

**LORNA A. MEDINA, Petitioner, vs. COMMISSION ON AUDIT (COA),
represented by the Audit Team of EUFROCINIA MAWAK, SUSAN
PALLERNA, and MA. DOLORES TEPORA, Respondents.**

G.R. No. 176478. February 04, 2008

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TINGA, J.:

While highlighting the interplay between the powers of two constitutional offices, one mandated as the government monitor of public fund expenditures and the other as the sentinel against graft and corruption in government, this case resolves some questions about the extent of their powers.

This is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 89539. The Court of Appeals' decision affirmed the two joint orders issued by the Office of the Deputy Ombudsman for Luzon finding herein petitioner Lorna A. Medina guilty of grave misconduct and dishonesty. The Resolution of the same court denied petitioner's motion for reconsideration of the said decision.

The instant petition originated from the audit conducted by respondent Commission on Audit (COA) on the cash and accounts handled by petitioner in her official capacity as Municipal Treasurer of General Mariano Alvarez, Cavite. In the Joint Affidavit[4] executed by herein respondents Eufrocinia M. Mawak, head of the audit team, and Susana L. Pallerna, Ma. Dolores C. Tepora and a certain Nelson T. Alvarez, who were all state auditors of the Provincial Auditor's Office of Cavite, they all stated that they had examined petitioner's financial records covering 19 August 1999 to 26 September 2000 and discovered a total cash shortage in the aggregate amount of P4,080,631.36. They thus directed petitioner to immediately reconstitute the shortage within 72 hours from receipt of the demand letter but petitioner allegedly failed to comply. The state auditors submitted a report to the Provincial Auditor's Office and recommended the relief of petitioner from her post as municipal treasurer and the filing of criminal charges against her.

COA, represented by the aforementioned state auditors, filed an administrative case docketed as OMB-L-A-04-0361-F before the Office of the Deputy Ombudsman for Luzon, charging petitioner with grave misconduct and dishonesty. As directed, petitioner filed a Counter-Affidavit[5] and a Position Paper[6] mainly raising the following defenses: (1) the audit team was not independent and competent; (2) the computation of her accountabilities was overstated and erroneous; (3) the audit team failed to verify documents such as bank reconciliation statements, general ledgers and cashbooks presented during the cash count; (4) the documents in support of the audit report were not signed, hence, were self-serving; (5) the cash shortage in the amount of P379,646.51 under the SEF and Trust Fund as well as the disallowed amount of P585,803.37 had no basis as the same pertained to a previous audit and, thus, should have been excluded from the computation of the total shortage; (6) the cash items amounting to P883,952.91 in the form of reimbursement expense receipts should not have been disallowed because they were actually received by individual payees; (7) petitioner's cash on hand accountability was overstated because a collection was not immediately recorded; and (8) the audit team erroneously credited petitioner's accounts to another cashier.

In a Decision[7] dated 8 November 2004, Deputy Ombudsman Victor C. Fernandez approved the recommendation of the Graft Investigation and Prosecution Officer to dismiss petitioner from service based on the existence of substantial evidence of a discrepancy in petitioner's account totaling P4,080,631.36. The said decision noted petitioner's supposed failure to file a counter-affidavit and position paper despite due notice.

On 29 November 2004, petitioner filed an urgent motion[8] stating that she complied with the directive to file a counter-affidavit and position paper and praying that the defenses therein be considered in reversing the 8 November 2004 decision. The motion was treated as a motion for reconsideration of the said decision.

On 31 January 2005, Deputy Ombudsman Fernandez issued the first assailed Joint Order[9] denying petitioner's urgent motion. Although the order acknowledged the erroneous statement in the 8 November 2004 Decision stating that petitioner failed to submit a counter-affidavit, nevertheless, it affirmed the Resolution and Decision both dated 8 November 2004. Deputy Ombudsman Fernandez ruled that petitioner's Counter-Affidavit and Position Paper did not present exculpatory arguments that would negate the allegation of discrepancy on petitioner's accounts. He also held that petitioner's concerns relating to the conduct of the audit should have been raised at the time of the audit or immediately thereafter, and that petitioner's failure to produce the amount of cash shortage despite demand created a presumption that she appropriated public funds under her custody for her own personal use.[10]

Petitioner sought reconsideration[11] on grounds of newly discovered and material evidence and grave errors of fact and/or law prejudicial to her own interest. The purported newly discovered evidence consisted of petitioner's request for reconsideration of the audit report filed and still pending before the office of the audit team head, herein respondent Mawak, and letters sent by petitioner's counsel to the provincial auditor of Cavite questioning the audit and requesting a re-audit of petitioner's accounts.

