

BENIGNO V. MAGPALE, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION AND ROGELIO A. DAYAN, IN HIS CAPACITY AS THE GENERAL MANAGER OF THE PHILIPPINE PORTS AUTHORITY, RESPONDENTS.

G.R. No. 97381. November 05, 1992

Ponente: MELO, J.

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MELO, J.:

Before Us is a petition for review on certiorari assailing Resolution No. 90-962 dated October 19, 1990 of respondent Civil Service Commission (CSC). Said CSC resolution set aside and modified the decision dated February 5, 1990 of the Merit Systems Protection Board in MSPB Case No. 449, which ordered the immediate reinstatement in the service herein petitioner Benigno V. Magpale, Jr., without loss of seniority rights and with payment of back salaries and other emoluments to which he is entitled under the law.

The record shows that petitioner started his career in government as an employee in the Presidential Assistance on Community Development in 1960. Fifteen years later, or in 1975, he transferred to the Philippine Ports Authority (PPA) as Arrastre Superintendent. He was promoted to the position of Port Manager in 1977 of the Port Management Unit (PMU), General Santos City. Then he was reassigned, in the same year, to PPA-PMU, Tacloban City where he likewise discharged the functions of Port Manager. On December 1, 1982, the PPA General Manager designated Atty. William A. Enriquez as officer-in-charge of PPA-PMU, Tacloban City effective December 6, 1982. On January 6, 1983, petitioner was ordered to immediately report to the Assistant General Manager (AGM) for Operations, PPA, Manila. Petitioner reported at PPA, Manila on the same date and performed the duties and functions assigned to him.

In an Internal Control Department Report dated March 5, 1984, the PMU-Tacloban Inventory Committee and the Commission on Audit (COA) stated that petitioner failed to account for equipment of PPA valued at P65,542.25 and to liquidate cash advances amounting to P130,069.61. He was found also to have incurred unauthorized absences from May 25, 1984 to July 23, 1984.

On July 23, 1984, or nineteen months after he began reporting in Manila, a formal charge for Dishonesty, Pursuit of Private Business without permission as required by Civil Service Rules and Regulations, Frequent and Unauthorized Absences and Neglect of Duty was filed against petitioner. Based on said charges, he was ordered preventively suspended and has been out of service since then.

For almost four years, the case remained unacted upon. The formal investigation and hearing resumed on September 18, 1987.

On January 18, 1989, a Decision was rendered by the Secretary of the Department of Transportation and Communications (DOTC), through its Administrative Action Board, finding petitioner guilty of Gross Negligence on two counts: (a) for his failure to account for the forty-four (44) assorted units of equipment, among them a

Sony Betamax, and a TV Camera, and (b) for failing to render the required liquidation of his cash advances amounting to P44,877.00 for a period of four years. Petitioner was also found guilty of frequent and unauthorized absences. Accordingly, he was meted the penalty of dismissal from the service with the corresponding accessory penalties.

When petitioner's motion for reconsideration of the aforesaid Decision was denied in the DOTC's Order of February 20, 1989, he appealed to the Merit Systems and Protection Board (MSPB) of respondent Civil Service Commission.

On February 5, 1990, the MSPB rendered a Decision reversing the Decision of the DOTC. The pertinent portion of the MSPB's Decision reads:

"After a careful review of the records of the case, this Board found the appeal meritorious. Respondent cannot be held liable for Gross Negligence for his alleged failure to account for several properties and for failure to liquidate the cash advances he received as there was no showing that he has been specifically required to do so either by law or regulation. The mere detail of respondent to PPA-Manila, in the absence of an order requiring him to turn over and account for the funds and property received for his office at PMU-Tacloban will not necessarily obligate him to make accounting for the same.

Moreover, Section 105, Chapter 5 of Presidential Decree 1445, otherwise known as 'The Government Auditing Code of the Philippines' measured the liability of an officer accountable for government property only to the money value of said property. Though respondent is the person primarily liable for these funds and property, he holds this liability jointly with the person who has the actual possession thereof and who has the immediate responsibility for their safekeeping.

As to the charge relative to respondent's frequent unauthorized absences had been sufficiently and convincingly explained, due to which the Board found him not at all guilty of the offense charged (sic).

IN VIEW THEREOF, the decision appealed from is hereby reversed. Respondent-Appellant Magpale should immediately be reinstated in the service without loss of seniority rights and with payment of back salaries and other emoluments to which he is entitled under the law." (pp. 31-32, Rollo.)

