

NATIONAL BUREAU OF INVESTIGATION, REGION VII, PETITIONER, VS. AVELINO J. GUNGOB, SR., RESPONDENT.

G.R. No. 249916, August 13, 2025

Ponente: ROSARIO, J.

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ROSARIO, J.:

This is a Petition for Review on Certiorari[1] assailing the Decision[2] dated March 13, 2019 and Resolution[3] dated October 2, 2019 of the Court of Appeals (CA).

The antecedents, as found by the CA, are as follows:

In the morning of [November 26,] 2009, agents from the National Bureau of Investigation (NBI), Central Visayas Regional Office, Atty. Roy Salubre of the Provincial Treasurer's Office, officers from the Cebu Provincial Police Office (CPPO), and soldiers from the Philippine Army 78th Infantry Battalion, conducted monitoring operations and checkpoint in Barangays Danglag, Garing[,] and Dagongdong, all in Consolacion, Cebu. Their purpose was to monitor and possibly apprehend those suspected of illegal extraction and hauling of mineral products.

The checkpoint caused the apprehension of [three] ten-wheeler dump trucks loaded with limestone or diorite used as filling materials. The team also seized [one] backhoe and [one] bulldozer at the quarry site where the minerals were sourced from. All these vehicles were owned by the Municipal Government of Consolacion, Cebu. The Municipal Mayor at that time was [respondent] Avelino Gungob, Sr. [(Gungob).]

On [December 3,] 2009, [petitioner] NBI Regional Office VII [(NBI-Region 7)] filed a Complaint with the [Office of the Ombudsman (OMB)] accusing Gungob, in his capacity as Mayor of Consolacion, Cebu, and Job Order Employees namely: Glicerio Galo, Leonardo C. Capao, Joebeboy C. Dayon, Juanito T. Gerundio, Jr., Beda I. Comesos, Nicarter J. Yray, and Dionito C. Mangilaya (Job Order Employees, collectively) of Theft of Minerals punished under Section 103 of [Republic Act No. 7942 or] the Mining Act of 1995. These Job Order Employees were the drivers and operators of the seized [dump trucks] and heavy [equipment]. The [OMB] found enough basis to proceed with both the criminal and administrative investigations. [The criminal aspect of the complaint was docketed as OMB-V-C-09-0425-I, while the administrative aspect was docketed as OMB-V-A-09-0416-I].

In his Counter-Affidavit, Gungob alleged that he did not commit the offense charged. The alleged illegal quarrying in the mountains of Consolacion was for the construction of farm-to-market roads known as the "Mountain Highway Project." As mandated by the Environmental Compliance Certificate for the project, the excavated earth materials/debris were to be expeditiously removed. Coincidentally, several projects of the municipality required dumping of filling materials such as the construction of a transportation terminal within the new public market and the "Government Center Project," which was to reclaim and develop [21] hectares to be used as a Government Center.

In a 4[th] Endorsement dated [April 29,] 2008, the Provincial Government of Cebu granted the Municipality of Consolacion a Gratuitous Permit to extract and haul limestone. This permit, however, expired after the completion of the public transport terminal. The municipality then applied for another Gratuitous Permit to

haul limestone from the "Mountain Highway Project" to the "Government Center Project" but the provincial government did not act upon their application despite of several follow-ups. So as not to delay [both] projects, the hauling of limestone continued until the municipality's vehicles were apprehended at the checkpoint.

The Job Order Employees also filed a Joint Counter-Affidavit. Their defense was that they merely followed the instructions of their supervisor who, in turn, only followed the directive of Gungob.[4] (Citations omitted)

On February 9, 2015, the OMB issued a Joint Resolution[5] in OMB-V-C-09-0425-I and OMB-V-A-09-0416-I, ruling as follows:

- As for the criminal aspect, the OMB found probable cause to indict Gungob and the Job Order Employees for theft of materials under Section 103 in relation to Section 49 of Republic Act No. 7942. The OMB thus ordered that a corresponding information to be filed against Gungob and the Job Order Employees in the appropriate court.[6]

- As for the administrative aspect, on the other hand, the OMB found Gungob guilty of simple misconduct and meted him the penalty of suspension without pay for three months together with the concomitant accessory penalties. The OMB also directed that, in the event that the penalty of suspension can no longer be enforced due to Gungob's separation from the service, such penalty shall be converted into a fine in the amount equivalent to Gungob's salary for three months which may be deducted from the latter's retirement benefits, accrued leave credits or any receivables from his office.[7]

Gungob filed a Motion for Reconsideration[8] but was denied by the OMB via a Joint Order[9] dated April 23, 2015. Undeterred, Gungob filed a Petition for Review[10] before the CA.

On March 13, 2019, the CA rendered a Decision[11] partially granting Gungob's Petition for Review. Prefatorily, the CA held that it had no jurisdiction over questions regarding the criminal aspect of the OMB's ruling for lack of jurisdiction. Hence, it confined itself only to the resolution of Gungob's appeal against the administrative aspect of the OMB's ruling.

