment[2] of the Regional Trial Court (RTC), Branch 37, Manila in Civil Case No. 03-107563 granting the petition for certiorari and prohibition lodged before it by PCG Captain Ernesto S. Caballero.

The Facts

In August 2002, petitioner Captain Ernesto S. Caballero, Commander of the Internal Affairs and Service Headquarters Group of the PCG, became the subject of a sexual harassment complaint filed by Dr. Jennifer Liwanag. Dr. Liwanag is a dentist and a civilian employee of the PCG assigned at the dental detachment of the PCG Headquarters located in Port Area, Manila. In her affidavit-complaint, Dr. Liwanag alleged:

- On or about February, 2002, at around 2 o'clock in the afternoon, Capt. Caballero entered the dental detachment of the Philippine Coast Guard to obtain a treatment with Dr. Donna B. Dinglasan, a dentist and also a civilian employee of the Philippine Coast Guard;
- While he was in the receiving area waiting for Dr. Dinglasan, he was talking to me and other personnel of such clinic/detachment;
- As I was sitting at the bench listening to him, he walked towards me and, he suddenly touched my thighs. I was shocked and was not able to react with his advancement;
- He sat beside and very close to me on my right side and put his left hand at the side of my leg, touching and rubbing it in a back and forth motion. I was surprised that I immediately stood up and walk (sic) away from him;
- I went directly to the treatment room and talked about the incident to Lt. Rodolfo S. Ingel, Jr., but he just told me to forget about it and said, "Hayaan mo na, matanda na yon";
- At around three o'clock in the afternoon, that same day, on my way to my locker room, which is located at the

far end of the hallway to get something, I chanced upon Capt. Caballero who came from the toilet which is also located near the locker room;

- He noticed me. Since the locker room is open, he entered such room and said, "Patingin naman ng locker mo." He closed the door and suddenly embraced and pulled me towards him. He kissed me on the cheek, then he forcefully moved his lips towards my lips;

- I right away pushed him and drove him back and resisted his advances. Then, he left me;

- I was stunned, shocked and trembling;

- I really felt insulted, disgusted, humiliated and sickened of what Captain Caballero did to me; afterwards I went to Lt. Ingel crying. I told him what transpired in the locker room;

- I can hardly sleep for so many nights after the incident;

- Since May 2002, there were already bad rumors going on at the headquarters, which put me on the (sic) bad light and the center of the controversy and mockery;

- I am executing this affidavit-complaint to attest to the truth of the foregoing facts for the purpose of instituting formal criminal and administrative charges against CAPTAIN ERNESTO S. CABALLERO PCG (CSG) with postal address at Philippine Coast Guard Headquarters Support Group, 139 25th Street, Port Area, Manila for the acts described above.[3]

Liwanag's complaint was eventually referred to the Office of the Coast Guard Judge Advocate (OCGJA). However, despite the issuance of a subpoena directing him to appear before the investigating officers and submit his counter-affidavit and any evidence on his behalf, petitioner failed to appear. Instead, petitioner questioned the proceedings, claiming that the OCGJA was not the proper office to conduct the investigation. Despite his protest, the investigation proceeded in due course, based mainly on Dr. Liwanag's evidence.

The investigating officers, Lt. Fedelyn A. Santos and Ens. Mitzie S. Silva, recommended that petitioner be tried before the Philippine Coast Guard Efficiency and Separation Board (PCG-ESB) for misconduct on the ground of sexual harassment.[4] Acting Coast Guard Advocate Lt. Lazaro Ernesto C. Valdez, Jr. endorsed the investigation report to PCG Commandant Reuben Lista. Lt. Valdez recommended that petitioner be tried before the PCG-ESB, despite the pendency of a criminal complaint against petitioner for acts of lasciviousness before the Department of Justice. On April 11, 2003, PCG Commandant Lista approved the recommendation. Petitioner's administrative case was then referred to the PCG-ESB.

In April 2003,[5] the PCG-ESB submitted its report with the following observations, among others:

- Capt. Ernesto S. Caballero was holding a very sensitive position and a member of the PCG Promotions Board B when the incident happened. His acts constitutes misconduct as he abused his authority and moral ascendancy over a female Civilian Employee who has been working in the PCG organization for the last four (4) years and the wife of a PCG Junior Officer whose promotion falls under the jurisdiction of the said Board.

