

HONORABLE OMBUDSMAN SIMEON V. MARCELO, PETITIONER, VS. LEOPOLDO F. BUNGUBUNG AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 175201. April 23, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, whereby petitioner Office of the Ombudsman (Ombudsman) prays for the reversal of the Decision[1] dated 30 June 2006 and Resolution[2] dated 26 October 2006 of the Court of Appeals in CA-G.R. SP No. 89689 which, in turn, reversed and set aside the Ombudsman's Orders dated 11 January 2005 and 28 April 2005 in OMB-ADM-0-01-0502. The Ombudsman found respondent Leopoldo F. Bungubung (Bungubung) administratively liable for grave misconduct, dismissing him from the service and imposing the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and his perpetual disqualification from reemployment in government service.

The Hon. Simeon V. Marcelo represented the Ombudsman, with powers and functions provided under Article XI, Section 13 of the 1987 Constitution and the provisions of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989.

Bungubung is the Manager of the Port District Office (PDO) of Manila, Philippine Ports Authority (PPA), South Harbor, Port Area, Manila. He is also the Chairman of the Ports District Security Bids and Awards Committee (PDSBAC) of the PPA.

On 24 September 2001, Roberto C. Doromal (Doromal), the President of Combat Security & Executive Protection Agency (CSEPA), a security agency that participated in the bidding for security services for the PPA, filed a Complaint-Affidavit[3] dated 7 September 2001 against Bungubung before PPA Resident Ombudsman Manolo M. Mabini, alleging as follows:

3. That sometime in June 1995, my aforesaid wife was instrumental in negotiating and concluding a contract for Security Services with the Philippine Ports Authority (PPA), more particularly at the Port District of Manila (PDO-Manila) for two (2) years starting August 1, 1995;

x x x x

6. That after a service contract was signed by PPA and this agency on January 28, 1999, the Port District Manager of PDO-Manila, Mr. Leopoldo Bungubung and other PPA officials asked for certain amounts from my said wife as "balato" for winning the award where (sic) the latter obliged herself to give;

7. That initially, Mr. Leopoldo Bungubung and other PPA officials demanded amounts ranging from P10,000 a month down to P2,000 for him (Bungubung) and his subordinates, respectively; and my wife directed our staff, particularly the Billing and Collection Clerk and Cashier to include in our records and books of account these disbursements as "Representation expense";

8. That when my late wife died on May 3, 2000, the same arrangement was pursued and carried over through the period that I was already the one dealing with PPA, and that, sometime in late April 2000, when the security force was increased to 184 Security guards at North Harbor-Special Take-Over Unit (STU), the amount demanded by Mr. Bungubung was also increased to P40,000 a month and sometimes P50,000;

x x x x

10. That sometime in late February, 2001, one of office staff received a telephone call from a certain Capt. Valenzuela of the Port Police Dept. of PPA and because I was not around, said Capt. Valenzuela left a message advising me to see Mr. Leopoldo Bungubung for some important matters;

11. That upon receipt of the advise (sic) from my office staff, I went to PPA, with my secretary, Ms. Evalyn Cruz, to see Mr. Leopoldo Bungubung at his office located at old PNR Bldg., South Harbor, Port Area, Manila and at the same time personally delivered a sum of money amounting to P50,000 as earlier requested by him (Bungubung).

12. That during the course of my conversation with Mr. Leopoldo Bungubung after giving the P50,000, he asked from me a vehicle, Mitsubishi Pajero (late model) van, to be due and delivered supposedly to him in the middle part of March 2001 while there is no award of the winning bidder yet; and that I asked the said Bid Committee Chairman, Mr. Bungubung to give me a grace period of two (2) months to produce what he was asking from me. Unfortunately, however, due to the expensive value of the said Pajero van, I was not able to deliver. Hence, on March 30, 2001, I was served a Notice of Award of the winning bidder which is STAR SPECIAL WATCHMAN & DETECTIVE AGENCY, INC. an agency comparatively smaller than mine;

13. That taking a cue from the Pajero van being asked, I instructed my men to conduct an investigation and there, they found a late model Pajero van with Plate No. WLA-674 parked in front of the residence of Mr. Leopoldo Bungubung and later verified to have been registered and transferred on 12 March 2001 under the name of Mr. Norman Vincent Bungubung, son of Chairman Bungubung at #45 Buencamino St., BF Homes, Paranaque City.[4]

In support of the allegations in his Complaint-Affidavit, Doromal submitted an affidavit of his secretary Evalyn Cruz (Cruz) and an alleged "blue book" of CSEPA. Cruz recounted in her affidavit another incident wherein she personally handed over the amount of P50,000.00 cash to Bungubung at his office on 16 January 2001. The CSEPA blue book purportedly detailed monthly balato or payola paid to PPA officials from July 2000 to February 2001, recorded therein as representation expenses. It was allegedly prepared by a certain Evalyn M. Eboral (Eboral), and approved by Doromal.