On that matter, the CA found Gungob not liable for simple misconduct. The appellate court noted that, while Gungob may have committed a blunder in causing the extraction of earth minerals or limestones without the necessary permits, the latter only did so out of utmost good faith and with the intent to implement bona fide projects of his municipality.[12] The CA also held that the lack of gratuitous permits could not be attributed to the negligence or misconduct of Gungob, as evidence revealed that the latter had sent no less than five letters to the provincial governor, from January to October 2009, requesting for the renewal of the municipality's gratuitous permits, but had been ignored.[13]

The NBI-Region 7, through the Office of the Solicitor General (OSG), filed a Motion for Reconsideration,[14] but the CA denied the same for being filed out of time.[15]

Hence, this Petition by the NBI-Region 7.

Our Ruling

We grant the Petition.

The CA erred in denying the Motion for Reconsideration of the petitioner for being filed out of time

Prefatorily, We hold that the CA erroneously regarded the Motion for Reconsideration of the petitioner as being filed out of time. In deeming such motion too late, the appellate court reckoned the reglementary period for filing a motion for reconsideration from the time the petitioner received a copy of the assailed CA Decision, viz.:

This Court NOTES that [the petitioner] received a copy of the [March 13,] 2019 Decision on [March 29,] 2019. The Office of the Solicitor General, representing [the petitioner], filed the herein Motion for Reconsideration only on [April 16,] 2019.

Based on the date of receipt, the [15-day] period to file a Motion for Reconsideration expired on [April 13,] 2019. Since the latter date fell on a Saturday, the [petitioner] had until [April 15,] 2019, Monday, to file the said Motion. Since the motion was filed only on [April 16,] 2019, said Motion is [one] day late.

The [15-day] reglementary period for filing a motion for reconsideration is non-extendible.

. . . .

WHEREFORE, the Motion for Reconsideration is DENIED for being filed out of time.

SO ORDERED.[16] (Emphasis supplied, citations omitted)

The Rules of Court is clear that whenever a party to a case is represented by counsel, service of pleadings, judgments, and other papers to such party ought to be done through his or her counsel unless otherwise directed by the court. Thus, under Rule 13, Section 2 of the 1997 Rules on Civil Procedure:

SEC. 2. Filing and service, defined. – Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Emphasis supplied)

The above provision was substantially carried over under the 2019 Rules of Civil Procedure:

SEC. 2. Filing and service, defined. – Filing is the act of submitting the pleading or other paper to the court.

Service is the act of providing a party with a copy of the pleading or any other court submission. If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court. Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served by the opposite side.

Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel. (Emphasis supplied)

Consequently, service of court orders or papers to a party who appears by counsel is not, as a rule, considered as notice in law.[17] In *Soriano v. Soriano*,^[18] it was taught:

As mentioned above, the general rule is, where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. Notice should be made upon the counsel of record at his exact given address, to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.

Said differently, when a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[19] (Emphasis supplied, citations omitted)

Villalongha v. Court of Appeals,[20] on the other hand, expounded on the rationale of the foregoing rule, to wit:

Section 2, Rule 13 of the Rules of Court provides that "if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." Thus, even if a party represented by counsel has been actually notified, said notice is not considered notice in law. "The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself if [he/she] does not intend to hire a lawyer." [21] (Emphasis supplied, citations omitted)

With the above precepts, the error of the CA becomes manifest.

Here, it is undisputed that the petitioner was and continues to be represented by the OSG. In fact, it was the OSG, as counsel of record of the petitioner, which prepared and filed with the CA the subject Motion for Reconsideration.[22]

Consequently, to be considered effective and binding upon the petitioner, the service of the CA Decision must be made to its counsel— i.e., the OSG. As ordained under the Rules and as construed by jurisprudence, the petitioner's receipt of the CA Decision, on its own, cannot be considered as notice of such decision in law. Accordingly, We find that the CA erred in reckoning the reglementary period for filing a motion for reconsideration from the petitioner's receipt of the assailed CA Decision. The said period should have been counted from the OSG's receipt of the same decision.

In this case, the records attest that the OSG only received a copy of the CA Decision on April 4, 2019.[23] Thus, strictly speaking, the petitioner had until April 19, 2019 to file its Motion for Reconsideration. Given that the subject Motion for Reconsideration was already filed on April 16, 2019,[24] We hold that the CA's denial thereof, on the ground of being filed out of time, is baseless.

The respondent is guilty of simple misconduct

Anent the crux of the appeal, We find in favor of the petitioner.

The OMB was correct. The respondent may still be found guilty of simple misconduct. In *Civil Service Commission v. Ledesma*, [25] We defined the concept of "misconduct" and its different permutations as such:

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.[26] (Emphasis supplied, citations omitted)

Verily, the plain unlawful behavior of a public officer—even if not motivated by bad faith, malice or a corrupt consideration—already gives rise to the administrative offense of simple misconduct.

