

RIMANDO A. GANNAPAO, PETITIONER, VS. CIVIL SERVICE COMMISSION (CSC), THE CHIEF OF PHILIPPINE NATIONAL POLICE, THE SECRETARY OF DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, ARIEL...

G.R. No. 180141. May 31, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Petitioner SPO1 Rimando A. Gannapao appeals the Decision[1] dated April 27, 2007 and Resolution[2] dated October 10, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 70605. The CA affirmed Civil Service Commission (CSC) Resolution No. 020487[3] which upheld the decision of the Philippine National Police (PNP) Chief finding petitioner guilty of Serious Irregularities in the Performance of Duties, as affirmed by the Secretary of Department of Interior and Local Government (DILG), but modified the penalty of three months suspension to dismissal from the service.

The facts are as follows:

On December 22, 1995, respondents Ricardo Barien, Inocencio M. Navallo, Ligaya M. Gando, Lea Molleda, Fe R. Vetonio, Primo V. Babiano, Patiga J., Jose Taeza, G. Delos Santos, Losbañes, W., Ave Pediglorio and Cresencia Roque (Barien, et al.) who are stockholders and board members of United Workers Transport Corp. (UWTC), filed a verified complaint before the PNP Inspectorate Division at Camp Crame, charging petitioner with Grave Misconduct and Moonlighting with Urgent Prayer for Preventive Suspension and Disarming.[4] Barien, et al. are former drivers, conductors, mechanics and clerks of the defunct Metro Manila Transit Corporation (MMTC). In April 1995, UWTC started operating MMTC's buses which it acquired under a conditional sale with right of repossession. At about the same time, petitioner was allegedly employed by Atty. Roy G. Gironella, the general manager appointed by the Board of Directors of UWTC, as his personal bodyguard with compensation coming from UWTC. In October 1995, Barien, et al. representing the majority stockholders of UWTC sued Atty. Gironella and five other members of the UWTC Board of Directors for gross mismanagement.

Barien, et al. further alleged that upon orders of Atty. Gironella, the buses regularly driven by them and other stockholders/drivers/workers were confiscated by a "task force" composed of former drivers, conductors and mechanics led by petitioner. Armed with deadly weapons such as guns and knives, petitioner and his group intimidated and harassed the regular bus drivers and conductors, and took over the buses. Petitioner is not authorized to use his firearm or his authority as police officer to act as bodyguard of Atty. Gironella and to intimidate and coerce the drivers/stockholders and the bus passengers. Barien, et al. thus prayed for the preventive suspension of petitioner, the confiscation of his firearm and his termination after due hearing.

The complaint passed a pre-charge investigation with The Inspector General, Internal Affairs Office (TIG-IAO) of the PNP, and petitioner filed his Answer[5] on January 12, 1996. Petitioner specifically denied the allegations of the complaint and averred that he was never employed by Atty. Gironella as bodyguard. Instead, it was his twin

brother, Reynaldo Gannapao, who worked as messenger at UWTC. In an undated Memorandum,[6] Chief Service Inspectorate Police Superintendent Atty. Joselito Azarcon Casugbo recommended the dismissal of the complaint, citing the affidavit of desistance allegedly executed by Avelino Pediglorio.

Subsequently, National Police Commission (NAPOLCOM) Memorandum Circular No. 96-010[7] dated July 31, 1996, was issued, and a summary hearing on the complaint was conducted by the Office of the Legal Service, PNP National Headquarters in accordance with the newly promulgated rules. The case was docketed as Adm. Case No. 09-97.

On January 30, 1997, Atty. Eduardo Sierra of the Office of the Director General, PNP, issued a subpoena to petitioner requiring him to appear at the hearing of Adm. Case No. 09-97 before the Office of the Legal Service in Camp Crame.[8] Petitioner moved to dismiss the complaint on the ground of res judicata, citing the earlier dismissal of the complaint against him by Chief Service Inspectorate Casugbo.[9] However, PNP Chief Recaredo A. Sarmiento II denied the motion to dismiss.

On November 26, 1997, PNP Chief Sarmiento rendered his Decision,[10] as follows:

WHEREFORE, premises considered, this Headquarters finds respondent SPO1 RIMANDO A. GANNAPAO GUILTY of the charge of serious irregularities in the performance of duties, thus, he is hereby sentenced to suffer the penalty of three (3) months suspension from the police service without pay.