- Pursuant to DOTC Department Order No. 2000-61 and Memorandum Circular No. 2000-64, this case is submitted to this Board to determine the respondent Officer's fitness and suitability to remain in the service.[6]

On August 14, 2003, petitioner filed before the RTC in Manila a petition for certiorari and prohibition with an application for a temporary restraining order (TRO) against respondents PCG-ESB, its members and Dr. Liwanag. Petitioner sought to nullify and set aside the orders[7] issued by the PCG-ESB in relation to ESB Case No. 003-03, entitled "Re: Capt. Ernesto S. Caballero," for misconduct. He also sought the nullification of DOTC Department Order (DO) Nos. 2000-61[8] and 2002-76[9] as well as Memorandum Circular No. 2000-64.[10] The

DOs were the basis for the constitution of the PCG-ESB. In essence, petitioner argued that the PCG-ESB acted without or in excess of jurisdiction in taking cognizance of the administrative complaint for sexual harassment filed by Dr. Liwanag.

RTC Judgment

On September 9, 2003, the RTC issued an Order granting petitioner's application for a writ of preliminary injunction. On August 2, 2005, a Decision[11] was rendered in favor of petitioner, with the following fallo:

WHEREFORE, premises considered, the petition for Certiorari and Prohibition is GRANTED. The creation of ESB and its procedure are hereby declared IMPROPER and IRREGULAR and the proceeding had thereon against petitioner is declared NULL and VOID as such Board has no jurisdiction over the complaint of Dra. Jennifer G. Liwanag.

The preliminary injunction is hereby made PERMANENT, and the respondent board and all its members as well as private respondent Dra. Jennifer G. Liwanag are hereby directed to cease and desist from continuing the questioned proceedings.[12]

Following are pertinent segments of discussion by the RTC:

The primordial issues to be resolved in this case are as follows:

- Whether or not the Court has jurisdiction over the instant petition;
- Whether or not the petitioners are guilty of estoppel;
- Whether or not the validity of DOTC Department Order Nos. 2000-61 and 2002-76 and Memo Circular No. 2000-64 was seasonably raised to this Court; and
- Whether respondent board has committed grave abuse of discretion amounting to lack or in excess of jurisdiction.

The first issue has been squarely passed upon by this Court in its order dated September 9, 2003. To reiterate, the jurisdiction of this Court over the subject case springs from Section 4 Rule 65 of the Revised Rules of Court on Civil Procedure which unequivocally provides that petition shall be filed in the Regional Trial Court exercising jurisdiction over the territorial area if it relates to the acts or omissions of a board, among others.

What is involved in this case is a board exercising administrative discipline over the PCG officers created by the DOTC. While it is true that petitioner alleged that ESB is a quasi-judicial body exercising quasi-judicial function, such allegation is not sufficient to confer or loss jurisdiction. The crucial matter is the real import of such board to determine which court has jurisdiction. This is so because the legal precept is that jurisdiction is conferred by law and cannot be acquired by mere acquiescence of the parties. Respondent board not being co-equal body of the Regional Trial Court, the instant petition is validly filed to this Court.

Anent the second issue, the Supreme Court has frequently declared a long standing rule that jurisdiction over the subject matter is conferred only by the Constitution or law. It cannot be fixed by the will of the parties; it cannot be acquired through waiver, enlarged or diminished by any act or omission of the parties (*Mun. of Sogod v. Rosal*, G.R. No. L-38204, Sept. 24, 1991, 201 SCRA 632). Thus, the fact that petitioner had once sat as member of ESB, by itself, could not prevent him from questioning the jurisdiction of respondent board.

x x x x

Department Order No. 2000-61, creating the PCG-ESB, was issued on November 6, 2000 by the DOTC pursuant to the Executive Order No. 477, series of 1998 promulgated by then President Fidel V. Ramos. It is undisputed, however, that with the advent of said EO 477, the PCG has ceased to exist as a major unit of the

Philippine Navy and they were, as a consequence, separated from the command of the Armed Forces of the Philippines (AFP). Not being part of Phil. Navy or AFP, PCG loses its military character and civilianized in the process.

However, subsequently, the DOTC issued the questioned circular, Memorandum Circular No. 2000-64, which outlined the rules and regulations on the discharge or separation by administrative action of all PCG officers. This circular was made and adopted pursuant to Executive Order No. 337, series of 1998.

x x x x

Thereafter, on December 9, 2002, the DOTC issued Department Order No. 2002-76 regarding re-composition of PCG-ESB pursuant to Department Order No 2000-61, which created the PCG-ESB.

x x x x

As borne out by the records, it is no less than the General Headquarters of the AFP, through the Deputy Chief of Staff of Personnel (J-1) who categorically stated and confirmed that PCG has ceased to be a major unit of the Philippine Navy, AFP.

