

OFFICE OF THE OMBUDSMAN (VISAYAS), PETITIONER, VS. RODOLFO ZALDARRIAGA, RESPONDENT.*G.R. No. 175349. June 22, 2010*

Ponente: PERALTA, J.

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This is a petition for review on certiorari assailing the Decision[1] dated October 27, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 81392, which reversed and set aside the Decision of the Office of the Ombudsman (Visayas) dismissing respondent from government service.

The procedural and factual antecedents are as follows:

Respondent Rodolfo Zaldarriaga was the Municipal Treasurer of the Municipality of Lemery, Iloilo.

On November 16, 1998, the Commission on Audit (COA), through State Auditors Sergia G. Garachico, Cresencia H. Gulangayan, and Shelly H. Gorriceta, conducted an audit examination of the accountabilities of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. Based on the audit conducted, the COA auditors prepared a report showing a deficiency amounting to P4,711,463.82.[2]

Respondent was asked to reconstitute the deficiency but he failed to do so. Instead, respondent sent letters to State Auditor Garachico requesting for a bill of particulars on his alleged accountability.[3] The COA, however, failed to clarify the basis of the shortage. Subsequently, on the strength of the COA auditors' report, the COA filed a Letter-Complaint[4] against the respondent before the Office of the Ombudsman (Visayas).

In his Counter-Affidavit, respondent contested the findings of the COA auditors alleging that it was inaccurate, incorrect, and devoid of merit. He stated that during the audit examination, the COA team never mentioned any discrepancy in the cashbook nor found any accountability. Respondent claimed that during the said audit examination, the COA team established that the balance for the General Fund was only in the amount of P998.00 and that all other accounts showed a zero balance. Respondent also pointed out that the COA's failure to show a detailed "disbursements and cash items validated and/or disallowed" placed doubt as to the accuracy and reliability of the findings.

Meanwhile, the Office of the Provincial Treasurer also conducted its own investigation on the alleged deficiency. Its findings, however, did not indicate any shortage but, instead, pointed out that had the municipal mayor, municipal treasurer, and municipal accountant observed the COA Rules and Regulations in the proper disbursement of funds, the irregularity would not have been committed.[5]

Thereafter, the COA conducted another audit examination of respondent's cash and accounts covering the period November 17, 1998 to May 25, 2000. In the report of cash examination,[6] State Auditor II Malvie Melocoton, reported a zero balance during the last examination conducted on November 16, 1998.[7] Respondent then sought for the dismissal of the complaint filed against him on the ground that the latest COA report dated May 25, 2000 indicated that there was no shortage.

After the parties filed their respective pleadings, the Office of the Ombudsman (Visayas) rendered a Decision[8] dismissing respondent from government service for dishonesty, the dispositive portion of which reads as follows:

WHEREFORE, finding substantial evidence to hold respondent RODOLFO B. ZALDARRIAGA, Municipal Treasurer of Lemery, Iloilo, administratively guilty of Dishonesty, he is hereby meted the penalty of DISMISSAL FROM THE SERVICE with the corresponding accessory penalties of perpetual disqualification for re-employment in the government service, and cancellation of eligibility and forfeiture of retirement benefits.

This Office also WARNED the other responsible Municipal Officials of the Municipal Government of Lemery, Iloilo to be more discreet and circumspect in their actions by properly observing existing COA and Civil Service Rules and Regulations.

For complainant COA, it is hereby ADVISED to be more vigilant in its duties and responsibilities. The said Office must see to it that there should be proper observance of its Rules and Regulations in every government agency, particularly the Local Government Unit of Lemery, Iloilo.[9]

In ruling against the respondent, the Ombudsman opined, among other things, that while it may be true that both the Municipal Mayor and the respondent were signatories of several Land Bank checks covering the Municipality's cash advances during the said period, it was the respondent who encashed and received their proceeds; thus, he should be the one responsible and accountable for the same. Respondent never denied having received these funds. His failure to account the same when audited and his alleged lack of cooperation with the Audit Team constitute substantial evidence of dishonesty. Also, the Ombudsman did not give much credence (1) to the second audit examination conducted by State Auditor Melocoton, reasoning that it was conducted two years from November 16, 1998; (2) that of the three assigned state auditors, it was only State Auditor Melocoton who signed the second report; and (3) on conclusion that there was no shortage in the second report may be due to the fact that petitioner had restituted the missing funds after its discovery.

