

SECOND DIVISION

[G.R. No. 235837, April 01, 2019]

**BELINA AGBAYANI CONCEPCION, PETITIONER, VS. THE FIELD
INVESTIGATION OFFICE - OFFICE OF THE OMBUDSMAN,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition^[1] for review on *certiorari* are the Resolutions dated July 17, 2017^[2] and November 10, 2017^[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 151485 which dismissed outright the petition for review filed by petitioner Belina Agbayani Concepcion (petitioner) based on purely procedural grounds, *i.e.*, failure to attach material portions of the record, non-representation by a lawyer, and failure to comply with the rule on proof of service, all of which are required under the Rules of Court.

The Facts

On February 3, 2015, respondent Field Investigation Office (FIO), Office of the Ombudsman (Ombudsman), filed an administrative complaint^[4] for Conduct Prejudicial to the Best Interest of the Service, Dishonesty, and Grave Misconduct against petitioner, who was then the Sales and Promotion Supervisor V of the Technology and Livelihood Information Dissemination Services (TLIDS) Group-Marketing Division and Legislative Liaison Officer (LLO) of the Technology Resource Center (TRC) and two (2) others^[5] in connection with the alleged anomalous utilization of Congressman Douglas RA. Cagas' (Congressman Cagas) Priority Development Assistance Fund^[6] (PDAF) for the year 2007.^[7] At the time material to this case, Congressman Cagas was the Representative of the 1st District of Davao del Sur.^[8]

Records show that in 2007, Congressman Cagas was allocated two (2) Special Allotment Release Orders^[9] (SAROs) in relation to his PDAF in the total amount of P16,000,000.00 with the corresponding Notice of Cash Allocations^[10] (NCAs). The PDAF-drawn funds were channeled through TRC as the implementing agency (IA), with two (2) non-government organizations (NGOs) as "project partners" for implementation, namely: Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED) and Philippine Social Development Foundation, Inc. (PSDFI).^[11]

Based on its fact-finding inquiry, as well as the findings in the Commission on Audit's (COA) Special Audits Office Report No. 2012-03 (COA Report),^[12] the FIO alleged in its complaint that the projects funded by Congressman Cagas' PDAF were merely a

scheme used by him, other TRC officials, and Janet Lim Napoles (Napoles), *in conspiracy with petitioner* and her co-respondents, to siphon and embezzle the aforesaid PDAF funds. The FIO alleged that CARED and PSDFI, which were endorsed by Congressman Cagas, were dummies of Napoles and created for the purpose of funneling the PDAF through the TRC.^[13] As such, the PDAF-funded projects of Congressman Cagas were non-existent or "ghost projects."

The FIO further alleged that the amount of P15,360,000.00 allotted for farm implements, livelihood materials, and training for the projects sponsored by Congressman Cagas were misappropriated and converted to his and Napoles' personal use and benefit *in conspiracy* with petitioner, her co-respondents and other TRC officials.^[14] Particularly with respect to petitioner, her participation in this case consisted of overseeing the processing of and recommending the PDAF release to CARED.^[15]

In defense,^[16] while petitioner admitted that she drafted the internal letter/memorandum recommending the release of Congressman Cagas' PDAF for the implementation of his livelihood projects, she merely did so after finding that all the required documents were complete upon transfer to her by the Office of the Director General of TRC.^[17] Thereafter, she endorsed the recommendation letter together with the required documents to the Legal Department for review and approval, after which the said department forwarded the documents to the Office of the Director General. She averred that without the evaluation and approval of the Legal Department, her recommendation letter had no value.^[18] Further, she claimed that she did not recommend the release of Congressman Cagas' PDAF to any specific NGO as implementing agency and that she never transacted with any of them during her designation as LLO.^[19] Neither was she privy to the selection of CARED as an NGO in this case.^[20] Instead, she maintained that she was merely performing her ministerial function as the TRC's LLO when she recommended the release of Cagas's PDAF, her recommendation being still subject to the approval of her superiors.^[21] Finally, she asserted that she was not a member of the Bids and Awards Committee (BAC).^[22]

The Ombudsman Ruling

In a Decision^[23] dated November 21, 2016, petitioner was found administratively liable for Grave Misconduct and Serious Dishonesty, and accordingly, dismissed from the service along with the accessory penalties of: (a) cancellation of civil service eligibility; (b) forfeiture of retirement benefits; and (c) perpetual disqualification from holding public office.^[24]

The Ombudsman held that petitioner played a vital role in the release of Congressman Cagas' PDAF when she recommended its release to CARED, stressing that the funds would not have been transferred to the latter if not for petitioner's certifications, approvals, and signatures in the relevant documents. It added that despite the apparent irregularities in the documents submitted, petitioner helped expedite the release of PDAF disbursements to the dummy NGOs of Napoles.^[25] The Ombudsman noted that the TRC did not even bother to conduct a due diligence audit on the said NGOs, which possessed neither the accreditation to transact with

the government nor any track record in project implementation.^[26]

In conclusion, the Ombudsman held that the acts of petitioner in directly allowing the NGOs to be project implementors without complying with the pertinent laws and regulations amounted to Grave Misconduct.^[27] Moreover, the Ombudsman ruled that TRC's repeated illegal transfers of public funds to the said NGOs for non-existent projects amounted to distortion of the truth and thus, was tantamount to Serious Dishonesty.^[28] Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),^[29] Grave Misconduct and Serious Dishonesty are offenses punishable by dismissal from the service, even on the first offense.^[30]

Petitioner filed a motion for reconsideration,^[31] which was denied in an Order^[32] dated May 4, 2017. Aggrieved, petitioner elevated the case to the CA via a petition for review.^[33]

The CA Ruling

In a Resolution^[34] dated July 17, 2017, the CA dismissed the petition outright on the ground that petitioner: (a) failed to append material portions of the record;^[35] (b) attached only one (1) registry receipt as proof of service of the petition, without any indication as to whether the same pertained to the FIO or the Ombudsman, despite claiming in her Affidavit of Service^[36] that a copy of the petition had been sent to the FIO *and* the Ombudsman, in accordance with Section 5,^[37] Rule 43 of the Rules of Court; and (c) was not represented by counsel.