On March 1, 1990, PPA, through its General Manager, herein respondent Rogelio A. Dayan, filed an appeal with the Civil Service Field Office-PPA, and the latter office indorsed the appeal to respondent CSC in a letter dated March 5, 1990.

On March 5, 1990, petitioner requested the Secretary of the DOTC to direct the PPA to implement the MSPB decision as it has become final and executory. Said request was reiterated in another letter also dated March 5, 1990 by petitioner to OIC Wilfredo M. Trinidad of the Office of the Assistant Secretary for Administration and Legal Affairs, DOTC.

On March 13, 1990, petitioner filed with the MSPB a Motion for Implementation of the MSPB decision. This was opposed by the PPA through its General Manager.

On April 27, 1990, petitioner filed with respondent CSC his comment to the appeal of the PPA contending that he is not an accountable officer and is under no obligation to account for the property and equipment; that said property and equipment were not received by him as custodian and he should not be held liable for the loss of the same; that the said property and equipment were placed in PPA-PMU Tacloban City which the herein petitioner left on October 8, 1982 and since then had lost control over them. Moreover, petitioner averred that as to the unliquidated cash advances of P44,877.00, the same had long been liquidated. Finally, petitioner claimed that his failure to secure the clearance for any possible property or financial obligation in PMU-Tacloban was due to the urgency of his transfer to PPA-Manila and the absence of any order or demand to secure the clearance.

On May 29, 1990, the MSPB issued an Order for the immediate implementation of its February 5, 1990 Decision, ruling that:

"Records further show that a copy of this Board's decision was received by the Office of the Honorable Secretary, that Department, thru Mr. Frankie Tampus on February 6, 1990. Records finally show that as of March 5, 1990, no motion for reconsideration of this Board's aforementioned decision has ever been filed as evidenced by the certification of even date issued and signed by Director Adelaida C. Montero of the Office for Central Personnel Records, this Commission. Hence, said decision has long become final and executory". (p. 34, Rollo.)

On June 28, 1990, petitioner filed a Motion to Dismiss the appeal of PPA claiming that:

- "1. Appeal of PPA was filed out of time and that the CSC has no jurisdiction over it;
 2. The PPA has not exhausted administrative remedies before appealing to the higher body, the CSC;
 3. The MSPB decision has become final and therefore cannot be disturbed anymore.
- (p. 22, Rollo.)

On October 19, 1990, respondent CSC rendered its now assailed Resolution No. 90-962, the pertinent portion of which reads as follows:

"The Commission thus holds respondent Magpale guilty of Gross Neglect of Duty on two (2) counts for his failure to account for the forty-four (44) equipments (sic) under his charge and to render an accounting for cash advances amounting to P44,877.90. Accordingly, considering two mitigating circumstances of length of service and first offense in favor of respondent, the commission hereby imposes a penalty of suspension for a period of one (1) year against him. As he has been out of the service since 1984, the penalty is deemed served and he should now be reinstated to his former position. This is, however, without prejudice to any criminal or civil proceedings that the agency concerned or the COA may institute as proper under the premises.

Finally, the decision of the MSPB exonerating the respondent Magpale for Gross Negligence is hereby reversed. Corollarily, the order of payment of back salaries is hereby set aside. MSPB is likewise reminded to be more circumspect on matters of this nature, especially as the instant case involves accountability of public funds and property.

WHEREFORE, foregoing premises considered, the Commission finds respondent Benigno V. Magpale, Jr., guilty of Gross Neglect of Duty on two (2) counts for failure to account for the forty-four (44) equipments (sic) under his charge and to render an accounting for cash advance amounting to P44,877.90. In view of the attendant mitigating circumstances of length of service and first offense in favor of respondent and the Neglect of Duty to account for cash advance in the amount of P44,877.90 (second count) be appreciated as an aggravating circumstance, the penalty of suspension for one (1) year shall be imposed against respondent. This shall be without prejudice to any criminal or civil proceedings that PPA or COA may institute against respondent. Accordingly, the Decision and Order of MSPB dated February 5, 1990 and May 29, 1990, respectively, are hereby set aside." (pp. 27-28, Rollo.)

Hence, the present recourse.

The petition alleges that respondent CSC, in issuing its Resolution No. 90-962, gravely abused its discretion because:

- "1. The law did not authorize an appeal by the government from an adverse decision of the Merit Systems Protection Board (MSPB);
2. Respondent PPA General Manager did not have the right or legal personality to appeal from the MSPB

decision;

3. Assuming that the appeal was available to respondent DAYAN, the same was filed out of time after the MSPB decision had long become final and executory." (pp. 6-7, Petition; pp. 7-8, Rollo.)