In the second assailed Joint Order dated 22 March 2005,[12] Deputy Ombudsman Fernandez denied petitioner's motion for reconsideration. He reiterated that petitioner's allegations as regards the incompetence of the audit team and the errors in the audit report were matters which may be properly ventilated during trial. He explained that petitioner failed to produce the missing funds despite notice thereof creating a presumption that the same were appropriated for personal use and for the purpose of preliminary investigation, such findings warranted the filing of criminal charges against petitioner. The deputy ombudsman held that petitioner's belated request for re-audit could not be considered newly discovered evidence and denied the request for a formal investigation on the ground that petitioner was afforded due process when she filed her counter-affidavit and position paper.[13]

Petitioner elevated the matter to the Court of Appeals via a Petition for Review[14] questioning the denial of her request for a formal investigation, the penalty of dismissal, and the sufficiency of the evidence against her.

The Court of Appeals dismissed the petition in the assailed Decision dated 23 October 2006.[15] It held that petitioner was not entitled to a formal investigation and it affirmed the deputy ombudsman's factual finding that petitioner was guilty of grave misconduct and dishonesty. The appellate court also denied petitioner's motion for reconsideration in a Resolution dated 30 January 2007.

Hence, the instant petition[16] seeking the reversal of the Court of Appeals' decision on the following grounds: (1) the Court of Appeals failed to order a formal reinvestigation, to reopen and review the records of the administrative case, to consider newly discovered evidence attached to petitioner's motion for reconsideration of the deputy ombudsman's Decision and to consider material allegations in the motion for reconsideration of the assailed decision; (2) petitioner was able to overcome the presumption that she appropriated the missing funds for personal use; (3) the filing of the administrative case was baseless; and (4) the penalty of dismissal was unwarranted.

The instant petition reiterates the issues brought up before the Court of Appeals, namely: whether petitioner was deprived of her right to due process, whether the penalty of dismissal is proper and whether petitioner's guilt for grave misconduct and dishonesty is supported by substantial evidence.

Invoking her right to due process, petitioner, on one hand, insists that she is entitled to a formal investigation, citing the Administrative Code of 1987, Book V, Title I, Subtitle A, Section 48 (2)[17] and (3).[18] On the other hand, in support of its argument that the propriety of conducting a formal investigation rests on the sound discretion of the hearing officer, respondent COA, through the Office of the Solicitor General (OSG), relies on Administrative Order No. 07, as amended by Administrative Order No. 17, Rule III, Section 5,[19] governing the procedure in administrative cases filed before the Office of the Ombudsman.

The validity of Administrative Order No. 07, Rule III, Section 5 is not in dispute. However, petitioner argues that said provision is inferior to the provision in the Administrative Code which entitles the respondent to a formal investigation if he so desires.

Petitioner's theory is erroneous.

Administrative Order No. 07, as amended by Administrative Order No. 17, particularly governs the procedure in administrative proceedings before the Office of the Ombudsman. The Rules of Procedure of the Office of the Ombudsman was issued pursuant to the authority vested in the Office of the Ombudsman under Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989." When an administrative agency promulgates rules and regulations, it "makes" a new law with the force and effect of a valid law. Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute.[20]

On the other hand, the provisions in the Administrative Code cited by petitioner in support of her theory that she is entitled to a formal investigation apply only to administrative cases filed before the Civil Service Commission (CSC). In particular, Section 48(2) and Section 48(3) are subsumed under Subtitle A of Title I, which pertains to the CSC and to the procedure of administrative cases filed before the CSC. The administrative complaint against petitioner was filed before the Office of the Ombudsman, suggesting that a different set of procedural rules govern. And rightly so, the Deputy Ombudsman applied the provisions of Rules of Procedure of the Office of the Ombudsman in ruling that the prerogative to elect a formal investigation pertains to the hearing officer and not to petitioner.

