

SIXTO TALAG, PETITIONER, VS. C. E. NATHORST, AS CHIEF OF CONSTABULARY, RESPONDENT.

G.R. No. 28465. February 21, 1928

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition presented in the Supreme Court for the extraordinary legal writ of mandamus. The petitioner was a duly appointed officer of the Philippine Constabulary, with the rank of first lieutenant and medical inspector, and served as such from May 16, 1919, to September 23, 1927. The respondent is the Chief of Constabulary, with headquarters in the City of Manila, Philippine Islands.

The petitioner claims that he was illegally and unlawfully removed from his said position in the Constabulary without authority of law; that he has no other plain, speedy and adequate remedy in the ordinary course of law, and prays for the writ of mandamus requiring the respondent to vacate the order dismissing him, and to restore him to his former rank as officer of the Philippine Constabulary. Upon the presentation of the petition the respondent was required to show cause why the prayer should not be granted.

After the presentation of the answer the parties entered into a stipulation of facts, which clearly and succinctly presents the issue involved in the present case. The agreed statement of facts follows:

"1. That the petitioner was duly appointed officer of the Philippine Constabulary with the rank of first lieutenant and medical inspector and served as such from May 16, 1919 to September 23, 1927.

"2. That the respondent is the Chief of Constabulary with headquarters in the City of Manila, Philippine Islands.

"3. That on or about August 3, 1927, the provincial commander, Philippine Constabulary at Lingayen, Pangasinan, indorsed to the petitioner a telegram received from the headquarters, Philippine Constabulary, Manila, the pertinent part of which said telegram reads as follows:

" 'Instruct Lieutenant Talag submit his resignation effective completion transfer property accountability to Lieutenant Fernandine refusal to resign means dismissal

" 'RAMOS'

"4. That the petitioner, upon the receipt of the said telegram, requested and obtained permission from the proper authorities to proceed to Manila to find out the reason or reasons for requiring his resignation, and upon arriving in the city he was informed that the order requiring his resignation was issued as the result of a recommendation made by and received from the Board of Officers created by Special Order No. 103, Philippine Constabulary.

"5. That no specific charge or charges had been filed against the petitioner, the said Board of Officers having merely proceeded to review as it reviewed the record of the petitioner, without giving him an opportunity to be heard; and as a result of such review the Board recommended his separation from the service.

"6. That on or about August 8, 1927, the petitioner requested that the order requiring him to resign be reconsidered and that a complete investigation of the charges, if any, against him be made.

"7. That in view of the request thus made by the petitioner, the respondent appointed a new Board of Officers by Special Order No. 151, which said special order was later amended by Special Order No. 156, the pertinent part of which reads as follows:

" '3. Paragraph 3, Special Order No. 151, current series, these headquarters, is amended to read:

" '3. A board of officers, composed of Major Paulino Santos, Chairman, Major Miguel Aguilar, Captain Juan C. Quimbo, Captain Emiliano M. Pahis, and Captain Cayo Marfori, is hereby appointed to meet at the call of the Chairman thereof for the purpose of going over the records of First Lieutenant Sixto Talag, with a view of recommending to the Chief the advisability of retaining him in the Constabulary service. The board will convene at these headquarters. The Adjutant, P. C., will furnish the board the records of Lieutenant Talag.

" 'C. E. NATHORST

" 'BRIGADIER-GENERAL
Chief of Constabulary'

"8. The petitioner on September 5, 1927, addressed and filed with the respondent the following request:

" 'I was informed that the trial of my case will be held this afternoon before the Board of Officers created by S. O. No. 151, paragraph 3, H. P. C., c. s. it is respectfully requested that the undersigned be furnished a specification of charges before the investigation, in order that he can prepare the necessary evidences to defend himself from such charges and to determine the necessity of procuring* the services of counsels.

" 'SIXTO TALAG'

"9. That notwithstanding the said request, and after the petitioner had been informed verbally by the chairman of the said Board of Officers that no charges had been filed against him, the said Board of Officers met on September 45, 1927, to consider the advisability of retaining him in the service of the Philippine Constabulary by merely taking into consideration the personal record of the petitioner.