x x x x

Moreover, in the cited case of *ELPIDIO SORIANO v. REUBEN S. LISTA, et al.*, G.R. No. 153881, March 24, 2003, the Supreme Court has made an express pronouncement that the PCG is under the DOTC and no longer part of the Philippine Navy or the Armed Forces of the Philippines. And while public respondents may argue that such ruling refers to the promotion of PCG Officers, this court could not see any reason why such pronouncement could not be applied on the appropriateness of continuous adaptation of military system in the PCG notwithstanding the irreversible fact that it is no longer part of the military establishment.

x x x x

This Court is not saying that the DOTC cannot issue a Department Order or Circular for the discipline of PCG officers. The DOTC has all the rights to do so being tasked of the administrative supervision over PCG. But as manifested by private respondent's counsel on their comment, it is the Civil Service Administrative Disciplinary Rules on Sexual Harassment that should govern because DOTC is a civilian component of government such that the DOTC Secretary should create the Committee on Decorum and Investigation (CODI) of the PCG, which should handle all cases of sexual harassment pursuant to CSC Resolution No. 01-0940.

This Court does not agree with public respondent's view that PCG-ESB could proceed independently of another PCG Administrative proceeding. As there is only one act complained of, there must be only one administrative proceeding in the PCG against petitioner, which regrettably, ESB, a military type proceeding is not appropriate.[13]

Public respondents moved for reconsideration.[14] The motion was, however, denied in an Order[15] dated October 28, 2005.

Representing public respondents, the Office of the Solicitor General (OSG) appealed to the CA, submitting the following issues:

(I)

Does the trial court have jurisdiction to pass upon PCG-ESB orders dated July 10, 2003 and July 31, 2003 and to enjoin the administrative proceedings being conducted by the PCG-ESB which, according to Capt. Caballero's judicial admission, is a quasi-judicial body exercising quasi-judicial functions?;

(II)

Was the petition below questioning the validity of DOTC Department Orders Nos. 2000-61 and 2002-76, as well as Memorandum Circular No. 2000-64 filed seasonably?;

(III)

Are DOTC Department Order No. 2000-61, which created the PCG-ESB, and DOTC Department Order No. 2002-76, which recomposed the PCG-ESB lawful?;

(IV)

Is DOTC Memorandum Circular No. 2000-64, which prescribes the rules and regulations for the discharge or separation by administrative action of PCG uniformed personnel lawful?; and,

(V)

Does the PCG-ESB have jurisdiction to conduct administrative proceedings against Capt. Caballero?[16]

CA Disposition

On June 19, 2006, the CA gave judgment in favor of public respondents, disposing as follows:

WHEREFORE, premises considered, the present appeal is hereby GRANTED and the appealed Decision dated August 2, 2005 of the Regional Trial Court of Manila, Branch 37 in Civil Case No. 03-107563 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the petition for certiorari and prohibition for lack of merit.

No pronouncement as to costs.

SO ORDERED.[17]

Issues

His motion for reconsideration having been denied, petitioner has resorted to the present recourse under Rule 45, raising twin issues:

- WHETHER THE HONORABLE COURT OF APPEALS RULED IN ACCORDANCE WITH THE PREVAILING LAWS AND JURISPRUDENCE, PARTICULARLY THE RULING OF THIS COURT IN THE CASE OF SORIANO III VS. LISTA, (399 SCRA 437), WHEN IT HELD THAT UNIFORMED PERSONNEL OF THE PHILIPPINE COAST GUARD (PCG) ARE STILL COVERED BY THE MILITARY LAW ON ADMINISTRATIVE DISCIPLINE, THEREBY VESTING JURISDICTION TO PCG-ESB.

- WHETHER THE MANIFEST BIAS OF THE MEMBERS OF THE PCG-ESB AGAINST THE PETITIONER HAS OUSTED THEM OF ITS JURISDICTION TO TRY AND DECIDE THE CASE OF THE PETITIONER.[18] (Underscoring supplied)

Our Ruling

Before discussing at length the issues hoisted by petitioner, it would be instructive to look into the background relating to the establishment of the PCG.