In support of his first contention, petitioner invokes Paragraph 2(a), Section 16, Chapter 3, Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987 which provides:

"Sec. 16. Offices in the Commission. -- The Commission shall have the following offices:

x x x x x x x x

(2) The Merit Systems Protection Board composed of a Chairman and two (2) members shall have the following functions:

(a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission." (Underscoring supplied.)

claiming that since the MSPB decision was not for dismissal or separation from the service, but reinstatement without loss of seniority rights and with payment of back salaries, the said MSPB decision should be deemed final, immediately executory and unappealable.

Petitioner next contends that assuming, for the sake of argument, that the decision of the MSPB was appealable, respondent Dayan, even in his capacity as General Manager of the PPA, did not have the legal personality nor the right to appeal the decision of the MSPB, citing Paragraph 1, Section 49, Chapter 7, Subtitle A, Title I, Book V, of Executive Order No. 292 and the case of Paredes vs. CSC, G.R. No. 88177, December 4, 1990, 192 SCRA 84.

Assuming further that the MSPB decision was appealable and that respondent Dayan had the legal personality to appeal the MSPB decision, petitioner still contends that the appeal should not have been given due course by the respondent CSC because the appeal was not filed with the proper disciplining office in accordance with same Section 49 of Executive Order No. 292, which, in this case, should be the DOTC, not with the CSC Field Office at the PPA.

On the merit of the petition, petitioner claims that assuming even further that an appeal lies from the MSPB decision, that respondent Dayan had the legal personality or standing to institute the appeal and that it was filed with the proper office, still CSC Resolution 90-962 was rendered with grave abuse of discretion because petitioner cannot be suspended for alleged failure to account for pieces of equipment and cash advances since this is not the neglect of duty contemplated by Section 36 of Presidential Decree No. 807 or Section 46 of the chapter on the Civil Service in Executive Order 292. At most, petitioner can be held liable for the money value of the equipment and advances as mandated by Section 105 of Presidential Decree No. 1445, the Government Auditing Code of the Philippines.

For its part, respondent CSC maintains -?

First, that the finality of the MSPB decision in disciplinary cases as stated in Section 16, Paragraph 2(a), Book V of Executive Order No. 292, relied upon by petitioner, is modified by Section 12, Paragraph 11, Book V, of the same Executive Order No. 292, which reads:

"Section 12. Powers and Functions. -- The Commission shall have the follow-ing powers and functions:

x x x x x x x x

(11) Hear and decide administrative cases instituted by or brought directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it."

Furthermore, relevant provisions of Executive Order No. 135 dated February 25, 1987 amending Section 19(b) of Presidential Decree No. 807 and Section 8 of Presidential Decree No. 1409 state, thus:

"WHEREAS, in the interest of justice, there is a need to confer upon the Civil Service Commission jurisdiction over appeal in contested or provisional appointments and to make its decision thereon, as well as in administrative disciplinary cases final and reviewable by the Supreme Court.

x x x x x x x x

Relationship with the Civil Service Commission. -- The Commission shall hear and decide appeals from other decisions of the Board provided that the decisions of the Commission shall be subject to review on certiorari only upon receipt of a copy thereof by the aggrieved party."

Thus, respondent CSC argues that it is deemed not to have lost its appellate jurisdiction over the decisions of the MSPB in administrative disciplinary cases.

Second, the case of *Paredes v. CSC* is not applicable. Respondent Dayan appealed the MSPB decision not in his personal capacity nor in pursuit of his private interest, but as head of the PPA, being the general manager thereof.

Third, the appeal was filed with the proper disciplining office because the decision appealed from was that of the MSPB, one of the offices in respondent CSC. Thus, respondent CSC was justified in giving due course to PPA's notice of appeal filed with its (CSC) Field Office at the PPA.

Finally, petitioner's claim that he is liable only for the money value of the property and cash advances and cannot be administratively charged for such infraction is untenable and a mockery of the civil service law. For his failure to account for the property under his charge and to liquidate his cash advances, petitioner is guilty of Gross Neglect of Duty and should have been dismissed from the service if no mitigating circumstances were considered in his favor.

We gave due course to the petition and required the parties to file their respective memoranda. After considering the same and the pertinent laws and jurisprudence, We find that the petition must be granted.