SO ORDERED.[11]

Petitioner's motion for reconsideration was likewise denied under the Resolution[12] dated April 14, 1998 of Police Director General Santiago L. Aliño. Petitioner elevated the case to the NAPOLCOM National Appellate Board. His appeal, however, was dismissed in a Resolution dated December 29, 1999.[13]

Aggrieved, petitioner brought his case to the Department of Interior and Local Government (DILG). In an Order[14] dated July 18, 2000, DILG Secretary Alfredo Lim denied petitioner's appeal and affirmed his suspension for three months.

Petitioner then appealed to the CSC claiming that he had been denied due process in the proceedings before the Office of the Legal Service. He also sought to set aside the penalty of three months suspension.

On April 3, 2002, the CSC issued Resolution No. 020487 dismissing petitioner's appeal but modifying his penalty of three months suspension to dismissal. The CSC noted that the only evidence submitted by petitioner during the investigation of the case is the picture of his alleged twin brother, Reynaldo and said that the best evidence would have been the birth certificate or any document or the presentation of the person himself, which would verify the existence and employment in UWTC of such person. As to the assertion of petitioner that the complaint has no more basis since some of the complainants (Cresencia Roque, Primo V. Babiano and Avelino Pediglorio) have filed affidavits of desistance with the PNP, the CSC pointed out that these affidavits were submitted after the PNP Chief had rendered his decision and attached to petitioner's motion for reconsideration of said decision. More importantly, the withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. The CSC ruled that petitioner's act of serving as bodyguard of Atty. Gironella and harassing the bus drivers of UWTC is so grave as to warrant the penalty of dismissal. The dispositive portion of the CSC resolution reads:

WHEREFORE, the appeal of Rimando A. Gannapao is hereby DISMISSED. However, the Order dated February 26, 2001 of then DILG Secretary Alfredo S. Lim affirming the suspension of Gannapao for a period of three (3) months is modified to dismissal from the service.[15]

Petitioner thus filed with the CA a Petition for Review with an Urgent Motion for Issuance of Temporary Restraining Order and/or Preliminary Injunction. The CA issued a TRO on September 4, 2002[16] and a writ of preliminary injunction on January 14, 2003.[17] In a petition for certiorari filed with this Court, the CSC questioned the validity of the CA's issuance of the writ of preliminary injunction, arguing that the injunctive relief violates the Administrative Code and the CSC rules which state that administrative disciplinary penalties shall be immediately executory, notwithstanding the pendency of an appeal. By Decision[18] dated November 17, 2005, we sustained the CA ruling and found no grave abuse of discretion in the issuance of the preliminary injunction. The CA, however, dissolved the writ in its Decision dated April 27, 2007 affirming CSC Resolution No. 020487. The CA ruled that petitioner cannot claim denial of due process since he was given ample opportunity to present his side. According to the CA, where the opportunity to be heard, either through oral arguments or pleadings, is accorded, and the party could present its side or defend its interest in due course, there is no denial of procedural due process. Thus, the CA decreed:

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolution No. 020487 dated 3 April 2002 of the Civil Service Commission is hereby AFFIRMED. Accordingly, the Preliminary Injunction issued on 14 January 2003 enjoining the Civil Service Commission from implementing the assailed Resolution is DISSOLVED.

SO ORDERED.[19]

On October 10, 2007, the CA denied petitioner's motion for reconsideration.

Hence, this petition.

Petitioner contends that he was denied due process in the proceedings before the Office of the Legal Service of the PNP since no notice and summons were issued for him to answer the charges and no hearing was conducted. He claims that his dismissal was not proper and legal as there was no introduction and presentation of evidence against him and he was not given the opportunity to defend his side. Also, petitioner assails the penalty of dismissal imposed upon him by the CSC, alleging that it was improperly imposed considering the mitigating circumstance of his length of service (14 years at the time the decision of the PNP Director General was rendered[20]).