The PCG was established by virtue of Republic Act (RA) No. 5173.[19] This Republic Act institutionalized the PCG as a major unit of the Philippine Navy. The relevant provisions of the said law read:

SECTION 1. Coast Guard Objectives. - There is hereby created in the Philippine Navy a major unit to be known as Philippine Coast Guard which shall have the following general objectives:

x x x x

SECTION 4. Organization; Administration. - The Philippine Coast Guard shall be headed by a Commandant who shall be a Flag Officer. Subject to the approval of the Secretary of National Defense, the Flag Officer-in-Command, Philippine Navy, shall organize the Philippine Coast Guard into operational units of subordinate commands and equip the same as may be necessary for effective exercise of the functions and duties vested upon it by law, and shall promulgate rules and regulations necessary for its administration. The Philippine Coast Guard shall be administered and maintained as a separate unit of the Philippine Navy, and it shall be specially trained and equipped for the effective discharge of police duties at sea.[20] (Underscoring supplied)

On March 30, 1998, President Fidel V. Ramos issued Executive Order (EO) No. 475[21] which transferred the PCG from the Department of National Defense (DND) to the Office of the President. The transfer was made pursuant to the President's authority under Section 31, Chapter 10, Title III, Book III of EO No. 292 (Administrative Code of 1987) to reorganize the Office of the President through the transfer of any agency or function to the Office of the President. EO No. 475 contains a third "whereas" clause,[22] which states that the Philippine Coast Guard remains a subordinate unit of the Philippine Navy. Further, Sections 3 and 6 of EO No. 475 states:

SECTION 3. Implementing Requirements. - There is hereby created a Transition and Liquidation Committee to be composed of the DOTC as Chairman, the Philippine Navy, PCG, Department of Budget and Management and the Office of the President as members. These agencies shall designate their respective representatives to this Committee which shall recommend to the President the necessary plans and measures to effect the transfer within 30 days from the signing of this EO. The Committee shall likewise, undertake the appropriate inventory and disposition of all PCG properties.

x x x x

SECTION 6. Pay, Allowances, and Retirement of Uniformed Personnel. - PCG uniformed personnel shall continue to receive the same base pay, longevity pay, and other allowances and benefits as authorized for corresponding grades and ranks in the AFP. PCG uniformed personnel shall continue to be covered by PD 1638 (AFP Retirement Law), as amended, until such time as the PCG is able to establish its own retirement system under a regime and timetable agreed upon by the Committee.[23]

Subsequently, President Ramos issued EO No. 477 on April 15, 1998 transferring the PCG to the DOTC. Section 1 of EO No. 477 states:

Section 1. Transfer. - The PCG is hereby transferred from the Office of the President to the DOTC. The DOTC shall exercise administrative supervision over the PCG. (Underscoring supplied)

EO No. 477 also provided that the Transition and Liquidation Committee (TLC) created pursuant to EO No. 475 shall continue to exercise its functions. Section 3 of EO No. 477 specifically provided:

The Committee shall likewise prepare plans and measures to ensure the smooth transfer of personnel from the PN to the PCG. Such plans and measures shall include the rules and guidelines covering matters pertaining to the transfer of commissioning of PCG officers, the administration and discipline and order during the transition period and appointments and promotions and benefits of officers and enlisted men of the PCG, among others.[24] (Underscoring supplied)

Section 6 of EO No. 477 further provided that PCG uniformed personnel shall continue to receive the same base pay, longevity pay and other allowances and benefits authorized for corresponding grades and ranks in the AFP. The same section likewise declared that PCG uniformed personnel shall continue to be covered by the AFP Retirement Law until such time as the PCG is able to establish its own retirement system as provided for by the transition committee.[25]

On May 15, 1998, in accordance with the directives contained in both EO Nos. 475 and 477, Arturo T. Valdez, DOTC Undersecretary and Chairman of the PCG Transition and Liquidation Committee (PCG-TLC), submitted to then President Ramos a report on the plans and measures to effect the implementation of PCG's transfer to DOTC. Noteworthy is Section A(5) and (6) of the said report which states:

PHILIPPINE COAST GUARD TRANSITION AND
LIQUIDATION COMMITTEE

(EO 475 & EO 477)

PLANS AND MEASURES TO IMPLEMENT EXECUTIVE ORDERS 475 & 477

CONCERN

PLAN/MEASURE

IMPLEMENTING
DOCUMENT

A. PERSONNEL MANAGEMENT

x x x x

5. Administration of Discipline and Order

Under Section 4 of RA No. 5173, the PCG shall, "subject to the approval of the Secretary of the National Defense, promulgate rules and regulations necessary for its administration." Since Section 1 of EO No. 477 transfers administrative supervision over the PCG to the DOTC, approval for the promulgation of such rules and regulations now rests upon the Secretary, DOTC. A PCG Code of Discipline for Uniformed Personnel shall therefore be formulated and promulgated subject to the Secretary's approval.