"10. That at the said meeting, the petitioner appeared with Major Silvino Gallardo, P. C. as his counsel, who then and there raised the question of the legality of the creation of the said Board of Officers and demanded a specification of the charges against the petitioner, whereupon the meeting was adjourned to September 7, 1927.

"11. That on September 8, 1927, Major Silvino Gallardo, P. C., filed with the said Board of Officers the following memorandum:

" 'From: Major S. Gallardo, P. C.,

" 'Counsel for 1st Lieut. Sixto Talag.

" 'To: Board of Officers appointed by paragraph 3, S. O.

No. 103, as amended S. O. No. 121-(3) & S. O. No. 160-(3) H. P. C., c. s.

" 'Subject: Investigation of 1st Lieut. Sixto Talag, Med. Div.

" 'In compliance with telegraphic instruction from the Adjutant, P. C., the undersigned reported to him for an interview.

" '2. Upon reporting to the Adjutant I was instructed to appear before the Board of Officers created by par. 3, S. O. No. 156, H. P. C., c. s., as defense counsel for 1st Lt. Sixto Talag. On September 6, 1927, at 2 p. m., I appeared before the said board as counsel for Lt. Talag, and after discussing the legal aspects under which this

board was convened; and this board not being able to produce specific charges against 1st Lt. Talag; it adjourned for further consultation with the Chief of Constabulary.

" '3. On the morning of September 8, 1927, the undersigned was informed by the adjutant to appear with his client before a new board which will convene at 2 p. m. September 8, 1927. In compliance with this information the respondent and his counsel appeared on the time and date designated. This board is composed of the following officers:

Colonel Lucien R. Sweet, Chairman
Lt.-Colonel Basilio Valdes,
Captain Emiliano Panis,
Captain Manuel Olympia, &
Capt. Porfirio Zablan, members.

" '4. As counsel for the defense, I requested the board to furnish me with specific charges in due form, that I may properly and duly comply with my duty. The Board thru its chairman Col. L. R. Sweet informed the counsel that it is a board directed by the Chief of Constabulary to examine and pass upon the records of Lt. Talag and make recommendation thereof, hence no specific charge could be given in the present case.

" '5. Having been informed by the Board that there are no. specific charges filed against Lt. Sixto Talag, I then ask the Board to permit me to withdraw my appearance and leave the room, giving up my duty as defense counsel, for my presence therein is considered unnecessary under the circumstance; therefore I left room with due permission of the Board.

" '6. I respectfully submit this to be made of record.

" '(Sgd.) S. GALLARDO

" 'SILVINO GALLARDO

" 'Major, P. C.

" 'Counsel for 1st Lieut Sixto Talag'

"12. That on September 9, 1927, the petitioner received a memorandum signed by Major Paulino Santos, Adjutant, P. C., and reading as follows:

" 'PHILIPPINE CONSTABULARY

" 'MANILA

" 'September 9, 1927

" 'MEMORANDUM FOR

Lieutenant Sixto Talag, P. C.

" 'Herewith is an itemized list of incidents in your service as a Constabulary officer, which appear in the records on file at these headquarters, and upon which the Board appointed by the Chief of Constabulary in paragraph 3, S. O. 103, H. P. C., c. s., has based its action in recommending your summary separation from the service. The list is being furnished you in order that you may comment thereon should you so desire.

" '(Sgd.) PAULINO SANTOS

" 'Major, P. C.

" 'Adjutant'

"13. That a copy of the said itemized list of incidents in the petitioner's service as a Constabulary officer is marked Exhibit A and attached to, and made a part of, the petition.

"14. That there are other incidents in the petitioner's service record which are not included in the above

mentioned list such as the following:

" 'E. R. 1923 Dec. 31.—Rated as good and excellent. Stevens.

" 'E. R. 1923 Dec. 31.—Rated very good and excellent. Lt. Talag is a good officer and a good Doctor, conscientious, hard-worker and very attentive to duty. The undersigned desires to have this officer in this District and at his present station, his long experience fitting him particularly well to be in charge of a Constabulary Hospital of the importance of that in Tuguegarao. ALEJO VALDES.'