On the other hand, the Office of the Solicitor General (OSG), representing public respondent CSC, maintains that petitioner was not denied due process. The OSG points out that petitioner answered the complaint during the pre-charge investigation and when the case was heard at the Office of the Legal Service, petitioner was given the opportunity to answer the charges or to submit his supplemental answer or counter-affidavit, but he instead moved for the dismissal of the case. Atty. Sierra, the hearing officer of the Office of the Legal Service, also issued a subpoena for petitioner to appear on February 10, 1997, but he failed to appear on the said date. Moreover, petitioner's culpability was proven by substantial evidence through the documentary evidence consisting of individual sworn statements from all the complainants, the police blotter of the incident involving Atty. Gironella and the UWTC drivers and conductors which also established that petitioner was present thereat and his firearm identified, and the photocopies of documents signed by Atty. Gironella showing payments to petitioner as security personnel. In addition, a document changing the name of the payee to 'Reynaldo' instead of 'Rimando' also signed by Atty. Gironella was presented to prove that petitioner's claim that it was really his 'twin brother' who was employed at UWTC is just an alibi. Lastly, the OSG is of the view that the penalty of dismissal was correctly imposed on petitioner, stressing that his act of serving as bodyguard of Atty. Gironella and harassing the bus drivers of UWTC is a grave offense.

The Court is tasked to resolve the following issues: (1) whether petitioner was denied due process, and (2)

whether the CA correctly affirmed the CSC decision modifying the penalty of petitioner from three months suspension to dismissal from the service.

The petition must fail.

Time and again, we have held that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[21] In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.[22] As long as a party was given the opportunity to defend his interests in due course, he was not denied due process.[23]

Reviewing the records, we find that petitioner was afforded due process during the proceedings before the Office of the Legal Service of the PNP. The pertinent provisions of NAPOLCOM Memorandum Circular No. 96-010 prescribe the following procedure:

x x x x

D. Pre-Charge Investigation

SECTION 1. Procedure. -

4.01 Within three (3) days from the receipt of the complaint, the Command/Unit Inspector, upon directive from the Disciplinary Authority concerned, shall conduct a preliminary inquiry/pre-charge investigation wherein both the complainant and the respondent and their witnesses, if any shall be summoned to appear. x x x After the inquiry, the Command/Unit Inspector shall submit to the Disciplinary Authority concerned his Report of Investigation, together with his recommendation x x x:

x x x x

E. Summary Hearing

SECTION 1. Notification of Charges/Complaint Order to Answer.

5.01 After it has been determined from the results of the pre-charge investigation that the complaint is a proper subject of summary hearing, the respondent PNP member shall be furnished with a copy of the complaint or charges filed against him to include copies of affidavits of witnesses and other documents submitted by the complainant should there be any, and he shall be directed to submit an answer within five (5) days from receipt of the complaint, attaching therewith pertinent documents or evidence in support of his defense.

x x x x

As records bear out, petitioner was adequately apprised of the charges filed against him and he submitted his answer to the complaint while the case was still under a pre-charge investigation. When the Office of the Legal Service conducted a summary hearing on the complaint, petitioner was again duly notified of the proceedings and was given an opportunity to explain his side. Extant on the records, particularly in the Resolution[24] dated April 14, 1998 issued by Police Director General Santiago L. Aliño, was the manner in which the summary hearing before the Office of the Legal Service was conducted. We quote the relevant portions thereof:

Having elevated this case to the Summary Dismissal Authority of the C,(sic) PNP through the Office of the Legal Service, a hearing was set by P/SInsp. Eduardo T[.] SIERRA, the Hearing Officer, on January 29, 1997, at 2:00 p.m., but respondent failed to appear (LS-3); per Memo of the Director, HSS, respondent was no longer assigned at HSS (LS-4). On February 10, 1997, respondent appeared for hearing without counsel after the subpoena was served at his home address (LS-5). During the clarificatory questions propounded by the Hearing Officer, respondent reiterated that it was his twin brother who was the bodyguard of Atty. Gironella

and not him; he also mentioned that this case was already dismissed by Atty. Joselito Azarcon-CASUGBO; since the records show no evidence of said dismissal, respondent was asked by the Hearing Officer that he may submit a supplemental answer or counter-affidavit until February 17, 1997, or he may adapt (sic) his answer to complaint he filed with TIG, IIAO and submit the case for decision. Nonetheless, he was given copies of the complaint and affidavits of complainants in case he wants to submit a supplemental answer or counter-affidavit.