By DOTC (being formulated)

6. Procurement, Promotion, Separation and Attrition

Under Section 4 of RA No. 5173, the PCG shall "subject to the approval of the Secretary of National Defense x x x promulgate rules and regulations necessary for its administration." Since Section 1 of EO No. 477 transfers administrative supervision over the PCG to the DOTC, approval for the promulgation of such rules and regulations now rests upon the Secretary, DOTC. Coast Guard/DOTC guidelines covering procurement, promotion, separation and attrition shall therefore be formulated and promulgated subject to the Secretary's approval. Until such guidelines are promulgated, however, the PCG shall remain covered by pertinent AFP/PN rules and regulations.

PCG/DOTC guidelines (being formulated by the PCG for the approval of the Secretary, DOTC)

Subsequently, the DOTC issued the following DOs relative to the exercise of its administrative supervision over the PCG:

First, on November 6, 2000, the DOTC issued DO No. 2000-61 creating the PCG-ESB. DO No. 2000-61 was issued by the DOTC by virtue of EO No. 477 which provided for the transfer of the PCG to the DOTC and DND Memorandum Circular No. 30 which provided that all applicable laws pertaining to discipline, law and order shall remain applicable to the PCG.

Second, the DOTC issued Memorandum Circular No. 2000-64 which provided for the discharge or separation by administrative action of PCG officers. Pertinent provisions of the said order are as follows:

1. Purpose. - Pursuant to paragraph 12 of Executive Order No. 337 dated 13 September 1998 hereby prescribed are the rules and regulations as well as the procedures governing the discharge or separation from the Coast Guard service of PCG Officers.

2. Discharge or Separation from the Service. - PCG Officer shall be administratively discharged or separated from the service as provided in EO# 337, series of 1998 and these implementing rules and regulations.

a. Referral of Case for Misconduct. - When a PCG Officer commits any act of misconduct of such a nature and gravity as to warrant his/her discharge or separation from the service, his/her name and record shall be referred by the Commandant, Philippine Coast Guard to the PCG Efficiency and Separation Board for the determination of his/her suitability or fitness for retention in the service.

x x x x

4. PCG Efficiency and Separation Board. -

a. Designation. - The Efficiency and Separation Board established under Executive Order No. 337, s-88 shall be officially designated as the Philippine Coast Guard Efficiency and Separation Board.

I. Being now subject to the administrative supervision of the DOTC, the PCG has become a civilian agency with a distinct administrative disciplinary system for its uniformed personnel administered by the PCG-Efficiency and Separation Board.

Petitioner essentially argues that the PCG-ESB is devoid of any authority to conduct administrative disciplinary proceedings against him. According to petitioner, the transfer of the PCG to the DOTC has stripped the ESB, which adopts military rules of procedure in the conduct of its proceedings, of authority and jurisdiction over him. It is asserted that civil service law and rules should be adopted in the conduct of any administrative disciplinary measures against PCG personnel, uniformed or non-uniformed.

We are not persuaded. EO No. 477 vested the DOTC with administrative supervision over the PCG. Under the Administrative Code of 1987, administrative supervision covers the following:

(2) Administrative Supervision. - (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions x x x.[26]

Pursuant to this authority, the DOTC via Memorandum Circular No. 2000-61 created the PCG-Efficiency and Separation Board to oversee the promotion, discharge or separation from the service of PCG uniformed personnel. The memorandum circular likewise prescribed the rules, regulations and the procedures to be adopted by the ESB in the performance of its functions.

It bears stressing that the authority of the ESB extends only to the promotion, discharge or separation from the service of uniformed personnel. The non-uniformed or civilian complement of the PCG became subject to the

disciplinary rules pervading in the mother department, DOTC, which of course are the pertinent civil service laws, rules and regulations.

That the ESB rules of procedure are akin to the rules permeating administrative proceedings adopted by the Armed Forces of the Philippines and the Philippine Navy does not remove the PCG from the ambit of a civilian agency. It remains a civilian component of the DOTC regardless of the nature of the rules of procedure of the ESB. This is because the PCG is a distinct instrumentality performing an essential function - that of enforcing the country's maritime laws. As such, its officers are not similarly situated as ordinary civil service employees. The adoption of a distinctive administrative disciplinary mechanism different from that of other government agencies is clearly justified.

This is not a novel issue. In the recent *Manalo v. Calderon*,^[27] this Court recognized that the Philippine National Police has an administrative disciplinary system distinct from that of ordinary agencies. Its personnel are different from ordinary civil service employees. We held then:

Lastly, petitioners contend that by placing them under restrictive custody, they are made to suffer lesser rights than those enjoyed by private citizens. On this score, the Court's pronouncement in *Canson, et al. v. Hidalgo, et al.* is categorical. It was held there that although the PNP is civilian in character, its members are subject to the disciplinary authority of the Chief, Philippine National Police, under the National Police Commission. Courts cannot, by injunction, review, overrule, or otherwise interfere with valid acts of police officials. The police organization must observe self-discipline and obey a chain of command under civilian officials.