Respondent filed a Motion for Reconsideration, which was denied in an Order[10] dated July 1, 2003.

Aggrieved, respondent sought recourse before the CA arguing, among other things, that the Office of the Ombudsman erred (1) in ruling that the amount of P4,711,463.82 was lost, despite the absence of substantial evidence on how the COA Auditors reached the conclusion; (2) in failing to declare that the audit conducted by the COA Auditors was incomplete, inaccurate, replete with errors, and in violation of the COA Rules and Regulations; and (3) in dismissing him from the service notwithstanding the absence of substantial evidence.

On October 27, 2006, the CA rendered a Decision[11] in favor of the respondent, the decretal portion of which reads:

WHEREFORE, premises considered, the Petition for Review is GRANTED. The Decision dated 27 January 2003 and the Order dated 1 July 2003 of the Office of the Ombudsman (Visayas) finding petitioner administratively guilty of Dishonesty and dismissing him from service are REVERSED and SET ASIDE.

SO ORDERED.[12]

Ruling in favor of the respondent, the CA opined that since the shortage was not clearly and indubitably established, the administrative case against respondent should be dismissed.

Hence, the present petition assigning the following errors:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT FROM THE SERVICE.

A. THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT [FROM] THE SERVICE IS BASED ON SUFFICIENT EVIDENCE.

B. THE ZERO-SHORTAGE FINDING OF STATE AUDITOR M[ELO]COTON DOES NOT NEGATE THE COA'S FINDING ON RESPONDENT'S CASH SHORTAGE.[13]

Petitioner argues that the COA findings that respondent failed to account for the shortage and his unjustified release of cash advances constitute sufficient basis for his dismissal. These findings were duly supported by records from respondent's own office, and, as such, could not have been merely contrived in order to implicate him. Petitioner insists that respondent was given ample time and opportunity to refute and rebut the charges against him and was provided documents supporting the audit findings. Despite being fully apprised of the details of the charges against him, respondent failed to present countervailing evidence in his favor; instead, respondent was content on simply denying the adverse findings of the COA.

Petitioner maintains that the zero-balance reflected in State Auditor Melocoton's report, which was prepared two years after the first COA audit, cannot negate the latter's finding of cash shortage, considering that Melocoton's report is defective.

The petition is bereft of merit.

Basic is the rule that, in administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court is explicit, to wit:

Sec. 5. Substantial evidence. - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. [14]

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.[15]

In the present case, the evidence upon which respondent's administrative liability would be anchored lacked that degree of certainty required in administrative cases, because the entries found in the two separate audit conducted by the COA yielded conflicting results. On November 16, 1998, the COA auditors conducted an audit of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. The alleged shortage is reflected in the corresponding report, as follows:

Collections

Cash Advances

Total

Total Debits to Accountability

P3,420,839.74

P11,341,502.45

P14,762,342.19

Less: Total Credits to Accountability

3,309,680.50

6,656,120.77

9,965,801.27

Balance of Accountability

111,159.24

P 4,685,381.68

P 4,796,540.92

As of 11/16/98

Inventory of Cash and/or

Valid Cash Items

85,077.10

-0-

85,077.10

Shortage

P 26,082.14

P 4,685,381.68

P 4,711,463.82[16]

However, in the succeeding audit examination of respondent's accounts covering the period November 17, 1998 to May 25, 2000, the report of cash examination prepared by State Auditor Melocoton reflected that there was no balance during the last examination conducted on November 16, 1998, viz.:

NATURE OF FUNDS

GEN. FUND

ACV.

SEF.