In this case, it is undisputed that the respondent, in his capacity as the mayor of the municipality of Consolacion, directed the extraction and transport of earth minerals and limestones sans the necessary government permits.[27] Such act by the respondent, however, is in itself a prima facie violation of Section 103 of Republic Act No. 7942, viz.:

SEC. 103. Theft of Minerals. — Any person extracting minerals and disposing the same without a mining

agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from [six] months to [six] years or pay a fine from [PHP 10,000.00] to [PHP 20,000.00], or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership. (Emphasis supplied)

The CA's position that the respondent may be totally absolved on account of his good faith—i.e., that the respondent only authorized the extraction and transport of the minerals in order to implement bona fide projects of his municipality, and that there were already requests for the renewal of the municipality's gratuitous permits—is not right. Good faith is not anathema to a finding of liability for simple misconduct. Thus, in *Faeldonea v. CSC*,^[28] We held that while a postmaster's good faith and honest intentions when committing a protocol violation did not render him liable for the offense of grave misconduct, the same did not excuse him from being found guilty of simple misconduct:

There is no doubt that petitioner's conduct was improper because he deviated from the normal procedure of delivering the letter to the addressee unopened. The question is whether his conduct amounted to "grave misconduct," which has been defined as "a flagrantly or shamefully wrong or improper conduct."

....

In the instant case, the Court finds that petitioner's lack of ill or selfish motives in depositing the check for Efren's death benefits in the account of the Philippine Postal Corporation does not amount to grave misconduct.

....

However, the Court finds that petitioner cannot be completely exonerated for the acts complained of. As Postmaster, petitioner is charged with the duty of preserving the privacy of communication and correspondence, particularly the integrity of the postal system. He is, likewise, expected to set a good example to his subordinates in the office. This he failed to do when he took matters into his own hands and deposited the check in the account of the Philippine Postal Corporation to settle Efren's obligations, instead of giving the check to Merced, the intended recipient thereof, and urging her to pay her late husband's debts. Petitioner is thus held liable for the less grave offense of simple misconduct.^[29] (Emphasis supplied, citations omitted)

Hence, like the postmaster in *Faeldonea*, the respondent ought to remain administratively accountable for his transgression of the law despite his good faith. Verily, We must reinstate the ruling of the OMB anent the administrative liability of the respondent.

ACCORDINGLY, the instant Petition is GRANTED. The Decision dated March 13, 2019 and the Resolution dated October 2, 2019 of the Court of Appeals in CA-G.R. SP No. 09439 are REVERSED and SET ASIDE.

Respondent Avelino Gungob, Sr. is found GUILTY of SIMPLE MISCONDUCT and is hereby meted the penalty of SUSPENSION WITHOUT PAY for three months together with the concomitant accessory penalties.

In the event that the penalty of suspension can no longer be enforced due to respondent Avelino J. Gungob, Sr.'s separation from the service, such penalty shall be converted into a FINE in the amount equivalent to the respondent's salary for three months which may be deducted from his retirement benefits, accrued leave credits, or any receivables from his office.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Hernando, Zalameda, and Marquez, JJ., concur.

[1] Rollo, pp. 13-29.

[2] Id. at 33-41. The March 13, 2019 Decision in CA-G.R. SP No. 09439 was penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Gabriel T. Ingles and Edward B. Contreras of the Nineteenth Division, Court of Appeals, Cebu City.

[3] Id. at 132-134. The October 2, 2019 Resolution in CA-G.R. SP No. 09439 was penned by Associate Justice Dorothy P. Montejo-Gonzaga and concurred in by Associate Justices Gabriel T. Ingles and Carlito B. Calpatura of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

[4] Id. at 34-36.

[5] Id. at 59-67. The February 9, 2015 Joint Resolution in OMB-V-C-09-0425-I and OMB-V-A-09-0416-I was signed by Graft Investigation and Prosecution Officer I Blesilda T. Ouano and approved by Ombudsman Conchita Carpio-Morales.

[6] See id. at 61-64, 65.

[7] See id. at 64-66.

[8] Id. at 68-72.

[9] Id. at 74-77.

[10] Id. at 43-46.

[11] Id. at 33-41.

[12] Id. at 39.

[13] Id. at 39-40.

[14] Id. at 135-147.

[15] Id. at 132-134.

[16] Id.

[17] See Soriano v. Soriano, 558 Phil. 627, 642 (2007) [Per J. Chico-Nazario, Third Division].

[18] 558 Phil. 627 (2007) [Per J. Chico-Nazario, Third Division].

[19] Id. at 642.

[20] 860 Phil. 351 (2019) [Per J. Perlas-Bernabe, First Division].

[21] Id. at 359.

[22] See id. at 142.

[23] See id. at 33.

[24] See id. at 135.

[25] 508 Phil. 569 (2005) [Per J. Carpio, En Banc].

[26] Id. at 579-580.

[27] See rollo, p. 64.

[28] 435 Phil. 410 (2002) [Per J. Kapunan, En Banc].

[29] Id. at 414, 416-417.

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