On February 17, 1997, the deadline for respondent to file a supplemental answer or counter-affidavit, he did not appear, hence the Hearing Officer considered the case submitted for decision. On February 18, 1997, at about 2:00 p.m., however, respondent showed up and submitted not a supplemental Answer or counter-affidavit but a Motion to be Furnished Official Copy of the Complaint/Information and its Annexes and to (sic) Respondent to Answer within Fifteen (15) Days from Receipt (LS-6). As prayed for, the Motion was granted.

x x x x

On March 6, 1997, respondent submitted not a supplemental answer or counter-affidavit, but a Motion to Dismiss (LS-11) upon the ground that this case was already dismissed by Atty. Joselito Azarcon-CASUGB[O]. The Hearing Officer clarified to respondent (who always appeared without counsel) that the Motion to Dismiss was deemed submitted for resolution, and in the event that the said Motion to Dismiss was denied, this case was likewise submitted for decision.[25] (Additional italics supplied.)

Petitioner's claim that he did not file an answer since no subpoena was issued to him thus deserves scant consideration. Petitioner had ample opportunity to present his side during the hearing and he was even advised by the hearing officer that he may file a supplemental answer or a counter affidavit until February 17, 1997 or he may adopt his answer filed with the TIG-IAO. Instead, petitioner filed a motion to dismiss, reiterating the ground of res judicata, based on his own assertion that the case against him had already been heard, tried and finally terminated. Petitioner, however, did not present proof of such dismissal. Indeed, he could not have presented such proof because, as correctly pointed out by the OSG, the undated memorandum of Atty. Casugbo, the hearing official who conducted the preliminary inquiry/pre-charge investigation, was merely recommendatory. Atty. Casugbo's report and recommendation was not approved by the PNP Director General, the disciplinary authority to whom such report of investigation is submitted, pursuant to Section (D) 4.01 of Memorandum Circular No. 96-010. Consequently, when the Office of the Legal Service of the PNP found the complaint to be a proper subject of a summary hearing, and a further investigation was conducted pursuant to the rules, the recommendation to dismiss was deemed not adopted or carried out. Having been given a reasonable opportunity to answer the complaint against him, petitioner cannot now claim that he was deprived of due process.[26]

Petitioner's assertion that the complainants/witnesses against him have not been cross-examined by him, is likewise bereft of merit. While the right to cross-examine is a vital element of procedural due process, the right does not necessarily require an actual cross examination but merely an opportunity to exercise this right if desired by the party entitled to it.[27] In this case, while Memorandum Circular No. 96-010 provides that the sworn statements of witnesses shall take the place of oral testimony but shall be subject to cross-examination, petitioner missed this opportunity precisely because he did not appear at the deadline for the filing of his supplemental answer or counter-affidavit, and accordingly the hearing officer considered the case submitted for decision. And even with the grant of his subsequent motion to be furnished with copy of complaint and its annexes, he still failed to file a supplemental answer or counter-affidavit and instead filed a motion to dismiss reiterating the previous recommendation for dismissal made by Atty. Casugbo. Moreover, after the PNP Director General rendered his decision, petitioner filed a motion for reconsideration which was denied. He was also able to appeal from the decision of the PNP Director General to the DILG Secretary, and eventually to the CSC. We have held

that the fact that a party filed motions for reconsideration and appeals with the tribunals below, in which she presented her arguments and through which she could have proffered her evidence, if any, negates her claim that she was denied opportunity to be heard.[28]

As to the second issue, we hold that the CA did not err in affirming the CSC ruling which modified the penalty imposed by the PNP Director General as affirmed by the DILG Secretary, from three months suspension to dismissal.

Under Memorandum Circular No. 93-024 (Guidelines in the Application of Penalties in Police Administrative Cases), the following acts of any member of the PNP are considered Grave Offenses:

x x x x

C. The following are Grave Offenses:

x x x x

Serious Irregularities in the Performance of Duties. This is incurred by any member of the PNP who shall:

x x x x

c. act as bodyguard or security guard for the person or property of any public official, or private person unless approved by the proper authorities concerned;

x x x x (Emphasis ours.)

The CSC found that petitioner indeed worked for Atty. Gironella as the latter's bodyguard -- at least during the relevant period, from April 1995 up to December 1995 when Barien, et al. filed their verified complaint before the Inspectorate Division on the basis of the following:

1)

Certification of the San Jose Del Monte Police Station and the police blotter entries Nos. 6050-95 and 6051-95 dated November 22, 1995 as certified by SPO2 Rafael delos Reyes;

2)

A document reflecting the payment made to SPO1 Rimando Gannapao as security signed by Atty. Gironella;

3)

A document changing the name of the payee to "Reynaldo" instead of "Rimando" signed by Atty. Gironella; and

4)

Affidavits of Primo Babiano, Ricardo Barien, Cresencia Roque and Jocelyn Evangelista.[29]

On the other hand, petitioner presented the Certification[30] dated January 2, 1996 by Atty. Gironella stating that petitioner was not an employee of UWTC. This piece of evidence is unreliable, and at best, self-serving.