Thereafter, PPA Resident Ombudsman Mabini released a Memorandum/Investigation Report[5] dated 25 September 2001, recommending the following:

- That criminal complaint be filed against Mr. Leopoldo F. Bungubung for violation of Section 3(b) of R.A. 3019; Section 7(d) of R.A. 6713 and Art. 211 of the RPC for demanding and receiving "balato" from COMBAT in the total amount of P320,000 more or less;
- That likewise, an administrative complaint be filed against Mr. Leopoldo F. Bungubung for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service arising from the above criminal act;
- That Mr. Leopoldo F. Bungubung be placed under Preventive Suspension for a period of six (6) months without pay pursuant to Section 24 of R.A. 6770.

From the foregoing, the following complaints were filed against Bungubung before the Ombudsman: (1) an administrative complaint for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, docketed as OMB-ADM-0-01-0502 (OMB-0-01-0793); and (2) a criminal complaint for violation of Section 3(b)

of the Anti-Graft and Corrupt Practices Act, docketed as OMB-0-01-0793.

After the parties submitted the required pleadings, a preliminary conference was held on 21 February 2002 in OMB-ADM-0-01-0502, the administrative case. Bungubung manifested therein that he was submitting the case for resolution. Doromal, however, was still undecided on whether to opt for the conduct of a formal investigation or to submit the case for resolution at once. In a Manifestation filed on 25 February 2002, Doromal informed the Ombudsman that he was opting instead for the conduct of a formal investigation for purposes of submission of evidence and affidavits of witnesses.[6]

Doromal's aforesaid manifestation notwithstanding, the Ombudsman, in an Order dated 6 March 2002, through Graft Investigation Officer II Joselito P. Fangon, ordered the submission of the case for resolution.

The parties were then required to submit their respective Memoranda.

On 28 November 2002, Graft Investigation Officer II Fangon drafted a Decision[7] which recommended the dismissal of the administrative case against Bungubung, without prejudice to its re-filing.

However, Ombudsman Marcelo disapproved Graft Investigation Officer II Fangon's 28 November 2002 Decision, and issued another Order[8] dated 11 January 2005 finding Bungubung liable for grave misconduct (which absorbed the lesser offense of conduct prejudicial to the best interest of the service) and ordering Bungubung's dismissal from service, together with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and respondent's perpetual disqualification from reemployment in government service. The dispositive part of Ombudsman Marcelo's 11 January 2005 Order reads:

WHEREFORE, the 28 November 2002 Decision prepared by the former Administrative Adjudication Bureau (AAB), this Office, recommending the dismissal (without prejudice to its re-filing) of the administrative complaint against [Bungubung] is hereby DISAPPROVED.

Respondent LEOPOLDO F. BUNGUBUNG, Port District Manager, Manila Port District, Philippine Ports Authority, is hereby found liable for Grave Misconduct and, as such, is DISMISSED from the service. The penalty of dismissal shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and [Bungubung's] perpetual disqualification from reemployment in the government service.

In the interim, the Ombudsman issued an Order[9] dated 10 September 2003 in OMB-0-01-0793, for the filing of the criminal complaint against Bungubung, after finding that there was probable cause to indict him for violation of Section 3(b) of the Anti-Graft and Corrupt Practices Act.[10]

The Ombudsman took into consideration its aforementioned 10 September 2003 Order in OMB-0-01-0793, when it found in OMB-ADM-0-01-0502 that Bungubung took advantage of his position as Chairman of the PDSBAC of the PPA, using it as leverage in soliciting cash and a Mitsubishi Pajero van from the bidders as consideration for the award of the security contract. According to the Ombudsman, such actuations constitute conduct grossly prejudicial to the best interest of the service. It rejected Bungubung's denial and instead gave credence to the attestation of Cruz that she personally delivered the P50,000.00 to Bungubung.