"15. That upon the termination of the so-called 'Hookworm campaign' and of the campaign undertaken against Akbara, a moro outlaw and his followers, the petitioner was awarded the medal of Sulu and Mindanao Campaign. The petitioner also claims and is ready and willing to testify under oath that he was personally felicitated by his then Chief Surgeon, Lieut.-Colonel Francisco Oñate, but the respondent claims that he has no knowledge of such felicitation, there being no record of same in his office.

'16. That the petitioner in 1922 took an examination and qualified for promotion to the rank of captain.

"17. That on September 15, 1927, the petitioner returned the memorandum mentioned in paragraph 11 hereof with the following indorsement:

" '1ST INDORSEMENT

" 'Manila, September 15, 1927

" 'From: 1st Lieut. Sixto Talag, Med. Insp. P. C.

" 'Manila.

""To: Adjutant, P. C., Manila.

" '1. Returned.

" '2. After perusal of the itemized list of incidents in his service as a constabulary officer, which has been furnished him, the undersigned respectfully submits that for such of those incidents as constituted misconduct on his part, he has already been duly punished. To reopen these incidents, therefore, would be placing the undersigned twice in jeopardy. The sense of justice so strongly prevailing in these proceedings revolts at the idea of punishing a man twice for the same offense.

" '3. As a result of the investigation made in 1922, the undersigned was given an opportunity to improve his conduct, and was transferred to Sulu. From that date up to the present his conduct has always been very good and satisfactory, as shown by his personal record.

" '4. The case of Representative Guzman which was brought to the attention of the Chief of Constabulary sometime in January, 1927, has already been acted upon, the case having been dropped as shown by the record.

" '5. The complaint made by Mr. Carlos Tiangco, a druggist, in February, 1927 has been the subject of different comments and reports which may be found in the files of the Headquarters. Attention is respectfully invited to the explanations of the undersigned on file.

" '6. Should it be decided to reopen any of the incidents mentioned, the undersigned respectfully prays that he be advised of the specific charges made against him and that he be given an opportunity to defend himself in accordance with law.

" 'SIXTO TALAG

" '1st Lieut. & Medical Inspector, P. C.'

"18. That notwithstanding his having made a request therefor, the petitioner was not allowed to engage the

services of a private counsel to defend him during the time in which the Board of Officers conducted the revision of his personal record.

"19. That on September 20, 1927, the Board of Officers rendered its report and recommendation in a memorandum dated September 20, 1927, which is marked Exhibit 1 of the respondent, attached to, and made a part of, the return; said memorandum making reference to another of Lieutenant-Colonel and Chief Surgeon B. J. Valdes, dated September 19, 1927, which is marked Exhibit 2 of the respondent, attached to, and made part of, the said return.

"20. That as a result of the above report which was approved by the Secretary of the Interior and the Governor-General, and which reaffirmed by reference the previous recommendation, approved by the Secretary of the Interior and the Governor-General, to the effect that the petitioner be required to resign and should he refuse to do so, he be dismissed from the service, the petitioner was directed to immediately submit his resignation in a memorandum signed by Major Paulino Santos, Adjutant, P. C., and reading as follows:

" 'September 21, 1927

" 'MEMORANDUM FOR

" 'Lieutenant Sixto Talag, P. C.,

" '1. In the 1st indorsement of the 20th instant of the office of the Governor-General, the approval of the findings and recommendation of the Board of Officers that you be separated from the service, has been confirmed. In accordance thereto, you are therefore hereby directed to immediately submit your resignation.

" '2. Please acknowledge receipt.

" 'PAULINO SANTOS

" 'Major, P. C.

" 'Adjutant'

"21. That on September 23, 1927, the petitioner received another memorandum signed by Major Paulino Santos, Adjutant, P. C., and reading as follows:

" 'September 23, 1927

" 'MEMORANDUM FOR

" 'Lieutenant Sixto Talag.

"Reference your memorandum of September 22d requesting that you be given five (5) days to decide the matter of your resignation, the Chief has directed me to advise you that he expects to receive your resignation not later than eleven o'clock this morning. In case your resignation is not received at the above designated time, orders dismissing you from the service will immediately be issued.

" '(Sgd.) P. SANTOS

" 'PAULINO SANTOS

" 'Major, P. C.

