

PHILIPPINE NATIONAL BANK (PNB), NORMA A. VICTORINO, DIOSDADO SOLIDUM, JR., DANTE FAJARDO, AND GERMAN FABELLA, THE LATTER IN THEIR OFFICIAL CAPACITIES AS OFFICERS OR EM-PLOYEES O...

G.R. No. 52439. July 12, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Fifty-one years ago, this Court laid down what it considered the "cardinal primary rights" of due process which must be accorded to parties in "trials and investigations of an administrative character," which have since been observed and applied with undeviating constancy.[1] These, as simply and succinctly stated by an acknowledged authority on Constitutional Law,[2] are:

"(1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.

(2) The tribunal must consider the evidence presented.

(3) The decision must have something to support itself.

(4) The evidence must be substantial.

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.

(7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered."

Whether or not these norms were met by the petitioners in the matter of the removal of Primitivo Virtudazo from his employment as credit investigator/inspector of the Philippine National Bank (PNB), Dipolog City Branch, is the principal issue in the special civil action of certiorari at bar, initiated by petition of the Bank and some of its officers. The petition was given due course.[3]

The controversy originated from a "Memorandum of Specification of Charges" issued by Norma A. Victorino (Assistant Vice President and Manager of the Personnel Administration Department, PNB), which was served on Virtudazo, then employed, as aforesated, as credit investigator of PNB at its Dipolog Branch.[4] The memorandum read as follows:[5]

"This Office has found, after an evaluation of official reports, that a prima facie case exists against you for Dishonesty and Violations of Bank Rules and Regulations, committed as follows:

"On falsification of overtime record of attendance -

* * *

"On authorized punching of bundy clock time card."

Seasonably, and thru the Manager of the Dipolog Branch, German Fabella, Virtudazo submitted a verified answer to which were attached copies of documents in support of his defenses.[6] The answer "directly travers(ed) * * and den(ied) point by point the charges against him (and) explain(ed) also that the error or discrepancy subject of the charges was due to -

(a) mechanical defect or faulty functioning of the office bundy time clock caused by continuous or intermittent electric power failures or interruptions of the Visayan Electric Co., Inc.; and

(b) he did not authorize Mr. Rolando Palomares, a co-employee, to punch-in his (Virtudazo's) time card."

Some two (2) months later, two of PNB's personnel examiners, Diosdado Solidum, Jr. and Dante Fajardo, went to Dipolog City to conduct a fact-finding investigation in connection with the charges against Virtudazo.[7] They interviewed and took down the statements of four (4) PNB employees, namely: Rolando Palomares; Constancio Adaro; Jaime Allesa; and Jose Nolido; this, in the absence of Virtudazo.[8]

Virtudazo requested that he be allowed to confront and examine the witnesses thus interviewed. He was told that the investigation was merely a fact-finding inquiry and a formal investigation would follow. He was not given a copy of the witnesses' statements.[9]

What happened instead was that Virtudazo was told that he would be the next person interrogated. He asked for time to engage counsel which was grudgingly given. He went to a few lawyers of his choice, but as fate would have it, they had other commitments. Virtudazo finally prevailed on Atty. Vicente Lubrico, whose offices happened to be near those of the PNB Dipolog Branch, just to be present during his questioning. He was thus interrogated by Messrs. Solidum and Fajardo, represented by an attorney who had no prior notion of the nature of the investigation or of the evidence against his client.[10]

Virtudazo then asked that certain persons be called by Solidum and Fajardo as his witnesses. Again he was told he could present witnesses at the formal investigation to be later scheduled.[11]

Notice of that formal investigation never came; this, notwithstanding the recommendation of the fact-finding team that "(i)n view of the flagrant violation of Bank rules and regulations, * * (the team was) recommending that this matter be endorsed to the Personnel Administration Department for formal investigation." [12] What he did get, on June 27, 1978 was a "memorandum" dated June 15, 1979, addressed to him ("Thru: Mr. R.G. Perez, Vice President, Mindanao Regional Office") and signed by Antonio F. Arce, as Officer-in-Charge, Personnel Administration Department,[13] the memorandum pertinently reading as follows:

"SUBJECT : ADMINISTRATIVE CASE -

This is to inform you that, under B/Res. No. 853 of May 31, 1978, you were found guilty of -

1. Dishonesty for falsifying your overtime record of attendance on March 25, 30 & 31, 1977; and
2. Violation of Bank Rules and Regulations for authorizing Mr. Rolando Palomares, NASECO Messenger to punch-in your time card on your scheduled overtime from June 14 to 16, 1977.

Accordingly, as penalty, under said B/Res No. 853, it was -

'RESOLVED, That, as the respondent has been found guilty as charged of Dishonesty and Violation of Bank

Rules and Regulations, Mr. Primitivo Virtudazo be dismissed from the service of the Bank, without benefits and with prejudice to reinstatement, effective upon receipt of notice.