Bungubung filed a Motion for Reconsideration[11] of the 11 January 2005 Order of the Ombudsman in OMB-ADM-0-01-0502, but it was denied by the Ombudsman in another Order[12] dated 28 April 2005, to wit:

WHEREFORE, the Motion for Reconsideration dated 21 January 2005 filed by respondent Leopoldo F. Bungubung is DENIED. The Order dated 11 January 2005 finding him liable for Grave Misconduct thereby ordering him dismissed from the service, together with its accessory penalties, is hereby AFFIRMED.

Bungubung then sought recourse to the Court of Appeals via a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 89689. He asserted therein that the Ombudsman erred in (a) holding that there was substantial evidence to make him liable for grave misconduct, resulting in his dismissal from service and imposition upon him of the accessory penalties; and (b) ordering him dismissed from the service, when the Constitution merely empowered said office to make a recommendation of dismissal. Pending resolution of CA-G.R. SP No. 89689 by the Court of Appeals, Bungubung filed therein a Motion for Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to enjoin the Ombudsman and the PPA General Manager from implementing the Order dated 11 January 2005 which dismissed him from service.[13] The Court of Appeals granted the TRO on 3 June 2005.[14]

In the meantime, Doromal executed an Ex-Parte Manifestation and Motion to Withdraw Complaint[15] dated 18 August 2005 and an Affidavit of Desistance[16] dated 23 August 2005, which he filed before the Ombudsman. In his Ex-Parte Manifestation and Motion to Withdraw Complaint and Affidavit of Desistance, Doromal expressed his desire to withdraw his Complaint-Affidavit against Bungubung and desist from the continuance of both OMB-ADM-0-01-0502 and OMB-0-01-0793. Doromal explicitly admitted in said documents that his allegations in the administrative and criminal complaints against Bungubung were all fabricated. He further confessed that Bungubung never demanded or received any balato from him or his wife in exchange for the award of the PPA security service contract; nor did Bungubung ask for a Mitsubishi Pajero van from him.

On 30 June 2006, the Court of Appeals issued a Decision in CA-G.R. SP No. 89689 ruling in Bungubung's favor, and reversing and setting aside the Orders dated 11 January 2005 and 28 April 2005 of the Ombudsman. It further absolved Bungubung from liability for the charge of grave misconduct, finding no substantial evidence that Bungubung committed the same.

According to the appellate court:

There is merit in the petition.

Indeed, there is absence of substantial evidence to hold [Bungubung] liable for grave misconduct.

To begin with, [Doromal] and his witness failed to appear at the preliminary conference on February 21, 2005 to attest to the truth of the contents of their affidavits. For such failure, their affidavits are inadmissible as they are hearsay evidence.

x x x x

By not appearing at the preliminary conference and affirming their affidavits, We can not readily conclude that the contents thereof are true. It is highly probable that [Doromal] is only sour graping for losing the PPA 2001 service contract. As early as January 18, 2001, the bids for the 2001 service contract were already opened and authenticated. Thus, it can not be said that the bids were manipulated or rigged to favour somebody.

While rules of procedure do not strictly apply to administrative cases as long as defendant's right to due process is not violated, its liberal application in administrative cases does not allow admission of hearsay evidence, i.e. affidavits not identified by affiants, as this would violate the constitutional right of petitioner to due process and his substantive right not to be adjudged guilty on the basis of hearsay evidence.

x x x x

In the instant case, [Bungubung], in denying the assertion of Evalyn Cruz in her affidavit that she gave him P50,000.00, and in describing her claim as a self-serving fabrication, is positive evidence that what she claimed did not occur. This holds true with respect to [Bungubung's] positive denial of [Doromal's] assertion that he gave [Bungubung] another P50,000.00 in late February 2001 and that he also demanded a late model Pajero

from [Doromal].

[The Ombudsman] accepted as credible [Doromal's] claim that [Bungubung] asked for a late model Pajero in exchange for the 2001 security service contract. x x x

The following must, however, be considered:

- The rule on positive and negative testimonies do not apply where a person who is in a position to know if a fact occurred denies that it did. This is positive denial which has the same weight as a contrary assertion.
- The finding that the van was acquired after the failed solicitation and before the award readily assumes as true private respondent's bare assertion that petitioner asked him for a van.

Allegedly taking cue from his failure to deliver a Pajero van, [Doromal] had [Bungubung's] home cased and saw a Pajero in front of his house. If this is the case, why was this not mentioned by [Doromal] when he filed a civil case to stop the award of the security service contract on ground of irregularities in the bidding? Neither was this matter brought up during the hearing on the application for a TRO. [Doromal] only brought up this matter about a Pajero in his affidavit-complaint of September 7, 2001 after hearing that [Bungubung's] son has a newly-bought Pajero.