On various occasions,[21] the Court has ruled on the primacy of special laws and of their implementing regulations over the Administrative Code of 1987 in settling controversies specifically subject of these special laws. For instance, in *Hon. Joson v. Exec. Sec. Torres*,[22] the Court held that the Local Government Code of 1991, the Rules and Regulations Implementing the Local Government Code of 1991, and Administrative Order No. 23 (A.O. No. 23)[23] govern administrative disciplinary proceedings against elective local officials, whereas the Rules of Court and the Administrative Code of 1987 apply in a suppletory character to all matters not provided in A.O. No. 23.[24] The aforesaid ruling is based on the principle of statutory construction that where there are two statutes applicable to a particular case, that which is specially intended for the said case must prevail.[25]

More significantly, in *Lapid v. Court of Appeals*,[26] the Court expressly upheld the applicability of The Ombudsman Act of 1989 and the implementing rules and regulations thereof to the exclusion of the Local Government Code and the Administrative Code of 1989 on the issue of the execution of the Ombudsman's decision pending appeal. The Court noted that petitioner therein was charged before the Office of the Ombudsman and accordingly, The Ombudsman Act of 1989 should apply exclusively. The Court explained, thus:

There is no basis in law for the proposition that the provisions of the Administrative Code of 1987 and the Local Government Code on execution pending review should be applied suppletorily to the provisions of the Ombudsman Act as there is nothing in the Ombudsman Act which provides for such suppletory application.

xxx xxx xxx

And while in one respect, the Ombudsman Law, the Administrative Code of 1987 and the Local Government Code are in pari materia insofar as the three laws relate or deal with public officers, the similarity ends there. It is a principle in statutory construction that where there are two statutes that apply to a particular case, that which was specially designed for the said case must prevail over the other. In the instant case, the acts attributed to petitioner could have been the subject of administrative disciplinary proceedings before the Office of the President under the Local Government Code or before the Office of the Ombudsman under the Ombudsman Act. Considering however, that petitioner was charged under the Ombudsman Act, it is this law alone which should govern his case.[27]

Thus, as between the Administrative Code of 1987 and Administrative Order No. 07, as amended, issued by the Office of the Ombudsman, the latter governs in this case which involves an administrative complaint filed with the Office of the Ombudsman and which raises the question of whether petitioner is entitled to a formal investigation as a matter of right.

Even assuming the Administrative Code is applicable, still there is a formidable hindrance to petitioner's prayer for a formal investigation. The records show that petitioner sought a reinvestigation only as an afterthought, that is, after the deputy ombudsman had already rendered a decision on the administrative complaint. The reinvestigation should have been requested at the first opportunity but definitely before the rendition of a decision.

As correctly pointed out by the OSG, the denial of petitioner's request for a formal investigation is not tantamount to a denial of her right to due process. Petitioner was required to file a counter-affidavit and position paper and later on, was given a chance to file two motions for reconsideration of the decision of the deputy ombudsman. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[28]

Petitioner's assertion that the Court of Appeals refused to reopen and review the case and ignored material issues and arguments in her motion for reconsideration of the 23 October 2006 Decision in violation of her right to due process, is quite hollow.

The appellate court disposed of petitioner's contention that she was able to controvert the accusations against her in this wise:

Regarding the second, third and fourth assigned errors, We judiciously believe that the issues raised therein are essentially factual in nature. The rule is that the findings of fact in administrative decisions must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant. It is not for the reviewing court to weight the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence. It has been consistently held that substantial evidence is all that is needed to support an administrative finding of fact which means such relevant evidence as a reasonable mind might accept to support a conclusion.[29]

Nothing prevents the Court of Appeals from adopting the factual findings and conclusion of the deputy ombudsman on the ground that the findings and conclusions were based on substantial evidence. Well-settled is the rule that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is settled that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative

decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[30] Guided by this principle, the appellate court correctly affirmed the finding of guilt for grave misconduct and dishonesty.