On July 11, 1978, Virtudazo filed thru counsel a motion for the reconsideration of the decision as laconically described in the memorandum. In his motion for reconsideration, he referred to the memorandum as "the Decision" which he had received on June 27, 1978.[14] His motion was denied by the PNB Board on December 11, 1978, a fact communicated to Virtudazo by letter dated January 10, 1979.[15]

Fifteen days later, Virtudazo's counsel wrote to the Bank asking to be furnished with a copy of the Board's decision itself so that he might either appeal to the Civil Service Commission or resort to judicial action. The letter was never answered. He and his counsel also went to the Bank's main offices at Manila, to try to get a copy of the decision. They saw several officers, Atty. Severino Cancio, Atty. Artemio Tipon, Atty. Catalan, but never succeeded in getting a copy of the decision.[16]

Virtudazo then filed a complaint with the Court of First Instance at Dipolog City against the PNB and certain of its officers praying for reinstatement to his former position and the payment of damages.[17] He also alleged that "no appeal could as yet be made to the Civil Service Commission as no decision was furnished to plaintiff from which an appeal could be taken."

The defendants filed an answer setting forth specific denials and such affirmative defenses as failure to exhaust administrative remedies and that defendants had "acted in accordance with law." [18]

After due proceedings, the Trial Court issued a pre-trial order assigning several dates for the trial of the case.[19] In that same order, the Court pointed out that a formal investigation should have, but was not, conducted; the prior, preliminary fact-finding inquiry was held "secretly, without the presence of the plaintiff," depriving him "of his right to cross-examine ** (the) witnesses" interrogated; and that the plaintiff had not been served with copy of the decision.

Two (2) motions for reconsideration of that order were filed for the defendants by the PNB lawyers,[20] and their attorneys based at Dipolog City.[21] They alleged that Virtudazo's claim that he had not been given a copy of the decision was untrue, for he had filed a "Motion for Reconsideration and/or New Trial" in which he declared that he had "received a copy of the Decision on June 27, 1978, and this motion for reconsideration and/or new trial is filed well within the reglementary period." [22] The PNB and its co-defendants insisted that -

1) jurisdiction over the case was lodged, not in the Trial Court, but in the Merit System Board created by PD No. 1409;

2) Virtudazo had no cause of action against them because -

a) he had failed to exhaust administrative remedies by omitting to elevate "his case to the Merit System Board/Civil Service Commission; and

b) the administrative charge against him being serious and the evidence of his guilt strong, "his summary dismissal was sanctioned under Section 40 (a) of Presidential Decree No. 807."

The motions were denied by the Trial Court.[23] The Court reiterated its view that Virtudazo "was never investigated formally;" that the receipt by him of a copy of the decision was "no argument that the decision has been rendered after a formal investigation of the charges against him;" that he could not appeal to the Merit System Board "because he was not formally investigated and because he had been dismissed * * before his receipt of copy of said decision, at which time the reglementary period for appeal ** had already lapsed;" and that Section 38 (c) of PD 807 "is very explicit as to the holding of a formal investigation although a respondent **

makes no request for it when from the allegations of the complaint and his answer thereto ** the merits of the case cannot be decided judiciously without conducting such an investigation." [24]

It is this resolution which the petitioners would have this Court nullify and set aside in the certiorari action at bar.

The evidence discloses that the two personnel examiners sent by the Bank's Main Office to the Dipolog Branch to conduct a fact-finding inquiry into the charges against Virtudazo were explicitly asked by the latter that : (1) he be given time to retain counsel of his choice before he was interrogated; (2) he be permitted to confront and cross-examine the witnesses interviewed, or at least be given a copy of their written statements; and (3) certain persons be called and interviewed as his (Virtudazo's) own witnesses. [25] All these requests were peremptorily turned down with the assurance, however, that a formal investigation would later be scheduled at which he could presumably be represented by counsel selected at more leisure, confront and cross-examine the witnesses against him, and adduce evidence in his own behalf. Indeed, the personnel examiners did subsequently recommend that Virtudazo's case be referred to the Personnel Administration Department for formal investigation. [26] The record further discloses that no formal investigation was ever scheduled and the PNB Board's decision dismissing Virtudazo was rendered without that formal investigation ever being held.

The record further reveals that despite Virtudazo's repeated and insistent requests, he was never given a copy of the decision of the PNB Board of Directors, mentioned in the Memorandum of Antonio F. Arce, the Officer in Charge of the Bank's Personnel Administration Department, supra. [27]

The petitioner Bank would however justify its dismissal of Virtudazo without formal hearing by adverting to Section 40 (a) of Presidential Decree No. 807, viz.:

"SEC. 40. Summary Proceedings. -- No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

(a) When the charge is serious and the evidence of guilt is strong.