- [Bungubung] presented proof that on May 4, 2001, [Doromal] filed a false "hit-and-run" report involving the Pajero with plate WLA 674 of [Bungubung's] son. This shows the extent that [Doromal] would go just to spite [Bungubung].
- The President of Star Security Agency declared under oath that he did not give [Bungubung] any Pajero;
- The Pajero was acquired by [Bungubung's] son from a certain Teresito Uy as evidenced by a notarized deed of sale;
- It is unfair to assume that [Bungubung's] son could not afford the price of a used Pajero. He put up a glass and aluminum business after getting married.

From the foregoing, [the Ombudsman] should have dismissed the complaint for lack of substantial evidence to support it.

The fallo of the Court of Appeals' 30 June 2006 Decision reads:

WHEREFORE, the petition for review is GRANTED and GIVEN DUE COURSE. The Orders[17] of the Ombudsman dated January 11, 200[5] and April 28, 200[5] are reversed and set aside and a new one issued absolving petitioner from liability for the charge of grave misconduct.[18]

The Ombudsman filed a Motion for Reconsideration of the afore-quoted Decision, which the appellate court denied in its Resolution dated 26 October 2006 for lack of merit, thus:

Notably, the issues raised in the motion have already been thoroughly threshed out and passed upon in the assailed decision. No novel or new matters were introduced therein.

The disquisition made by the Supreme Court in *Dela Cruz vs. Department of Education, Culture and Sports-Cordillera Administrative Region* is most helpful, "We have long held that affidavits are deemed hearsay evidence because the adverse party is deprived of the opportunity to cross-examine the affiants. Hence, affidavits are generally deemed inadmissible or rejected outright unless the affiants themselves are placed on the witness stand to testify thereon.

WHEREFORE, in view of the foregoing, the instant Motion for Reconsideration is DENIED for lack of merit.[19]

Consequently, the Ombudsman filed this Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court based on the following grounds:

I.

THE RELIANCE BY THE OMBUDSMAN ON THE AFFIDAVITS OF ROBERTO DOROMAL AND HIS WITNESS IN DETERMINING [BUNGUBUNG]'S ADMINISTRATIVE LIABILITY WAS PROPER. IT DID NOT DEPRIVE [BUNGUBUNG] OF DUE PROCESS;

II.

THE FINDING OF ADMINISTRATIVE OFFENSE FOR GRAVE MISCONDUCT AGAINST [BUNGUBUNG] IS SUPPORTED BY SUBSTANTIAL EVIDENCE;

III.

AS CONSEQUENTLY HELD BY THE SUPREME COURT, THE FINDINGS OF THE OMBUDSMAN DESERVE GREAT WEIGHT, AND MUST BE ACCORDED FULL RESPECT AND CREDIT.

The Ombudsman prays that this Court render a Decision nullifying and setting aside the Decision dated 30 June 2006 and Resolution dated 26 October 2006 of the Court of Appeals in CA-G.R. SP No. 89689, and affirming the Ombudsman's Orders dated 11 January 2005 and 28 April 2005 in OMB-ADM-0-01-0502 which found Bungubung guilty of Grave Misconduct and dismissing him from service with all the accessory penalties incident thereto.

Bungubung counters that the Court of Appeals correctly held that there was no substantial evidence to hold him liable for grave misconduct; and that the reliance by the Ombudsman on the affidavits of Doromal and Cruz in determining his administrative liability, despite the fact that the contents thereof were not personally attested to by the affiants before the Ombudsman, was a clear violation of his right to due process. He also avers that the Court of Appeals was correct in giving credence to the Ex-Parte Manifestation and Motion to Withdraw the Complaint and Affidavit of Desistance, filed by Doromal with the Ombudsman in August 2005, as proof of Bungubung's lack of culpability.

The present Petition must fail.