" 'Adjutant'

"22. That on September 23, 1927, the petitioner returned the memorandum mentioned in the preceding paragraph with the following indorsement:

" '1ST INDORSEMENT

" 'Manila, September 23, 1927

" 'From: 1st Lieut Sixto Talag, Med. Insp. P. C.,

" 'Manila.

" 'To: Adjutant, P. C., Manila.

" '1. Returned.

" '2. The undersigned begs leave to state that he finds no valid reason why he should submit his resignation.

" '3. The findings and recommendation of the Board of Officers were made without giving the undersigned proper opportunity to be heard.

" '4. While the undersigned realizes that he is in duty bound to obey legal orders from his superior officers, he believes that the order requiring him to resign is not in accordance with law.

" 'SIXTO TALAG

" '1st Lieut. & Medical Inspector, P. C.'

"23. That on the same date, September 23, 1927, the petitioner was furnished a copy of Special Order No. 171, dated September 23, 1927, which reads as follows:

" '1. First Lieutenant SIXTO TALAG is hereby dismissed from the service, effective at the close of office September 23, 1927.

" 'C. E. NATHORST

" 'Brigadier-General

" 'Chief of Constabulary'

"24. That for sometime before and at the date the petitioner was dismissed, he was earning a salary of P2,640 per annum.

"25. That by reason of the said order of dismissal, the petitioner has been deprived of his accrued leave pay amounting to approximately P400 to which he would otherwise be entitled."

The Constabulary of the Philippine Islands is a semimilitary organization, within which discipline is of the very essence of efficiency. It was organized for the preservation of peace, law and order in the Philippine Islands. It is an organized and disciplined body. In the exercise of its power to maintain peace, law and order, it is subject to the command and general supervision of the Governor-General. It has its regular officers appointed in accordance with law. It has one Chief and a number of Assistant Chiefs, which have been provided for from time to time.

Section 849 of the Administrative Code provides that the members of the Constabulary, for inefficiency, misconduct or disloyalty to the United States, may be suspended by the Chief of Constabulary with the prior approval of the department head, and, after due hearing, removed or reduced in rank as the case may require. The Chief of the Constabulary may also, for neglect of duty, violation of regulations, or any minor offense against good order and discipline, in the interest of public service, reduce the salary of any member of the Constabulary, or withhold his salary in a sum not exceeding one month's pay, or suspend him without pay for a period not exceeding two months. In accordance with the authority conferred by said section 849 and under the stipulated facts, the petitioner herein was dismissed from the service effective at the close of office September 23, 1927, with the approval of the department head.

The petitioner contends that he was removed from his office as a member of the Constabulary, without a hearing—without due process of law—and presents a very able and a very well-reasoned argument, through his attorney, in support of that contention. If the contention of the petitioner was supported by the facts this court

would have little trouble in granting it. The facts, however, do not fully support his contention as will be seen from a careful reading of the stipulated facts above quoted.

It is true that at the beginning of the administrative proceedings against the petitioner, the investigating Board of the Constabulary, believing that the petitioner, conscious of his faults and deficiency, would willingly tender his resignation, requested him so to do. The petitioner, however, was unwilling to tender his resignation and asked for an investigation. The respondent thereupon appointed a new Board to make an investigation of the petitioner's conduct. After some delay the Board, through its member, Major Paulino Santos, furnished the petitioner with what was called "an itemized list of incidents" in the petitioner's service. Such itemized list of incidents, in fact, was a specification of charges based on authentic official record. The petitioner answered said charges without controverting their truth. Said answer not being satisfactory, the Board recommended to the respondent that the petitioner be required to resign or be dismissed from the service. That recommendation of the Board was adopted by the respondent, with the approval of the Secretary of the Interior and the Governor-General. It thus appears that the petitioner was furnished with a copy of the charges preferred against him relating to his inefficiency and misconduct and he was given a full opportunity to answer the same and to defend himself. And, moreover, it must be remembered that the Constabulary is a semi-military organization where the power to discipline is of the highest importance.