Elsewise stated, police officers are not similarly situated with ordinary civil service employees. The PNP has its own administrative disciplinary mechanism different from those of other government employees. Sa ibang salita, ang kapulisan ay hindi katulad ng karaniwang kawani ng pamahalaan. Ang PNP ay may sariling mekanismo ng pagdisiplina na kaiba sa ipinatutupad sa ibang empleyado ng gobyerno.

In *Fianza v. The People's Law Enforcement Board, et al.*, we ruled:

x x x although respondent policemen continue to be citizens, as public respondents contend, they are not the 'private citizens' referred to in the laws cited above. Clearly, the term 'private citizens' does not ordinarily include men in uniform, such as the respondent PNP men. This is particularly evident in the PNP law which uses the term 'members of the PNP' as well as 'private citizens' to refer to different groups of persons and not interchangeably. The 'plain meaning rule' or *verba legis* in statutory construction is applicable in this situation. When the words of a statute are clear, plain, and free from ambiguity, it must be given its interpretation. The term 'private citizen' in the PNP Law and PLEB Rules is used in its common signification and was not meant to refer to the members of the PNP, such as respondent policemen.^[28]

We take the same position here. The Philippine Coast Guard is a distinct agency. Its uniformed personnel ought not to be treated in the same manner as other civil servants.

Too, petitioner's reliance on *Soriano III v. Lista*^[29] is misplaced. There is nothing in the said case that would indicate that the administration and discipline of PCG uniformed personnel should be patterned after pertinent civil service laws and rules. Said the Court in *Lista*:

x x x As aptly pointed out by the Solicitor General, the PCG used to be administered and maintained as a separate unit of the Philippine Navy under Section 4 of RA 5173. It was subsequently placed under the direct supervision and control of the Secretary of the Department of National Defense (DND) pursuant to Section 4 of PD 601. Eventually, it was integrated into the Armed Forces of the Philippines (AFP) as a major subordinate unit of the Philippine Navy under Section 54 of Chapter 8, Sub-title II, Title VIII, Book IV of EO 292, as amended.

However, on March 30, 1998, after the aforesaid changes in the charter of the PCG, then President Fidel V.

Ramos, in the exercise of his statutory authority to reorganize the Office of the President, issued EO 475 transferring the PCG from the DND to the Office of the President. He later on again transferred the PCG from the Office of the President to the Department of Transportation and Communications (DOTC).

Now that the PCG is under the DOTC and no longer part of the Philippine Navy or the Armed Forces of the Philippines, the promotions and appointments of respondent officers of the PCG, or any PCG officer from the rank of captain and higher for that matter, do not require confirmation by the CA.[30] (Underscoring supplied)

The issue in *Lista* was the legality of the PCG officers' appointments by the President in the absence of confirmation by the Commission on Appointments. The case did not tackle discipline and order among PCG uniformed personnel.[31] As aptly observed by the OSG, nowhere in the said decision did the Court rule that PCG officers should be covered by civil service rules.

Incidentally, there were bills filed in the Thirteenth Congress seeking to amend the PCG Charter, like Senate Bills 1287 and 2081[32] and House Bill No. 5304.[33] As noted by the appellate court:

That the PCG uniformed personnel is treated as a separate class - insofar as the maintenance of discipline and efficiency within the said institution - from that of non-uniformed civilian employees, can be gleaned from those proposed bills still pending in both the Senate and House of Representatives. Senate Bills 1287 and 2081, for instance, categorically provide that in the investigation of administrative cases against PCG officers and enlisted personnel, the PCG shall adopt the military justice system until such time that it has promulgated the provisions of the PCG Code of Discipline, Order, and Justice for PCG officers and enlisted personnel. On the other hand, the applicable rules, regulations, and guidelines promulgated by the Civil Service Commission shall govern the investigation of administrative cases against PCG non-uniformed/civilian employees. A similar provision is found in the proposed consolidated House Bill No. 5304. Significantly, HB No. 5304 and SB 1287 also contained a proviso that in times of war as declared by Congress, or the President, the PCG or parts thereof, shall be attached to the DND as a support unit.