* * * * *

The trouble is, the Bank's own fact-finders, despite their opinion that prima facie there had been "flagrant violations of Bank rules and regulations," had recommended that a formal investigation be conducted. That recommendation was obviously impelled by the fact that Virtudazo's formal answer had traversed the accusations against him and there was a not unreasonable possibility that if allowed to present evidence, as he was then demanding, the allegations of that answer would be substantiated and destroy the prima facie evidence of guilt collated by the fact-finders. Implicit in that recommendation, in other words, is that although standing alone, the proofs of Virtudazo's guilt were strong, the possibility could not be discounted that said proofs could be overcome by the evidence that Virtudazo was insisting on submitting. Be this as it may, the recommendation of the very investigators of the Bank that a formal hearing be had of the charges is inconsistent with the subsequent view expressed by the Bank that no such formal hearing was necessary, a virtual assertion that it was inutile to allow Virtudazo to adduce evidence as no proof on his part could possibly negate the proofs already gathered by the investigators against him.

Upon these considerations, the Court holds inapplicable the provisions of Section 40 (a) of PD 807, invoked by petitioner Bank. Given the facts, the provisions properly applicable are paragraphs (a) and (c) of Section 38, PD 807, reading as follows:

"SEC. 38. Procedure in Administrative Cases Against Non-Presidential Appointees. -- (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chief of agencies, or regional directors, or upon sworn,

written complaint of any other persons.

* * * * *

(c) 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.

* * * * *."

The Bank contends, too, that Virtudazo's failure to exhaust administrative remedies is fatal to his judicial action. The contention is rendered innocuous and inconsequential by the circumstance established in the record that Virtudazo had been denied due process. As already pointed out, he was not given a copy of the judgment discharging him from his employment on account of serious misconduct, hence, he was not informed of the various issues involved and the reason for the decision rendered; neither was the evidence on which that decision was based disclosed to him; and he was not accorded an opportunity to present his case and submit evidence in his behalf, and not given a copy of the decision. The proceedings having been conducted without according to Virtudazo the "cardinal primary rights of due process" guaranteed to every party in an administrative or quasi-judicial proceeding,[28] said proceedings must be pronounced null and void. The case thus comes within one of the recognized exceptions to the doctrine of exhaustion of administrative remedies, i.e.: the administrative action for which relief is sought is so patently illegal as to be deemed to have been done without or in excess of jurisdiction,[29] or the question involved is purely a legal one.[30]

WHEREFORE, the petition for certiorari is DENIED for lack of merit, with costs against petitioners.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.

Gancayco, J., on official leave.

[1] Ang Tibay v. C.I.R., 69 Phil. 635 (1940), per Laurel, J.

[2] My distinguished colleague, Mr. Justice Isagani A. Cruz: Constitutional Law, 1987 ed., pp. 111-112

[3] By this Court's Resolution of June 2, 1980.

[4] Rollo, pp. 16, 35. This was sometime in January, 1978

[5] Id., pp. 16-17, 35, 52, 106

[6] Id., pp. 17, 35, 57, 106-107. The answer was submitted on Jan. 17, 1978.

[7] Id., pp. 17, 36, 57, 107, 210

[8] Id., pp. 57-58, 107

[9] Id., pp. 107, 59.

[10] Id., pp. 37, 58

[11] Id., pp. 37-38, 59, 151

[12] Id., p. 58

[13] Id., p. 122. At the left hand margin appears the signature of Virtudazo acknowledging receipt of the memorandum at 8:15 A.M. on June 27, 1978. SEE also, pp. 17 (Par. 5, petition); 39, 66, 75-76, 96 of the same rollo.

[14] Id., pp. 65-66, 75-76, 159

[15] Id., p. 18

[16] Id., pp. 40-41, pp. 59-60

[17] Id., pp. 34-43. The complaint was filed on March 12, 1979 and was docketed as Civil Case No. 3094.

[18] Id., pp. 44-50

[19] Id., pp. 51-62

[20] Id., pp. 63-74

[21] Id., pp. 75-81

[22] Id., pp. 65-66; also, pp. 75-76

[23] Id., pp. 94-97

[24] Reconsideration of this resolution sought by PNB and its co-defendants was subsequently denied, by another resolution dated December 21, 1979.

[25] SEE footnotes 9-11 and related text, *supra*

[26] SEE footnote 5 and related text, *supra*

[27] SEE footnote 13

[28] SEE opening paragraph of this opinion.

[29] *Siliman University v. Benarao, et al.*, G.R. No. 46613, Feb. 26, 1990; *Mangubat v. Osmeña*, 105 Phil. 1308 (unrep.); *Baguio v. Rodriguez*, 105 Phil. 1323 (unrep.)

[30] *Pascual v. Provincial Board of Nueva Ecija*, 106 Phil. 466; *Prudential Bank v. Gapultos*, G.R. No. 41835 and *Prudential Bank v. Serrano*, G.R. No. 49293, Jan. 19, 1990; *Cebu Oxygen & Acetyline Co., Inc. v. Drilon, et al.*, G.R. No. 82849, Aug. 2, 1989

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