Before proceeding to the merits of the instant Petition, this Court deems it necessary to first address the allegation of Bungubung that he was denied due process by the Ombudsman. The fact that no formal hearing took place is not sufficient ground to say that due process was not afforded Bungubung. It is well-settled that in administrative proceedings, including those before the Ombudsman, cases may be submitted for resolution on the basis of affidavits and pleadings. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimonies.[20] Undoubtedly, due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of,[21] which requirement was afforded Bungubung.[22]

In *Mangagawa ng Komunikasyon sa Pilipinas v. National Labor Relations Commission*,[23] this Court held that:

[A]ctual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching questions to unclear witnesses. This is a procedural right which the employee must, however, ask for it is not an inherent right, and summary proceedings may be conducted. This is to correct the common but

mistaken perception that procedural due process entails lengthy oral arguments. Hearings in administrative proceedings and before quasi-judicial agencies are neither oratorical contests nor debating skirmishes where cross examination skills are displayed. Non-verbal devices such as written explanations, affidavits, positions papers or other pleadings can establish just as clearly and concisely aggrieved parties' predicament or defense. What is essential is ample opportunity to be heard, meaning, every kind of assistance that management must accord the employee to prepare adequately for his defense.

After the filing of the Complaint, Bungubung was allowed by the Ombudsman to submit the following: (a) a counter-affidavit refuting the charges against him; (b) a rejoinder-affidavit; and (c) a Motion for Reconsideration of the 11 January 2005 Order of the Ombudsman. Moreover, Bungubung had the option to subject the case to a formal investigation, but his Manifestation dated 21 February 2002 before the Ombudsman was evidence that he did not choose to do so and, instead, agreed to submit the case for resolution on the basis of the affidavits on record. These facts establish that Bungubung was not deprived of his right to due process, having ample opportunity to present his side before the Ombudsman. In fact, it was only later on in a Manifestation filed on 25 February 2002 that Doromal changed his mind and informed the Ombudsman that he was opting instead for the conduct of a formal investigation.

That point having been settled, this Court moves on to determine the merits of the Petition at bar.

The Petition primarily involves questions of fact, pitting against each other the findings of fact of the Court of Appeals and those of the Ombudsman, both of which depended on the probative weight to be given to the affidavits of Doromal, Cruz, and the alleged CSEPA blue book.

We stress the procedural tenet that a petition for review on certiorari filed with this Court under Rule 45 of the Revised Rules of Court shall raise only questions of law.[24] A question of law has been defined as one that does not call for any examination of the probative value of the evidence presented by the parties;[25] a question of fact arises when the doubt or difference pertains to the truth or falsehood of alleged facts or when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole and probabilities of the situation.[26] We have consistently held that in a petition for review on certiorari, this Court does not sit as an arbiter of facts for it is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below.[27] Such factual findings can be questioned only if, among other exceptions,[28] the findings of fact are conflicting and the findings of the Court of Appeals are contrary to those of the lower court and/or administrative agency, which exceptional circumstances are present herein, thus, justifying the review by this Court of the factual findings of the Ombudsman and the Court of Appeals.

In *Montemayor v. Bundalian*,[29] this Court laid down the following guidelines for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial power:

First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It 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. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing 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. Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally

instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.

As stated above, the fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. Section 27 of the Ombudsman Act is unequivocal: Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Conversely, therefore, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts. Such is the case in the present Petition.

Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable.[30] The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of,[31] even if such evidence might not be overwhelming or even preponderant.[32] While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case,[33] or evidence beyond reasonable doubt as is required in criminal cases,[34] it should be enough for a reasonable mind to support a conclusion. There is none here.

Bungubung is being charged with the administrative offense of Grave Misconduct, which has been authoritatively defined in *Amosco v. Judge Magro*[35] as:

Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office. x x x.

In *In re: Impeachment of Horilleno*,[36] this Court authoritatively defined serious misconduct --

"[S]ufficient cause" must exist in the judgment of the Supreme Court involving "serious misconduct." The adjective is "serious"; that is, important, weighty, momentous, and not trifling. The noun is "misconduct"; that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. x x x.

Being guided accordingly by the aforementioned evidentiary rules and jurisprudence, this Court finds that the evidence on record in the present case does not constitute substantial evidence of Bungubung's administrative culpability for grave misconduct.

Within the field of administrative law, while strict rules of evidence are not applicable to quasi-judicial proceedings, nevertheless, in adducing evidence constitutive of substantial evidence, the basic rule that mere allegation is not evidence cannot be disregarded.[37]

In his Affidavit-Complaint, Doromal accused Bungubung of soliciting and receiving P100,000.00 from him and a Mitsubishi Pajero van from another bidder in exchange for the award of the security services contract of the PPA. Doromal also accused Bungubung and other PPA employees of demanding and receiving balato in consideration of the award of the PPA Security Service Contract.

