

MARIA B. LUPO, PETITIONER, VS. ADMINISTRATIVE ACTION BOARD (AAB) (DEPARTMENT OF TRANSPORTATION & COMMUNICATIONS REPUBLIC OF THE PHILIPPINES) AND JUSTICE ONOFRE A. VILLALUZ, RESP...

G.R. No. 89687. September 26, 1990

Ponente: PARAS, J.

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PARAS, J.:

In this petition for prohibition, petitioner seeks the issuance of an order or writ of prohibition which would direct public respondents Administrative Action Board and Chairman Onofre A. Villaluz to permanently desist from assuming jurisdiction over Adm. Case No. AAB-034-88 until the same is finally disposed of by the Telecoms Office, Region V at Legaspi City and to refrain from issuing orders setting the aforementioned case for hearing.

Petitioner substantially assails the Resolution dated September 30, 1988 of then Secretary Rainerio O. Reyes of the Department of Transportation and Communications which suspended her for one year and disqualified her for promotion for a period of one year and also, the Order of July 5, 1989 of Chairman Onofre A. Villaluz of the Administrative Action Board of said department which set Adm. Case No. AAB-034-88 for trial.

The prefatory facts are:

On November 5, 1987, Fructuoso B. Arroyo, OIC/CDO, Message Center and then CDO of Telecom Office stationed at Buhi, Camarines Sur, filed a complaint for Dishonesty Thru Falsification (Multiple) of Official Documents against Maria B. Lupo, herein petitioner, as Chief of Personnel Section, Telecom Office, Region V at Legaspi City. The complaint was based on the alleged exclusion of several names from the Certification (on the list of employees) submitted by petitioner in compliance with a Confidential Memorandum of Director Claro Morante.

The aforesaid complaint was actually triggered off by the inquiry of Ignacio B. Arroyo, brother of complainant Fructuoso B. Arroyo, into the alleged illegal termination of the former's niece, Nenita Arroyo Noceda, as a daily wage clerk at Buhi Telecom Exchange in Camarinea Sur, in violation of a contract previously entered into between a certain Gloria D. Palermo, lot donor and former Bureau Director Ceferino S. Carreon, donee of the lot. The lot is located at Sta. Clara, Buhi on which the Telecom Office was to be constructed. This inquiry of Ignacio B. Arroyo was dismissed for lack of merit on September 16, 1987.

It appears that the basis for the complaint of Fructuoso Arroyo from whom Ignacio sought assistance was petitioner's exclusion of certain names of newly hired employees in Region V who appeared related to certain ranking officials of the region, for the purpose of keeping under wraps the appointment of said employees from Ignacio Arroyo who had previously complained of the alleged illegal termination of his niece Nenita A. Noceda. Petitioner had to falsify the list which she submitted in compliance with Regional Director Morante's Confidential Memorandum to the alleged prejudice of Noceda and for the purpose of protecting her future interest in the sense

that those excluded (who should have been included) were close relatives of ranking officials of the Telecommunications Office of Region V Telecom Investigator Florencio Calapano, acting on the unverified complaint of Fructuoso Arroyo, conducted an informal fact-finding inquiry and came out with a Memorandum recommending that petitioner be sternly warned that a repetition of a similar offense in the future would be dealt with more drastically and that the case should be considered closed.

Based solely on the aforesaid Memorandum, the Secretary of the Department of Transportation and Communications handed down a Resolution on September 30, 1988 finding petitioner "guilty as charged" and suspending her for one year and disqualifying her for promotion for a period of one year. Petitioner moved for reconsideration of the resolution but the same was denied. She thus appealed the resolution and order of denial of the motion for reconsideration to the Civil Service Commission for review, anchoring her appeal on lack of due process in the proceedings.

On March 2, 1989, the Civil Service Commission, thru its Merit Systems Board, issued the Order setting aside the resolution of the Department of Transportation and Communications and remanding the case to the Telecom Office of Region V for further investigation to conform with the procedural requirements of due process.

Instead of complying the above order, respondent Chairman Villaluz of the AAB issued the Order of July 5, 1989 setting the case for trial on August 3, 1989.

On August 2, 1989, petitioner filed a Manifestation and Motion informing respondent Villaluz that no formal charge had been instituted by the Telecommunications Office against her and respondents, therefore, had no jurisdiction over the case. Respondents denied said manifestation and motion for lack of merit in the Order of August 7, 1989 and again set the case for hearing on August 23, 1989.

Hence, this petition.

Petitioner avers that respondent AAB never acquired jurisdiction over Adm. Case No. AAB-034-88 because of the absence of a formal charge against her and that the proceedings conducted by Regional Investigator Florencio Calapano was a mere fact-finding inquiry.

Respondent Chairman of the AAB, however, contends that the Order of the Merit Systems Board of the Civil Service Commission was rendered without lawful authority since petitioner's appeal to said Board was filed when the assailed resolution had already become final and executory; that the Board, not having acquired jurisdiction to entertain the appeal for having been filed beyond the reglementary period could not have legally rendered its decision in the said administrative case. Likewise, respondents claim that Regional Office No. V could no longer take cognizance of the case as per order of the Merit Systems Board for the reason that the decision had already become final and executory.