Unfazed, petitioner now asks this Court to once again review the factual findings and conclusions of the Deputy Ombudsman which had already been affirmed by the Court of Appeals. Whether the finding of petitioner's guilt for grave misconduct and dishonesty is supported by substantial evidence, suffice it to say these are factual issues calling for a review of the records of the case. Clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by certiorari under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. Only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court a quo and the appellate court were correct in their appreciation of the evidence.[31]

Anyhow, the Court adopts the following findings of the Court of Appeals which are borne out by the records of the case:

x x x It is a fact that an examination was conducted on the cash and accounts of respondent and that a shortage was found. While the latter argues that the auditors did not observe the proper procedure in conducting an examination and as a consequence of which, she was not able to justify the alleged shortage, we take note that the latter was given the opportunity to make such explanation when the auditors sent her a demand letter.[32]

On the penalty of dismissal which petitioner claims is too harsh, petitioner argues that the mitigating circumstances of this being her first offense and of the unreasonable length of time in filing the administrative case should be considered in her favor.

Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the fact that the accused is a first time offender or by the length of service of the accused. In *Civil Service Commission v. Cortez*,[33] the Court held as follows:

The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases, we imposed the heavier penalty of dismissal or a fine of more than P20,000.00, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.[34]

Also, in *Concerned Employees v. Nuestro*,[35] a court employee charged with and found guilty of dishonesty for falsification was meted the penalty of dismissal notwithstanding the length of her service in view of the gravity of the offense charged.

To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[36]

WHEREFORE, the instant petition for review on certiorari is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 89539 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.
Chico-Nazario, J., on official leave.

[1] Rollo, pp. 4-55.

[2] Dated 23 October 2006 and penned by J. Mariano C. Del Castillo and concurred in by JJ. Conrado M. Vasquez, Jr., Chairperson, Second Division, and Santiago Javier Ranada; id. at 58-70.

[3] Dated 30 January 2007; id. at 71-72.

[4] Id. at 182-183.

[5] Id. at 157-167.

[6] Id. at 168-179.

[7] Id. at 143-145.

[8] Id. at 180-181.

[9] Id. at 106-111.

[10] Id. at 109.

[11] Id. at 113-126.

[12] Id. at 102-105.

[13] Id. at 103-104.

[14] Id. at 73-100.

[15] Supra note 2.

[16] Supra note 1.

[17] SEC. 48. Procedure in Administrative Cases Against Non-Presidential Appointees. – xxx (2) In the case of a complaint filed by any other persons, the complainant shall submit sworn statements covering his testimony and those of witnesses together with his documentary evidence. If on the basis of such papers a prima facie case is found not to exist, the disciplining authority shall dismiss the case. If a prima facie case exists, he shall notify the respondent in writing of the charges against the latter, to which shall be attached copies of the complaint, sworn statements and other documents submitted, and the respondent shall be allowed not less than seventy-two hours after receipt of the complaint to answer the charges in writing under oath, together with supporting sworn statements and documents, in which he shall indicate whether or not he elects a formal investigation if his answer is not considered satisfactory. If the answer is found satisfactory, the disciplinary authority shall dismiss the case.

[18] SEC. 48. Procedure in Administrative Cases Against Non-Presidential Appointees. – xxx (3) Although a respondent does not request a formal investigation, one shall nevertheless be conducted when from the allegations of the complaint and the answer of the respondent, including the supporting documents, the merits of the case cannot be decided judiciously without conducting such an investigation.

[19]SEC. 5. Administrative adjudication; How conducted. – a) If the complaint is docketed as an administrative case, the respondent shall be furnished with a copy of the affidavits and other evidence submitted by the complainant, and shall be ordered to file his counter-affidavit and other evidence in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file his reply-affidavit within ten (10) days from receipt of the counter-affidavit of the respondent;

b) If the Hearing Officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall issue an Order (or Orders) for any of the following purposes:

1) To direct the parties to file, within ten (10) days from receipt of the Order, their respective position papers. The position papers shall contain only those charges, defenses and other claims contained in the affidavits and pleadings filed by the parties. Any additional relevant affidavits and/or documentary evidence may be attached by the parties to their position papers. On the basis of the position papers, affidavits and other pleadings filed, the Hearing Officer may consider the case submitted for resolution.