Petitioner reiterates that it was his twin brother Reynaldo whom Barien, et al. encountered during the incident when their buses were confiscated by armed men in October 1995. He submitted a photograph of his twin brother but this was not given credence by the CSC. Before the CA, petitioner also attached a photograph of himself together with his alleged twin brother Reynaldo, as well as birth certificates issued by the Local Civil Registrar of Salcedo, Ilocos Sur stating their similar dates of birth and parents, and the affidavit of Reynaldo Gannapao.[31]

However, there was no certification issued by UWTC that Reynaldo Gannapao was indeed employed therein for the period relevant to this case, nor any document evidencing receipt of his wages or salary from UWTC. Also, the police blotter entries[32] dated October 13, 1995 and November 22, 1995 tend to support the claim of Barien, et al. that Atty. Gironella threatened them when they complained of his mismanagement of company funds and that in this conflict, petitioner had used his firearm and authority as police officer to lead in the taking of the MMTC buses from UWTC drivers and conductors. Thus, even assuming that petitioner in fact had a twin brother by the name of Reynaldo, Barien, et al. in their sworn statements categorically pointed to him, not his twin brother, as the one leading the armed group sent by Atty. Gironella to confiscate their buses and acted as bodyguard of Atty. Gironella. Barien, et al. positively identified him as the police officer with officially issued firearm who actively assisted Atty. Gironella and committed acts of harassment which were narrated in the verified complaint and sworn statements executed by respondents Primo Babiano, Ricardo C. Barien, Cresencia Roque and Jocelyn Evangelista. Consequently, no error was committed by the CSC in giving more weight to the positive declarations of Barien, et al. than the denials of petitioner.

In his motion for reconsideration of the decision rendered by PNP Director General Sarmiento, petitioner attached the alleged affidavits of desistance executed by Babiano, Roque and Avelino Pediglorio. Director Aliño, however, in denying the motion found these insignificant and not credible considering that Babiano's signature in the April 12, 1996 retraction[33] was starkly different from his original January 2, 1996 sworn statement[34] while the supposed affidavit of desistance of Roque[35] dated October 14, 1997 should have already been alleged or submitted by him before Director General Sarmiento rendered his decision on November 26, 1997.[36]

The CSC, on appeal, likewise gave scant weight to the alleged retraction of some of the respondents. It noted that respondents Inocencio M. Navallo, Ligaya Gando, Lea Molleda, Fe R. Vetonio, Jose Taeza, among others did not desist from pursuing the case. Before the CA, petitioner submitted a joint affidavit of desistance dated August 7, 2002 allegedly signed by Navallo, Vetonio, Gando, Patiga, Taeza and G. delos Santos.[37] Nonetheless, the CSC, citing Section 10, Rule II of the Uniform Rules on Administrative Cases in the Civil Service,[38] held that the withdrawal of the complaint does not result in its outright dismissal nor discharge the person complained of from any administrative liability. Where there is obvious truth or merit to the allegation in the complaint or where there is documentary evidence that would tend to prove the guilt of the person complained of, the same should be given due course.[39] We find no error in the CSC's appreciation of the foregoing evidence adduced by the petitioner. Section 6, Article XVI of the Constitution provides that the State shall establish and maintain one police force which shall be civilian in character. Consequently, the PNP falls under the civil service pursuant to Section 2(1), Article IX-B, also of the Constitution.[40] Section 91 of the DILG Act of 1990 expressly declared that the Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.

As a rule, administrative agencies' factual findings that are affirmed by the Court of Appeals are conclusive on the parties and not reviewable by this Court,[41] except only for very compelling reasons.[42] Where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence.[43] We find no cogent reason to deviate from the general rule in this case.