Complaints against employees, like petitioner herein, who belong to the Civil Service Career System are still governed by P.D. No. 807. This mandate of P.D. No. 807 has been recognized and implemented by respondent Administrative Action Board when it declared in Office Order No. 88-318 dated July 1, 1988 that the Board shall observe the pertinent civil rules and policies designed to expedite action on cases referred to it. (Underscoring supplied)

The pertinent provisions of the aforecited Civil Service Law read as follows:

"SECTION 37. Disciplinary Jurisdiction.- (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or

employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

"(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head.

"(c) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (d) of the following Section.

"(d) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

"SECTION 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 chiefs of agencies, or regional directors, or upon sworn, written complaint of any other persons.

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

"(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. x x x"

Petitioner's contentions appear meritorious.

It should be noted that under Section 37 (b) as aforequoted, the decisions of heads of departments become final only in cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary. In the case, therefore, of petitioner who had been made to suffer the penalty of suspension for one (1) year, such penalty should not have been implemented without the appeal to the Civil Service Commission for proper review.

Notably, paragraph (a) of the above Section explicitly provides that the Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than 30 days, or fine in an amount exceeding 30 days salary. Clearly, the enforcement of the penalty imposed upon petitioner under the resolution of the Secretary of the Department of Transportation and Communications was premature.

From the very start, the basis upon which this case was investigated had been defective and irregular. For, the

letter-complaint of Fructuoso Arroyo was not verified and yet, the name was haphazardly made the basis of the informal inquiry. It should be stressed that par. (a) of Sec. 38 mandates that administrative proceedings may be commenced against an employee by the head of the department or office of equivalent rank or upon sworn written complaint of any other person. It should also be noted that under paragraph (b) of said Section, a respondent is given the option to elect a formal investigation of the charge against him if his answer is not found satisfactory. In the case of petitioner, it appears that when her answer to the unverified complaint was found unsatisfactory, she was never given a chance to decide whether or not to submit herself to a formal investigation.

The Memorandum of Telecom Investigator Calapano to the Regional Director is merely recommendatory since it was only the outcome of a fact finding investigation based on the unverified complaint. Note that the informal investigation was only an inquiry into the alleged dishonest acts of petitioner in which case, the Memorandum could not be made as the basis for any final resolution of the case. The legal and proper procedure should have been for the Regional Director of Region V, the alter ego of the department secretary to initiate the formal complaint on the basis of the results of the inquiry of the Telecom Investigator. Instead of observing the mandatory rules on formal investigations as prescribed by PD No. 807, the DOTC Secretary cut corners and apparently railroaded this case by rendering the assailed resolution.

Even the Telecom Investigator did not know what he was doing. He exceeded his authority by imposing in the Memorandum a penalty in the form of a warning to petitioner. His job was limited to an inquiry into the facts and a determination on whether or not a prima facie case existed. His findings were merely preparatory to the filing of the necessary formal administrative case by the Regional Director.

It should be noted with alarm that the Telecom Director who was supposed to review the findings of the Telecom Investigator merely affixed his approval within the Memorandum (p. 7 of Memorandum), thus obviously indicating that he never reviewed the merits of the case.

It appears highly irregular that Asst. Secretary Sibal of the DOTC, in his letter dated August 2, 1989 to Chairman Villaluz of the Administrative Action Board, informed the latter that his Office did not file any administrative complaint against petitioner nor had it filed a formal charge against her for whatever administrative offense. Note that even with this letter, Chairman Villaluz proceeded to order the hearing of this case. This is a clear indication that for lack of coordination among the DOTC authorities and the Regional Office, the mandatory requirements of due process to which petitioner was entitled were irreverently ignored.

Thus, in the case of *Jose Rizal Colege v. National Labor Relations Commission* (G.R. No. 65482, December 1, 1987) this Court reiterated the "cardinal primary" requirements of due process in administrative proceedings and these 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, and substantial evidence means such evidence as a reasonable mind must accept as adequate to support a conclusion; (5) the decision must be based 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 view of a subordinate; (7) the board or body should in all controversial questions, render its decision in such manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered. (Underlining supplied)

Evidently, respondents denied petitioner her right to a formal and full-blown administrative proceedings which she never had.

WHEREFORE, the Resolution dated September 30, 1988 of the Secretary of the Department of Transportation

and Communications and the proceedings before the Administrative Action Board are hereby declared NULL and VOID. The Secretary of the DOTC is hereby directed to restore to petitioner's record of service the period which she served under suspension and to delete from her personnel file the period within which she was disqualified for promotion.

SO ORDERED.

Melencio-Herrera, (Chairman), and Regalado, JJ., concur.

Padilla, J., no part.

Sarmiento, J., on leave.

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