2) If the Hearing Officer decides not to consider the case submitted for resolution after the filing of position papers, affidavits and pleadings, to conduct a clarificatory hearing regarding facts material to the case as appearing in the respective position papers, affidavits and pleadings filed by the parties. At this stage, he may, at his discretion and for the purpose of determining whether there is a need for a formal trial or hearing, ask clarificatory questions to further elicit facts or information;

In the conduct of clarificatory hearings, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coured through the Hearing Officer who shall determine whether or not proposed questions are necessary and relevant. In such cases, the Hearing Officer shall ask the question in such manner and phrasing as he may deem appropriate;

3) If the Hearing Officer finds no necessity for further proceedings on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, he shall issue an Order declaring the case submitted for resolution. The Hearing Officer may also require the parties to simultaneously submit, within ten (10) days from receipt of the Order, their Reply Position Papers. The parties, if new affidavits and/or exhibits are attached to the other party's Position Paper, may submit only rebutting evidence with their Reply Position Papers.

4) If the Hearing Officer finds the need to conduct a formal investigation on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, an Order shall be issued for the purpose. In the same Order, the parties shall be required to file within ten (10) days from the receipt of the Order their respective pre-trial briefs which shall contain, among others, the nature of the charge(s) and defenses, proposed stipulation of facts, a definition of the issues, identification and marking of exhibits, limitation of witnesses, and such other matters as would expedite the proceedings. The parties are allowed to introduce matters in the pre-trial briefs which are not covered by the position papers, affidavits and pleadings filed and served prior to the issuance of the Order directing the conduct of the formal investigation.

c) The conduct of formal proceedings by the Office of the Ombudsman in administrative cases shall be non-litigious in nature. Subject to the requirements of due process in administrative cases, the technicalities of law, procedure and evidence shall not strictly apply thereto. The Hearing Officer may avail himself of all reasonable means to ascertain speedily the facts of the case. He shall take full control of the proceedings, with proper regard to the right of the parties to due process, and shall limit the presentation of evidence to matters relevant to the issue(s) before him and necessary for a just and speedy disposition of the case.

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[20] Freedom from Debt Coalition v. Energy Regulatory Commission, G.R. No. 161113, 15 June 2004, 432 SCRA 157, 192-193, citing *Victoria's Milling Co., Inc. v. Social Security Commission*, 114 Phil 555 (1962).

[21] *Alcantara v. Ponce*, G.R. No. 131547, 15 December 2005, 478 SCRA 27; *Calingin v. Court of Appeals*, 434 SCRA 173, 176 (2004); *Lapid v. Court of Appeals*, 390 Phil. 236 (2000).

[22] 352 Phil. 888 (1998).

[23] Entitled "PRESCRIBING THE RULES AND PROCEDURES ON THE INVESTIGATION OF ADMINISTRATIVE DISCIPLINARY CASES AGAINST ELECTIVE LOCAL OFFICIALS OF PROVINCES, HIGHLY URBANIZED CITIES, INDEPENDENT COMPONENT CITIES, AND CITIES AND MUNICIPALITIES IN METROPOLITAN MANILA."

[24] *Supra* note 22 at 908.

[25] *Calingin v. Court of Appeals*, G.R. No. 154616, 12 July 2004, 434 SCRA 173, 176.

[26] *Supra* note 21.

[27] *Lapid v. Court of Appeals*, *supra* note 21 at 251-252.

[28] *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

[29] *Rollo*, pp. 65-66.

[30] *Bernardo v. Court of Appeals*, G.R. No. 124261, 27 May 2004, 429 SCRA 285, 299-300.

[31] *JMM Promotions and Management, Inc. v. Court of Appeals*, 439 Phil. 1, 10 (2002).

[32] *Rollo*, pp. 66-67.

[33] G.R. No. 155732, 3 June 2004, 430 SCRA 593.

[34] *Id.* at 607.

[35] 437 Phil. 383 (2002).

[36] *Civil Service Commission v. Cortez*, *supra* note 31 at 607.

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