As mentioned, acting as private bodyguard without approval of the proper authorities is classified as a grave offense. Memorandum Circular No. 93-024 (Guidelines in the Application of Penalties in Police Administrative Cases)[44] provides for the following schedule of penalties:

SEC. 2. Schedule of Penalties. - The penalties for light, less grave, and grave offenses shall be made in accordance with the following schedule:

x x x x

C. For Grave Offenses:

- a. Maximum suspension imposable (minimum period);
- b. Forced Resignation/Demotion of not more than one (1) rank (medium period);
- c. Dismissal (maximum period).

x x x x

SEC. 4. Qualifying Circumstances. - In the determination of the penalties to be imposed, mitigating and aggravating circumstances attendant to the commission of the offense shall be considered:

The following are mitigating circumstances:

- a. physical illness
- b. good faith
- c. length of service in the government
- d. analogous circumstances.

x x x x

In refusing to be swayed by petitioner's argument that his fourteen (14) years of service in government with no record of previous administrative offense should have mitigated his liability, the CSC held:

The Commission finds the act of Gannapao of serving as a bodyguard of UTWC General Manager Atty. Gironella and harassing the bus drivers of the said agency so grave that the decision of then DILG Secretary Alfredo S. Lim, affirming his suspension from the service for three (3) months is modified to dismissal from the service.

In the case of *University of the Philippines vs. Civil Service Commission, et al.*, G.R. No. 89454 dated April 20, 1992, the Supreme Court held, as follows:

'We do not agree that private respondent's length of service and the fact that it was her first offense shall be taken into account. Respondent Commission failed to consider that private respondent committed not only one act, but a series of acts which were deliberately committed over a number of years while respondent was in the service. These acts were of the gravest character which strikes at the very integrity and prestige of the University.'

It must be emphasized that the PNP, as an institution, was organized to ensure accountability and uprightness in the exercise of police discretion as well as to achieve efficiency and effectiveness of its members and units in the performance of their functions thus, its leadership would be well within its right to cleanse itself of wrongdoers.[45]

Public respondent CSC did not err in not considering length of service as a mitigating circumstance and in imposing the maximum penalty of dismissal on the petitioner. Length of service as a factor in determining the imposable penalty in administrative cases is a double-edged sword.[46] Despite the language of Section 4 of Memorandum Circular No. 93-024, length of service is not always a mitigating circumstance in every case of commission of an administrative offense by a public officer or employee.

Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.[47] Said rule provides thus:

SEC. 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. - In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

- Physical illness
- Good faith
- Taking undue advantage of official position
- Taking undue advantage of subordinate
- Undue disclosure of confidential information
- Use of government property in the commission of the offense
- Habituality
- Offense is committed during office hours and within the premises of the office or building
- Employment of fraudulent means to commit or conceal the offense
- Length of service in the government
- Education, or
- Other analogous circumstances (Emphasis ours.)

In *University of the Philippines v. Civil Service Commission*,^[48] cited by CSC, we did not consider length of service in favor of the private respondent; instead, we took it against said respondent because her length of service, among other things, helped her in the commission of the offense.

Where the government employee concerned took advantage of long years of service and position in public office, length of service may not be considered in lowering the penalty. This Court has invariably taken this circumstance against the respondent public officer or employee in administrative cases involving serious offenses, even if it was the first time said public officer or employee was administratively charged. Thus, we held in *Civil Service Commission v. Cortez*^[49]:

Petitioner CSC is correct that length of service should be taken against the respondent. Length of service is not a magic word that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance. That this is so is clear in Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. x x x

x x x x

Moreover, a review of jurisprudence shows that, although in most cases length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious. x x x

x x x x

x x x we cannot also consider length of service in favor of the respondent because of the gravity of the offense she committed and the fact that it was her length of service in the CSC which helped her in the commission of the offense.

x x x x

x x x it is clear from the ruling of the CSC that respondent's act irreparably tarnished the integrity of the CSC.

x x x

x x x x

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, 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.[50] (Emphasis ours.)

Petitioner contends that this case should be distinguished from *University of the Philippines v. Civil Service Commission*[51] because he was "not committing any crime assuming he served a bodyguard," "was not in uniform or in the performance of duty there being no such allegation in the complaint," and "was not deceiving or cheating anybody." Even the ruling in *Civil Service Commission v. Cortez*[52] is not applicable since the respondent therein committed acts of dishonesty.

We are not persuaded.

As already pointed out, Serious Irregularities in the Performance of Duties, like those offenses (e.g., Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service) enumerated under Section 52 (A) of the Civil Service Law, is a grave offense. Grave offenses have the most deleterious effects on government service. By acting as a private bodyguard without approval by the proper authorities for several months, petitioner reneged on his primary duties to the community in the maintenance of peace and order and public safety. Such mercenary tendencies undermine the effectivity and integrity of a national police force committed to provide protection and assistance to citizens in times of danger and emergency. But what is worse, petitioner allowed himself to be used in perpetrating violence and intimidation upon ordinary workers embroiled in a legal conflict with management.