TF

CASH ADV

TOTAL

8-70-100

8-70-500

8-70-100

8-70-100

8-70-500

BALANCE, Last Examination

11/16/98 (date)

-0-

-0-

-0-

-0-

-0-

-0-

ADD: Debits to Account-Ability

11/17/30/98

85,030.00

xxx

xxx

xxx

xxx

xxx[17]

These discrepancies cannot be ignored. Evidence of shortage is imperative in order for the respondent to be held liable. In the case at bar, the evidence could not be relied upon. The second audit report necessarily puts into question the reliability of the initial audit findings. Whether the zero balance as appearing in the second audit report was correct or inadvertently indicated, the credibility and accuracy of the two audit reports were already tarnished. As aptly held by the CA:

Here, the balance on 16 November 1998 (zero) entered in the cash examination report for a subsequent audit substantially differs from the balance on 16 November 1998 (shortage of P4,711,463.82) entered in the previous cash examination report. This cannot be ignored nor overlooked. Such a significant disparity or inconsistency should have prompted COA to re-examine carefully and thoroughly "to the last detail" and "with absolute certainty" its findings for the cash examination conducted on 16 November 1998. Just as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. More so in this case when even the COA records negate a showing of the care and caution needed to be employed by the COA Auditors during audit examinations.

The inconsistent "balance" entries for the last cash examination on 16 November 1998 in the COA reports has led this Court to doubt if there was indeed a shortage of P4,711,463.82. In fact, the presumption that the audit examination conducted is regular, accurate and correct is now disputed in view of the inconsistencies in the entries (balance on 16 November 1998) in the cash examination reports prepared by COA. It is then possible that the cash examination conducted lacked the necessary thoroughness and completeness to ascertain and

establish the correct balance account. Under these circumstances, the findings of the COA were susceptible to errors and inaccuracies that consequently, the shortage of funds attributed to petitioner could not be considered as indubitably established.[18]

The Manual of Instructions to Treasurers and Auditors and Other Guidelines provides:

Sec. 561. Prohibition of Incomplete examinations. - Examinations shall be thorough and complete in every case to the last detail. Mere count of cash and valid cash items without verifying the stock of issued and unissued accountable forms and various records of collections and disbursements, as well as the entries in the cashbook is not examination at all. x x x x

Clearly, accounts should be examined carefully and thoroughly to the last detail and with absolute certainty in strict compliance with the Manual of Instructions. Had the Audit Team been more thorough and complete in its examination by reconciling the two audit reports, the reports would have been more credible and accurate. In the audit of accounts of accountable officers, COA auditors should act with great care and caution bearing in mind that their conclusion constitutes sufficient basis for the filing of appropriate charges against the erring employee and any erroneous conclusion would cause more than substantial hardships, whether financially or emotionally, on the part of the accountable officer concerned. As stated in *Tinga v. People*[19] -

x x x [J]ust as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly "to the last detail," "with absolute certainty" in strict compliance with the Manual of Instructions. x x x

Verily, the veracity of the two audit reports cannot be relied upon, as they both cast clouds of doubt in their respective conclusions. A separate and more thorough audit would be required to dispel any uncertainties and to arrive at respondent's true and correct accountability. The shortage of funds was clearly not indubitably established. Until such audit is conducted, the two audit reports cannot be used to prove or disprove any shortage in respondent's cash and accounts.

Even in administrative cases, a degree of moral certainty is necessary to support a finding of liability. In the instant case, the evidence submitted to conclude that respondent was administratively liable is sorely wanting.

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals dated October 27, 2006 in CA-G.R. SP No. 81392 is AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., and Perez, JJ., concur.
Nachura, J., no part.

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla, concurring; rollo, pp. 33-45.

[2] Rollo, pp. 33-34.

[3] Id. at 36-37.

[4] Id. at 46.

[5] Id. at 373.

[6] Id. at 125-128.

[7] Id. at 57.

[8] Id. at 74-82.

[9] Id. at 82.

[10] Id. at 83-93.

[11] Id. at 33-45.

[12] Id. at 45.

[13] Id. at 468-469.

[14] Italics supplied.

[15] *Ombudsman v. Jurado*, G.R. 154155, August 6, 2008, 561 SCRA 135, 154; *Go v. Office of the Ombudsman*, 460 Phil. 14, 35 (2003).

[16] Rollo, p. 123.

[17] Id. at 57.

[18] Id. at 44.

[19] G.R. No. L-57650, April 15, 1988, 160 SCRA 483, 491.

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