Though indeed, the foregoing are just legislative proposals, it is an undeniable reality that the transfer of administrative supervision over PCG to the DOTC did not result in transferring jurisdiction over disciplinary actions or administrative cases involving PCG officers and enlisted personnel to the Civil Service Commission as in the case of its ordinary employees falling under the disciplinary jurisdiction of the Commission.[34]

Until these bills get approval and ripen into law, the jurisdiction and authority of the ESB over uniformed personnel, including its rules of procedure, should be respected. Otherwise, this Court would be jumping the gun on Congress. That would be indulging in impermissible judicial legislation.

II. There is no manifest bias or prejudice of the members of the PCG-ESB.

Anent the imputation of prejudice and bias on the part of the PCG-ESB Board, We rule in the negative. Public officers enjoy the presumption of regularity in the exercise of their functions. Absent any proof to the contrary, We cannot sustain the bare allegation of petitioner that the Board acted with prejudice.

The general rule is that the findings of facts of administrative bodies are conclusive and not subject to review by the Court. In proceedings before administrative and quasi-judicial bodies, substantial evidence is sufficient to establish a fact in issue. Said quantum of evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[35]

Contrary to the assertion of petitioner, We find that the evidence on record overwhelmingly establishes his administrative liability. In addition to the affidavit submitted by Dr. Liwanag, the complaint against petitioner was duly supported by the individual sworn statements of Dr. Donna B. Dinglasan, Dr. Angelita P. Costa, and Lt. Rodolfo S. Ingel, who were all detailed in the PCG Dental Detachment, where the incident complained of

transpired.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Quisumbing, Ynares-Santiago, Corona, Chico-Nazario, Leonardo-De Castro, and Brion, JJ., concur.

Puno, C.J., in the result.

Carpio, J., see separate concurring opinion.

Carpio Morales, Azcuna, and Tinga, JJ., joins the concurring opinion of J. Carpio.

Nachura[*], J., no part.

[*] No part. Justice Nachura participated in the present case as Solicitor General.

[1] Rollo, pp. 30-49. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring.

[2] Penned by Judge Vicente A. Hidalgo.

[3] Records, pp. 280-281; Exhibits "1" to "1-A."

[4] Id. at 260-265; Exhibit "D."

[5] From the records, it is unclear when the report was executed. What appears is that it was served on the parties in April 2003.

[6] Rollo, pp. 247-248; Exhibit "A."

[7] Orders dated July 10, 2003 and July 31, 2003.

[8] Creation of the Philippine Coast Guard Efficiency Separation Board (DOTC Department Order No. 2000-61).

[9] Re-composition of the Philippine Coast Guard Efficiency and Separation Board (DOTC Department Order No. 2002-76), December 9, 2002.

[10] Discharge or Separation by Administrative Action of PCG Officers (DOTC Memorandum Circular No. 2000-64).

[11] Records, pp. 611-620.

[12] Id. at 620.

[13] Id. at 614-619.

[14] Id. at 622-651.

[15] Id. at 671.

[16] Rollo, p. 40.

[17] Id. at 49.

[18] Id. at ____.

[19] An Act Creating a Philippine Coast Guard, Prescribing Its Powers and Functions, Appropriating the Necessary Funds Therefor, and For Other Purposes. Approved on August 4, 1967.

[20] Republic Act No. 5173, Secs. 1 & 4.

[21] Transferring the Philippine Coast Guard from the Department of National Defense to the Office of the President and For Other Purposes.

[22] Executive Order No. 475 -

"WHEREAS, PCG remains a major subordinate unit of the Philippine Navy by virtue of Section 54, Chapter 8, Subtitle II, Title VIII, Book IV of EO No. 292 dated 25 July 1987, otherwise known as the Administrative Code of 1987, and assigned functions pertaining to the promotion of safety of life at sea and the protection of this marine environment. x x x."

[23] Id., Secs. 3 & 6.

[24] Executive Order No. 477, Sec. 3.

[25] Id., Sec. 6.

[26] Executive Order No. 292, Chapter 7, Sec. 38.

[27] G.R. No. 178920, October 15, 2007, 536 SCRA 290.

[28] Manalo v. Calderon, id. at 17-18.

[29] G.R. No. 153881, March 24, 2003, 399 SCRA 437.

[30] Soriano III v. Lista, id. at 439-440.

[31] Id.

[32] Filed by Senators Rodolfo G. Biazon (SB 1287) and Luisa Ejercito Estrada (SB 2081). Thirteenth Congress.

[33] "An Act Transferring the Philippine Coast Guard to the Department of Transportation and Communications as an Attached Agency and Redefining Its Organization and Personnel Administration, Amending Republic Act No. 5173, and for Other Purposes." Thirteenth Congress.

[34] Rollo, pp. 47-48.