In addition to his Complaint-Affidavit, Doromal submitted a Reply-Affidavit, as well as the following supporting documents:

(a)

Affidavit of Evalyn Cruz, his secretary;

(b)

CSEPA blue book detailing the monthly "balato" or "payola" paid to PPA officials and employees, referred to therein as representation expenses.

On the other hand, Bungubung filed his Counter-Affidavit and Rejoinder-Affidavit. In his defense, Bungubung further submitted the following evidence:

(a)

Affidavit of Celso A. Fernandez, President and Chairman of Star Special Watchman and Detective Agency, Inc., the winning bidder, who denied giving any money or a Pajero to Bungubung;

(b)

Affidavit of a certain Rufino Valenzuela, who denied giving instructions for Doromal to go to Bungubung's office;

(c)

A copy of the petition in Civil Case No. 01-100678, entitled "Roberto C. Doromal, etc. v. Philippine Ports Authority, et al.," questioning the legality of the case filed by Doromal against Bungubung before the RTC to show that Doromal never mentioned therein that Bungubung requested for a Pajero from him;

(d)

A copy of the Deed of Sale of the Pajero executed by Teresito Uy in favor of Norman Vincent Bungubung, as proof that the said vehicle was bought and is now owned by Bungubung's son;

(e)

A copy of the "Traffic Incident Report" of the Central Police Traffic Enforcement Office to evidence the fabricated "hit and run" charge made by an employee of CSEPA against the Pajero owned by Bungubung's son; and

(f)

PSBAC Resolutions establishing that the award of the PPA Security Contracts was made by public bidding.

The Ombudsman chose to give more credence to Doromal's allegations and evidence when it found that Bungubung took advantage of his position as Chairman of the PSBAC and used it as leverage in soliciting cash and a Mitsubishi Pajero van from the bidders as a consideration for the award of the PPA security service contract. However, Doromal's evidence is hardly substantive.

First, Doromal's allegation that Bungubung acquired the Mitsubishi Pajero van from another bidder after failing to successfully solicit the same from him is highly suspect, since Doromal only narrated the alleged solicitation in his Affidavit-Complaint against Bungubung filed with the Ombudsman on 7 September 2001. He failed to mention such a significant circumstance in Civil Case No. 01100678, Roberto C. Doromal v. Philippine Ports Authority, before the RTC or in his petition for TRO in the same case, both of which were filed ahead of his Affidavit-Complaint before the Ombudsman.

Second, little weight should be given to the CSEPA blue book allegedly detailing the monthly payola or balato paid to PPA officials and employees from July 2000 to February 2001, recorded therein as representation expenses. According to the CSEPA blue book, the following PPA key officials received monthly representation

allowances:

NAME POSITION PERIOD TOTAL AMOUNT

Mr. Cecilio AGM Operations July 2000-Feb 2001 P200,000.00

Leopoldo Bungubung Port District Manager July 2000-Feb 2001 P300,000.00

Ted Alcalde District Manager July 2000-Feb 2001 P144,000.00

Capt. Gamis Chief of Port Police - North Harbor July 2000-Feb 2001 P144,000.00

Felix Barcala Chief of Port Police - South Harbor July 2000-Feb 2001 P35,000.00

Alex Cruz July 2000- Feb 2001 P144,000.00

The CSEPA blue book, however, is evidently self-serving. The entries therein were purportedly made by a certain Ebor, who was never presented to personally identify the entries she made or confirm the same. The only other person involved in the preparation of the blue book was Doromal who supposedly approved the entries therein. The blue book is not audited, nor is it subject to review by an independent party. The blue book then can easily be manufactured. Considering the seriousness of the charges which may arise against the public officers named therein, the entries in the blue book must not be accepted at face value when the entries therein are uncorroborated by any other evidence.

Third, while the Ombudsman gave much weight and credit to Doromal's evidence, it lightly brushed aside that submitted by Bungubung. Among Bungubung's evidence which the Ombudsman failed to consider was a copy of the "Traffic Accident Incident Report" prepared by the Central Police Traffic Enforcement Office, stating that on 4 May 2001, Doromal filed a false report of a "hit-and-run" incident which supposedly occurred on 1 May 2001 involving the Mitsubishi Pajero van of Bungubung's son. The report was made by the police investigator in his official capacity; thus, it enjoys the presumption of regularity and is a prima facie evidence of the facts therein stated. The filing of the false report establishes ill motive on the part of Doromal specifically directed against Bungubung.