Petitioner moved for reconsideration,^[38] attaching to her motion copies of most^[39] of the lacking documents. She likewise implored substantial compliance with the rule on proof of service, explaining that the registry return receipt in her Affidavit of Service pertained to the FIO. At the least, she pleaded that the CA could have directed her to furnish a copy of her petition to the Ombudsman before it dismissed her appeal outright. Finally, she maintained that considering the gravity of the penalty of dismissal imposed upon her, the CA should have traversed the merits of the case instead of dismissing it on mere technicalities. However, her motion was denied in a Resolution^[40] dated November 10, 2017; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in dismissing outright petitioner's appeal on purely procedural grounds.

The Court's Ruling

The petition is impressed with merit.

At the outset, it must be stressed that procedural rules are tools designed to facilitate the adjudication of cases so courts and litigants alike are enjoined to abide strictly by the rules. They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party.^[41] However, procedural rules may be relaxed for the

most persuasive of reasons so as **to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure** prescribed.^[42]

In this case, petitioner filed a petition for review under Rule 43 of the Rules of Court before the CA, challenging the Ombudsman's decision finding her administratively liable and meting upon her the penalty of dismissal. Section 6, Rule 43 thereof provides:

Section 6. *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Underscoring supplied)

In its assailed July 17, 2017 Resolution, the CA dismissed the petition for review based purely on procedural grounds, namely, failure to append material documents^[43] to her petition; lack of representation by counsel; and failure to show proof of service to *both* the Ombudsman and the FIO. With regard to petitioner's failure to append material portions of the record in her petition, the Court has already declared in *Air Philippines Corporation v. Zamora*^[44] that:

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a prima facie case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.^[45] (Underscoring supplied)

In her motion for reconsideration, petitioner appended the "Complaint with Annexes, Joint Order dated 16 March 2015, Order dated 22 January 2016, Counter-Affidavit of the Petitioner, Rejoinder, Verified Position Paper of the Petitioner, Position Paper of

the Respondent, Decision dated 21 November 2016, Motion for Reconsideration of the Petitioner, and Order dated 4 May 2017"^[46] and likewise, averred that the rest of the documents that the CA found lacking were already incorporated as annexes in the Complaint. Jurisprudence pertaining to this matter has established that submission of a document together with the motion for reconsideration constitutes *substantial compliance* with the requirement that relevant or pertinent documents be submitted along with the petition, and therefore calls for the relaxation of procedural rules. This ruling is in consonance with the fact that the Rules do not specify the precise documents, pleadings or parts of the records which must be annexed to the petition, apart from the assailed judgment, final order, or resolution.^[47]

Neither should petitioner's lack of representation by counsel be deemed fatal to her cause and lead to the dismissal of her appeal. In *Polsoin, Jr. v. De Guia Enterprises, Inc.*,^[48] the Court held:

Aware that petitioners are not represented by counsel, the CA could have been more prudent by giving petitioners time to engage the services of a lawyer or at least by reminding them of the importance of retaining one. It is worthy to mention at this point that the right to counsel, being intertwined with the right to due process, is guaranteed by the Constitution to any person whether the proceeding is administrative, civil or criminal. The CA should have extended some degree of liberality so as to give the party a chance to prove their cause with a lawyer to represent or to assist them.^[49]

Nor should her failure to show that she furnished a copy of the petition to the Ombudsman, as the agency *a quo*, in accordance with Section 5,^[50] Rule 43 of the Rules of Court, be sufficient justification^[51] to dismiss her petition. In her motion for reconsideration, she clarified^[52] that the registry receipt in her Affidavit of Service indicated service of her petition to the FIO, which the Court finds to be substantial compliance with the rules. In any case, the presence of compelling reasons^[53] in this case impels the Court to relax the pertinent rules of procedure to make way for a resolution of the case on the merits.

In the case of *Dalton-Reyes v. Court of Appeals*^[54] (*Dalton-Reyes*), the Court exercised liberality and allowed the remand of the case to the CA for adjudication on the merits despite petitioner's failure to show proof of service of a copy of the petition on both the adverse party **and** the Ombudsman, among other procedural lapses committed by petitioner. The Court took into consideration the fact that *one*, petitioner was not assisted by a lawyer at that time, *as in this case*, and *two*, under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law;^[55] more so in the case of one who pursues her case even without the assistance of counsel. Thus, the Court stressed that "[s]ocial justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts."^[56] Moreover, the petitioner therein was also a public servant^[57] who was meted the penalty of dismissal from the service, an extreme penalty which prompted the Court to allow a review of the decision finding her administratively liable in order to obviate any doubts on the propriety of the