We find nothing in the law which prescribes in detail a method of procedure for disciplining the members of the Constabulary. There is nothing in the law which requires the Chief of the Constabulary to follow any particular procedure. The law simply requires that the member of the Constabulary who is charged with inefficiency, etc. shall be given a due hearing. It has been said that in determining whether the formalities required by law have been complied with, the courts do not require the same strictness of procedure on the part of the removing officer as is required in an ordinary judicial proceeding. In the case of *Burt vs. Board of Supervisors of Iron Co.* (108 Mich., 523) the Supreme Court of Michigan held, that in proceedings for the removal of an officer on the ground of incompetency the notice to the officer need not set out specific charges of incompetency. We are of the opinion that the same rule should be followed in case where the ground of removal is inefficiency, misconduct, etc.

From an examination of the facts agreed upon, in relation with the entire record, we are fully persuaded that the petitioner was given a full opportunity to be heard and to defend himself. He was given a full opportunity to justify his conduct under all of the charges, and to show that they were unfounded, which opportunity he did not embrace.

It is contended by the Attorney-General that this court has no jurisdiction to consider the petition or to review the findings and conclusions of the Board appointed to investigate the charges, nor to consider the question of the legality of the action of the Chief of Constabulary. The Attorney-General contends that the jurisdiction of this court is limited to the question whether or not the petitioner was given a "due hearing" and cites some very convincing authorities in support of that argument. The Attorney-General quotes from 29 Cyc., at page 1413, the following:

"In some cases the law, while not limiting the removing power to specified causes, provides that the power may be exercised only after charges have been preferred against the offending officer and an opportunity has been accorded to him to defend himself. Under these conditions it is held that the law has been complied with if an opportunity is given to the officer to defend himself against charges which if true would justify removal, and the courts have no right to review the determination ordering the removal."

Of course, in addition to that general doctrine, giving the offending officer an opportunity to be heard and to defend himself, it should appear that the Board appointed to inquire into the truthfulness of the charges was properly constituted. In the present case the Board was appointed by the Chief of Constabulary, the respondent

herein, and there is nothing in the record which even remotely tends to show that it was illegally constituted. The law simply provides that members of the Constabulary may be removed by the Chief of Constabulary, with the approval of the department head after "due hearing." No method of procedure is prescribed by the law.

Two things are necessary requisites for the removal of an officer; first, an individual or board authorized by law so to do, and, second, a due hearing and a full opportunity to defend. When those two essentials are complied with, we are of the opinion that the great weight of authority, in cases like the present, sustains the doctrine that the courts will not interfere for the purpose of superimposing its judgment upon that of the officers of military or semi-military organizations. (*Crouch vs. U. S.*, 13 Fed. Rep., 2d series, 348; *Carter vs. McClaughry*, 183 U. S., 365, and cases cited; *U. S. ex rel. French vs. Weeks*, 259 U. S., 326.)

Military and semi-military organizations, if they are to be efficient, must be subjected to the strictest disciplinary control. Civil tribunals will not revise the proceedings of boards or courts except for the purpose of ascertaining whether they had jurisdiction of the person and of the subject matter, and have given the person charged a full and free opportunity to be heard. Such boards or courts are possessed with full power to decide and to enforce their conclusions. The Chief of Constabulary of the Philippine Islands is undoubtedly given full power and jurisdiction to remove officers within said organization for "inefficiency, misconduct or disloyalty to the United States;" and when he has given such officers a full and free opportunity to be heard and to defend themselves, his jurisdiction will not be inquired into. We believe it to be a doctrine well settled and beyond controversy, that the decision of the Chief of Constabulary under such conditions should not be reviewed or set aside by the civil courts in a mandamus proceeding or otherwise. (*Johnson vs. Sayre*, 158 U. S., 109, 118; *Mullan vs. United States*, 212 U. S., 516, 520; *Collins vs. McDonald*, 258 U. S., 416.) If it were otherwise, the civil courts would virtually administer the authority of the Constabulary, irrespective of those to whom that duty and obligation has been confided by the law, from whose decisions no appeal or jurisdiction of any kind has been given to the civil courts. (*Dynes vs. Hoover*, 20 Howard [U. S.], 65, 84.)

We are forced to the conclusion, from the facts and the law, that the petition herein should be denied. And without any finding as to costs, it is so ordered.

Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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