[35] Megascope General Services v. National Labor Relations Commission, G.R. No. 109224, June 19, 1997, 274 SCRA 147.

SEPARATE CONCURRING OPINION

CARPIO, J.:

I concur in the result of the majority opinion that the Philippine Coast Guard Efficiency and Separation Board (PCG-ESB) has jurisdiction to conduct administrative proceedings against Capt. Ernesto Caballero.

The Philippine Coast Guard (PCG) was created under Republic Act No. 5173 (RA 5173)[1] as a major unit of the Philippine Navy. Under Section 4 of RA 5173, the PCG is administered and maintained as a separate unit of the Philippine Navy. Pursuant to Presidential Decree No. 601, issued on 9 December 1974, the PCG was placed under the direct supervision and control of the Secretary of National Defense.[2]

On 30 March 1998, then President Fidel V. Ramos issued Executive Order No. 475, transferring the PCG from the Department of National Defense to the Office of the President. Subsequently, Executive Order No. 477 (EO 477) was issued on 15 April 1998, transferring the PCG from the Office of the President to the Department of

Transportation and Communication (DOTC). Under Section 1 of EO 477, the DOTC shall exercise administrative supervision over the PCG.

On 6 November 2000, the DOTC Secretary issued Department Order No. 2000-61, creating the PCG-ESB. Subsequently, DOTC Memorandum Circular No. 2000-64 was issued which prescribed the rules and regulations, and the procedures governing the discharge or separation from the Coast Guard service of PCG Officers. On 9 December 2002, the DOTC Secretary issued Department Order No. 2002-76 on the re-composition of the PCG-ESB. In effect, the DOTC created PCG-ESB patterned after the Efficiency and Separation Board established under Executive Order No. 337 (EO 337),^[3] and prescribed its implementing rules and regulations.

The paramount effect of the transfer of the PCG from the Department of National Defense to the Office of the President and eventually to the DOTC is the transformation of the PCG into a non-military agency. Thus, the PCG is already civilian in character. By removing the PCG under the control and supervision of the military, the PCG ceased to be a part of the military establishment, and has already assumed civilian character. Thus, in *Soriano III v. Lista*,^[4] the Court held that the promotions and appointments of PCG officers do not require confirmation by the Commission on Appointments since the constitutional provision on "officers of the armed forces from the rank of colonel or naval captain" requiring such confirmation refers only to military officers.

The DOTC's creation of PCG-ESB patterned after the Efficiency and Separation Board established under EO 337 for the Armed Forces of the Philippines and its major services does not mean that the PCG is still covered by the military rules on administrative discipline. It should be emphasized that the PCG-ESB was created under DOTC Department Order No. 2000-61, which was issued by the DOTC Secretary in the exercise of his power of administrative supervision over the PCG. Under Section 38(2), Chapter 7, Book IV of Executive Order No. 292 (EO 292),^[5] administrative supervision includes the authority of the Department to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration.^[6] Section 7(5), Chapter 2, Book IV of EO 292 provides that among the powers and functions of a Department Secretary is to exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation. The Secretary is also mandated to promulgate not only rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects, but also administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. Section 7, Chapter 2, Book IV of the Administrative Code of 1987 provides:

SEC. 7. Powers and Functions of the Secretary. - The Secretary shall:

x x x

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

x x x (Emphasis supplied)

Thus, the DOTC's administrative supervision over PCG includes the authority to adopt policies and implement appropriate measures to regulate the conduct and discipline of the PCG personnel.

Clearly, the DOTC Secretary, exercising administrative supervision over PCG pursuant to EO 477, acted within his jurisdiction and authority under EO 292 when he issued Department Order No. 2000-61, Memorandum Circular No. 2000-64, and Department Order No. 2002-76.

Thus, I submit that the creation of the PCG-ESB is valid and that the PCG-ESB has jurisdiction to conduct administrative disciplinary proceedings against Capt. Ernesto Caballero.

Accordingly, I vote to DISMISS the petition.

[1] An Act Creating the Philippine Coast Guard, Prescribing its Powers and Functions, Appropriating the Necessary Funds Therefor, and for Other Purposes.

[2] See Section 4, Presidential Decree No. 601.

[3] Prescribing Regulations Governing the Discharge or Separation by Administrative Action of Officers of the Regular Force and Reserve Officers on Extended Tour of Active Duty in the Armed Forces of the Philippines.

[4] 447 Phil. 566 (2003).

[5] Otherwise known as the Administrative Code of 1987.

[6] Section 38(2), Chapter 7, Book IV of EO 292 reads:

(2) Administrative Supervision. - Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to ensure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them.

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