Fourth, the main defense put up by Bungubung is complete denial, a defense which is said to be the weakest, seldom believed or given weight, as it is easy to fabricate. Nonetheless, Bungubung's denial of -- (a) Cruz's allegation in her affidavit that she personally gave Bungubung P50,000.00 on 16 January 2001; (b) Doromal's assertion in his affidavit that he gave Bungubung another P50,000.00 in late February 2001; and (c) Doromal's assertion that Bungubung demanded from him a late model Mitsubishi Pajero van -- is given weight in this instance.

In the absence of corroborative evidence, the Court would not be prepared to accept the usual lame defense of denial over the straightforward and positive declaration of a witness since denials constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. Thus, in the case of contradictory declarations and statements, greater weight is generally given to positive testimonies than to mere denials.[38]

In this instance, however, Bungubung's denial of the allegations against him are supported by his own controverting evidence. In contrast, Doromal's Complaint-Affidavit and Cruz's Affidavit support only each other.

Finally, this Court cannot ignore Doromal's Ex-Parte Manifestation and Motion to Withdraw Complaint dated 18 August 2005 and Affidavit of Desistance dated 23 August 2005, which he filed with the Ombudsman. In both documents, Doromal expressed his desire to withdraw his Complaint-Affidavit filed with the Ombudsman and

desist from the continuance of the criminal and administrative complaints against Bungubung. Doromal explicitly admitted therein that he merely fabricated all his allegations against Bungubung.

While this Court looks with disfavor on affidavits of desistance, still, its effect on the instant case cannot be ignored. Doromal's Affidavit of Desistance includes an explicit admission that he fabricated the charges against Bungubung. Therefore, Doromal's Affidavit of Desistance is an express repudiation of the material points alleged in his Complaint-Affidavit, and not a mere expression of his lack of interest to pursue his complaints against Bungubung. Since Doromal willfully and knowingly executed his Affidavit of Desistance, there being no showing that he was made to do so fraudulently or under duress, then it may be admitted and considered as evidence which considerably puts into question the probative value of the Affidavit-Complaint he executed earlier and he now repudiates.

In *Gaviola v. Salcedo*,^[39] which involved an administrative case for suspension or disbarment against a lawyer, this Court gave probative value to the Affidavit of Desistance of the complainant, pronouncing that while the filing of an Affidavit of Desistance by the complainant for lack of interest does not ipso facto result in the termination of the administrative case, it was constrained to dismiss the charges since such charges cannot be proven without the evidence of the complainant and her witnesses. Such is the case at bar. Essentially, the administrative case against Bungubung was based on the allegations made by Doromal in his Affidavit-Complaint, without which, the case against Bungubung collapses.

The Court of Appeals therefore took proper notice of Doromal's Ex-Parte Motion to Withdraw the Affidavit-Complaint and Affidavit of Desistance since they cast a different light on the evidence previously considered by the Ombudsman.

After evaluating the totality of evidence on record, this Court reaches the inescapable conclusion that complainant Doromal failed to present substantial evidence that Bungubung is administratively liable for grave misconduct.

As this Court declared in *Ang Tibay v. Court of Industrial Relations*,^[40] the assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force.

WHEREFORE, premises considered, the Petition for Review on Certiorari is DENIED. The Decision dated 30 June 2006 and Order dated 26 October 2006 of the Court of Appeals in CA-G.R. SP No. 89689 are AFFIRMED.

No Costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Marina L. Buzon and Regalado E. Maambong concurring; rollo, pp. 46-61.

[2] Rollo, pp. 64-65.

[3] Incidentally, Doromal also filed on 25 April 2001 a Petition for Prohibition (rollo, pp. 107-133) with prayer for the Issuance of Preliminary Injunction and/or Temporary Restraining Order (TRO) before the Regional Trial Court (RTC) of the National Capital Region (NCR), captioned as "Roberto C. Doromal, doing business under the firm name/style of Combat Security and Executive Protection Agency vs. Philippine Ports Authority, Leopoldo F. Bungubung in his capacity as Port District Manager, PDC - Manila and as Chairman of PDS BAC and Alfonso G.

Cusi and Star Special Watchman and Detective Agency," docketed as Case No. 01100678.

[4] Rollo, pp. 318-319.

[5] CA rollo, pp. 67-71.

[6] Rollo, p. 93.

[7] Annex J to the Petition for Review before the Court of Appeals, pp. 94-106.