Petitioner apparently failed to grasp the gravity of his transgression which, not only impacts negatively on the image of the PNP, but also reflects the depravity of his character. Under the circumstances, the Court cannot consider in his favor his fourteen (14) years in the police service and his being a first time offender. The CSC thus correctly imposed on him the maximum penalty of dismissal. Pursuant to Section 6 of Memorandum Circular No. 93-024, the penalty of dismissal, which results in the separation of the respondent from the service, shall carry with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification from reemployment in the police service.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated April 27, 2007 and Resolution dated October 10, 2007 of the Court of Appeals in CA-G.R. SP No. 70605 are hereby AFFIRMED.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Perez, Mendoza, and Sereno, JJ., concur.

Nachura, J. on leave.

Del Castillo, J., on official leave.

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- [1] Rollo, pp. 27-38. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon concurring.
- [2] Id. at 40-41.
- [3] CA rollo, pp. 36-47.
- [4] Id. at 60-63.
- [5] Id. at 67-72.
- [6] Id. at 49-50.
- [7] Rules and Regulations in the Disposition of Administrative Cases Involving PNP Members Before the PNP Disciplinary Authorities.
- [8] CA rollo, p. 94.
- [9] Id. at 97-99.
- [10] Rollo, pp. 58-61.
- [11] Id. at 61.
- [12] CA rollo, pp. 115-119.
- [13] Rollo, p. 29.
- [14] CA rollo, p. 140.
- [15] CA rollo, p. 47.
- [16] Id. at 184-185.
- [17] Id. at 275-276.
- [18] Civil Service Commission v. Court of Appeals, G.R. No. 159696, November 17, 2005, 475 SCRA 276.
- [19] Rollo, p. 37.
- [20] Id. at 60.
- [21] Montoya v. Varilla, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 841.
- [22] Id. at 842.
- [23] Cayago v. Lina, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 45, citing Rodriguez v. Court of Appeals, G.R. No. 134278, August 7, 2002, 386 SCRA 492, 499-500.
- [24] CA rollo, pp. 115-119.
- [25] Id. at 116-117.
- [26] See Garcia v. Pajaro, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 138.
- [27] Philippine Banking Corporation v. Court of Appeals, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503.

- [28] *Batongbakal v. Zafra*, G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.
- [29] CA rollo, pp. 83-84, 109.
- [30] *Id.* at 87.
- [31] *Id.* at 568-570.
- [32] Rollo, pp. 169-170.
- [33] CA rollo, p. 125.
- [34] *Id.* at 88, 118.
- [35] *Id.* at 126.
- [36] *Id.* at 118.
- [37] *Id.* at 167-168.
- [38] CSC Resolution No. 991936 dated August 31, 1999.
- [39] CA rollo, pp. 44-45.
- [40] Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.
- [41] *Miralles v. Go*, G.R. No. 139943, January 18, 2001, 349 SCRA 596, 604, citing *Vda. de Nazareno v. Court of Appeals*, G.R. No. 98045, June 26, 1996, 257 SCRA 589, 598.
- [42] *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 12, 2005, 477 SCRA 339, 355.
- [43] *Nacu v. Civil Service Commission*, G.R. No. 187752, November 23, 2010, p. 16, citing *Remolona v. Civil Service Commission*, 414 Phil. 590, 601 (2001).
- [44] Adopted November 1993.
- [45] CA rollo, pp. 46-47.
- [46] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586, 593, citing *Mariano v. Nacional, A.M.* No. MTJ-07-1688, February 10, 2009, 578 SCRA 181, 188.
- [47] *Fact-Finding and Intelligence Bureau, Office of the Ombudsman v. Campaña*, G.R. No. 173865, August 20, 2008, 562 SCRA 680, 691, citing *Gonzales v. Civil Service Commission*, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 749; CSC Memorandum Circular No. 19-99, Rule IV, Section 53(J) and *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates*, A.M. No. 2005-07-SC, April 19, 2006, 487 SCRA 352, 367.
- [48] G.R. No. 89454, April 20, 1992, 208 SCRA 174, 178.
- [49] G.R. No. 155732, June 3, 2004, 430 SCRA 593.
- [50] *Id.* at 604-607.
- [51] *Supra* note 48.
- [52] *Supra* note 49.

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