After *Mendez vs. Civil Service Commission*, (204 SCRA 965 [1991]), the extent of the authority of respondent CSC to review the decisions of the MSPB is now a settled matter.

The Court, in said case held:

"It is axiomatic that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provision of law. (*Victorias Milling Co., Inc. vs. Office of the Presidential Assistant for Legal Affairs*, 153 SCRA 318).

A cursory reading of P.D. 807, otherwise known as 'The Philippine Civil Service Law' shows that said law does not contemplate a review of decisions exonerating officers or employees from administrative charges.

Section 37 paragraph (a) thereof, provides:

'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. x x x' (italics supplied) (p. 7, Rollo)

Said provision must be read together with Section 39 paragraph (a) of P.D. 805 which contemplates:

'Appeals, where allowable, shall be made by the party adversely affected by the decision x x x.' (italics supplied) (p. 104, Rollo)

The phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office. In the instant case, Coloyan who filed the appeal cannot be considered an aggrieved party because he is not the respondent in the administrative case below.

Finally, pursuant to Section 37 paragraph (b) of P.D. 807, the city mayor, as head of the city government, is empowered to enforce judgment with finality on lesser penalties like suspension from work for one month and forfeiture of salary equivalent to one month against erring employees.

By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges filed against him. But when the respondent is exonerated of said charges, as in this case, there is no occasion for appeal." (pp. 967-968)

The above ruling is a reiteration of the earlier pronouncement in *Paredes vs. Civil Service Commission*, (192 SCRA 84 [1990]) cited by petitioner, wherein We said:

"Based on the the above provisions of law, appeal to the Civil Service Commission in an administrative case is extended to the party adversely affected by the decision, that is, the person or the respondent employee who has been meted out the 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. The decision of the disciplining authority is even final and not appealable to the Civil Service Commission in cases where the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. Appeal in cases allowed by law must be filed within fifteen days from receipt of the decision.

Here the MSPB after hearing and the submission of memoranda exonerated private respondent Amor of all charges except for habitual tardiness. The penalty was only a reprimand so that even private respondent Amor, the party adversely affected by the decision, cannot even interpose an appeal to the Civil Service Commission.

As correctly ruled by private respondent, petitioner Paredes the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness (*Gonzalo v. D. Roda*, 64 SCRA 120). Even if she is the Head of the Administrative Services Department of the HSRC as a complainant she is merely a witness for the government in an administrative case. No private interest is involved in an administrative case as the offense is committed against the government." (pp. 98-99)

While it is true, as contended by respondent Civil Service Commission that under Section 12 (par. 11), Chapter 3, Subtitle A, Book V of Executive Order 292, the CSC does have the power to --

"Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. x x x"

the exercise of the power is qualified by and should be read together with the other sections of the same sub-title and book of Executive Order 292, particularly Section 49 which prescribes the following requisites for the exercise of the power of appeal, to wit:

- (a) the decision must be appealable;
- (b) the appeal must be made by the party adversely affected by the decision;
- (c) the appeal must be made within fifteen days from receipt of the decision, unless a petition for

reconsideration is seasonably filed; and

(d) the notice of appeal must be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal to the appellate authority within fifteen days from filing of the notice of appeal, with its comments, if any.

Under Section 47 of the same Code, the CSC shall decide on appeal all administrative disciplinary cases involving the imposition of:

- (a) a penalty of suspension for more than thirty days; or
- (b) fine in an amount exceeding thirty days salary; or
- (c) demotion in rank or salary or transfer; or
- (d) removal or dismissal from office.

The February 5, 1990 decision of the MSPB did not involve dismissal or separation from office, rather, the decision exonerated petitioner and ordered him reinstated to his former position. Consequently, in the light of our pronouncements in the aforecited cases of *Mendez vs. Civil Service Commission* and *Paredes vs. Civil Service Commission*, the MSPB decision was not a proper subject of appeal to the CSC.

Settled is the rule that a tribunal, board, or officer exercising judicial functions acts without jurisdiction if no authority has been conferred by law to hear and decide the case. (*Acena v. Civil Service Commission*, 193 SCRA 623 [1991]).

WHEREFORE, the decision of the Civil Service Commission is hereby ANNULLED and SET ASIDE and the decision of the Merit Systems Protection Board dated February 5, 1990 is hereby REINSTATED.

SO ORDERED.

Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Campos, Jr., JJ., concur.

Narvasa, C.J., and Medialdea, J., on leave.

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