[8] Rollo, pp. 84-87.

[9] Page 2 of the 11 January 2005 Order of the Ombudsman.

[10] Section 3(b) of the Anti-Graft and Corrupt Practices Act (RA 3019, as amended) provides:

SEC. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

[11] Rollo, pp. 39-59.

[12] Id. at 88-92.

[13] Id. at 135-140.

[14] Id. at 144-145.

[15] Id. at 217-218.

[16] Id. at 214-216.

[17] Erroneously cited as 2001 instead of 2005 in the CA decision dated 30 June 2006.

[18] Rollo, p. 45.

[19] Id. at 64-65.

[20] *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 473, citing *CMP Federal Security Agency, Inc. v. National Labor Relations Commission*, 362 Phil. 439, 450 (1999).

[21] *Vertudes v. Buenaflor*, G.R. No. 153166, 16 December 2005, 478 SCRA 210, 227-228, citing *Velasquez v. Hernandez*, G.R. No. 150732, 31 August 2004, 437 SCRA 357, 368; *Adiong v. Court of Appeals*, 422 Phil. 713, 720 (2001); *Vda. de Dela Cruz v. Abille*, 405 Phil. 357, 366 (2001).

[22] *Huertas v. Gonzales*, G.R. No. 152443, 14 February 2005, 451 SCRA 256, 270; *Samalio v. Court of Appeals*, *supra* note 20.

[23] G.R. No. 90964, 10 February 1992, 206 SCRA 109, 115.

[24] Section 1, Rule 45, Revised Rules of Court.

[25] Philippine National Bank v. Pike, G.R. No.157845, 20 September 2005, 470 SCRA 328, 339-340.

[26] Secretary of Education v. Heirs of Rufino Dulay, Sr., G.R. No. 164748, 27 January 2006, 480 SCRA 452, 460, citing Philippine National Bank v. Court of Appeals, 392 Phil. 156, 171 (2000); Bernardo v. Court of Appeals, G.R. No. 101680, 7 December 1992, 216 SCRA 224, 332.

[27] Metropolitan Bank & Trust Co. v. Barrientos, G.R. No. 157028, 31 January 2006, 481 SCRA 311, 320-321; German Machineries Corporation v. Endaya, G.R. No. 156810, 25 November 2004, 444 SCRA 329, 340; Fortuna v. People, 401 Phil. 545, 550 (2000).

[28]The exceptions to this rule include the following instances: (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial courts; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Sering v. Court of Appeals, 422 Phil 467, 471-472 (2001); Fuentes v. Court of Appeals, 335 Phil. 1163, 1168-1169 (1997).

[29] 453 Phil. 158, 167 (2003).

[30] Tapiador v. Office of the Ombudsman, 429 Phil. 47, 54 (2002); Audion Electric Co., Inc. v. National Labor Relations Commission, G.R. No. 106648, 17 June 1999, 308 SCRA 340, 351; Association of Independent Unions in the Phils. v. National Labor Relations Commission, G.R. No. 120505, 25 March 1999, 305 SCRA 219, 231; Gonzales v. National Labor Relations Commission, G.R. No. 125735, 26 August 1999, 313 SCRA 169, 174.

[31] Consolidated Food Corporation v. National Labor Relations Commission, G.R. No. 118647, 23 September 1999, 315 SCRA 129, 141.

[32]Coca Cola Bottlers Philippines, Inc. v. National Labor Relations Commission, G.R. No. 78787, 18 December 1989, 180 SCRA 195, 200-201.

[33] Buduhan v. Pakurao, G.R. No. 168237, 22 February 2006, 283 SCRA 116, 122.

[34] People v. Caiñgat, 426 Phil. 782, 792 (2002).

[35]165 Phil. 110, 112 (1976); Manuel v. Judge Calimag, Jr., 367 Phil. 162, 166 (1999).

[36]43 Phil. 212, 214 (1922).

[37] Narazo v. Employees' Compensation Commission, G.R. No. 80157, 6 February 1990, 181 SCRA 874, 877; Government Service Insurance System v. Court of Appeals, 357 Phil. 511, 529 (1998).

[38] People v. Antonio, G.R. No. 107950, 17 June 1994, 233 SCRA 283, 299; Vda de Ramos v. Court of Appeals, 171 Phil. 354, 364 (1978).

[39] A.C. No. 3037, 20 May 2004, 428 SCRA 563, 565-566.

[40]69 Phil. 635 (1940).

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