

**EN BANC****[ G.R. No. 229882, February 13, 2018 ]****CAMILO L. SABIO, PETITIONER, VS. FIELD INVESTIGATION OFFICE (FIO), OFFICE OF THE OMBUDSMAN, RESPONDENT.****D E C I S I O N****PER CURIAM:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated January 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 123692, which affirmed the Joint Decision<sup>[3]</sup> dated July 28, 2011 of the Office of the Ombudsman (Ombudsman) in the consolidated cases OMB-C-A-09-0611-J, OMB-C-A-09-0609-J, and OMB-C-A-09-0608-J that adjudged petitioner Camilo L. Sabio (petitioner) guilty of the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and thereby, imposed upon him the penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government.

**The Facts**

This case stemmed from separate Complaints<sup>[4]</sup> filed by respondent Field Investigation Office (FIO) of the Ombudsman charging petitioner, former Chairman of the Presidential Commission on Good Government (PCGG), of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service arising out of the following acts: (1) excess monthly charges in the official use of PCGG-issued cellular phones for the years 2005 to 2007 in the total amount of P25,594.76,<sup>[5]</sup> in violation of: (a) the P10,000.00 cap under Office Order No. CLS-001-2005 dated August 25, 2005;<sup>[6]</sup> (b) Commission on Audit (COA) Circular No. 85-55-A<sup>[7]</sup> against unnecessary, excessive, and extravagant expenditures; and (c) Administrative Order No. 103<sup>[8]</sup> dated August 31, 2004 requiring all government agencies to adopt austerity measures, including at least 10% reduction in the consumption of utilities;<sup>[9]</sup> (2) failure to deposit the aggregate amount of P10,350,000.00 consisting of the cash advances and partial remittances from sequestered corporations, *i.e.*, the Independent Realty Corporation (IRC) and Mid-Pasig Land Development Corporation (MPLDC),<sup>[10]</sup> to the Agrarian Reform Fund of the Comprehensive Agrarian Reform Program (CARP), through the Bureau of Treasury (BOT), as required under Section 63 of Republic Act No. (RA) 6657, as amended in relation to Sections 20 and 21 of Executive Order No. (EO) 229;<sup>[11]</sup> and (3) failure to liquidate despite demand the amount of P1,555,862.03 out of the total cash advances that he used in his travels and litigation of foreign cases,<sup>[12]</sup> as required by Section 89 of Presidential Decree No. 1445<sup>[13]</sup> and COA Circular No. 97-002<sup>[14]</sup> dated February 10, 1997.

In his defense,<sup>[15]</sup> petitioner claimed that the PCGG's operations are financed from the recovered ill-gotten wealth and from the P5,000,000.00 Confidential and Intelligence Funds (CIF) appropriated annually.<sup>[16]</sup> However, during his tenure, the CIF for the years 2005 to 2010 were never released to him; hence, he had to utilize the cash remittances from the sequestered corporations in lieu thereof. He further explained that he had to engage the services of foreign lawyers who asked for hefty compensation in the litigation of foreign cases because while he actively took part in the litigation, he was not duly licensed to practice law in foreign countries.<sup>[17]</sup>

**The Ombudsman Ruling**

In a Joint Decision<sup>[18]</sup> dated July 28, 2011, which was approved on October 11, 2011, the Ombudsman found substantial evidence against petitioner and accordingly, adjudged him guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service pursuant to Section 52 (A) of the Uniform Rules on Administrative Cases in the Civil Service.<sup>[19]</sup>

The Ombudsman found that petitioner failed to: (a) refute the allegations relative to his unpaid cellular phone charges, holding that his general denial along with the allegations concerning his duties and responsibilities as PCGG Chairman and the accomplishments of his office were not responsive to the charges; (b) refute the allegations concerning his non-remittance to the BOT of the amount of P10,350,000.00 received from the sequestered corporations despite the showing that he made use of the same as cash advances, and that he had, in fact, personally encashed the majority of the checks corresponding to the remittances; and (c) account for his unliquidated cash advance of P1,555,862.03 despite demand.<sup>[20]</sup> Thus, he was held liable for Grave Misconduct and Dishonesty.<sup>[21]</sup>

The Ombudsman likewise found that petitioner's acts of appropriating and/or misappropriating the proceeds of the ill-gotten wealth, excessive use of government resources, and failure to account for his cash advances tarnished the

integrity of his public office, thus constituting Conduct Prejudicial to the Best Interest of the Service.<sup>[22]</sup> However, considering that petitioner is no longer connected with the PCGG, the Ombudsman declared the penalty of dismissal from the service as having been rendered moot, and thus, imposed on him instead the accessory penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in the government, including government-owned or controlled corporations.<sup>[23]</sup>

Aggrieved, petitioner filed a petition for review<sup>[24]</sup> before the CA, docketed as CA-G.R. SP No. 123692.

### The CA Ruling

In a Decision<sup>[25]</sup> dated January 31, 2017, the CA declared the Ombudsman ruling to be amply supported by substantial evidence, and thus, affirmed the same.<sup>[26]</sup> It noted that petitioner failed to: (a) prove that the excess charges were used for calls, text, and data consumption while he was in the performance of his duties; (b) turn over and remit to the BOT upon demand the cash advances and remittances from sequestered corporations (duly covered by vouchers and checks) that automatically formed part of the funds of the CARP, which were not meant to be used for the operations of the PCGG, and hence, constituted technical malversation of funds; and (c) satisfactorily show by the corresponding receipts and vouchers that the amount of P1,555,862.03 was spent for the purposes for which it was released.<sup>[27]</sup>

Hence, the instant petition.

### The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the Ombudsman's Joint Decision finding petitioner guilty of the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

### The Court's Ruling

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.<sup>[28]</sup>

In this case, the Ombudsman found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which the CA affirmed.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate **gross misconduct** from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest** in the former.<sup>[29]</sup>

On the other hand, dishonesty has been defined as the concealment or **distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.<sup>[30]</sup> Civil Service Commission Resolution No. 06-0538<sup>[31]</sup> classifies dishonesty in three (3) gradations, namely: serious, less serious or simple. In this case, petitioner was charged with serious dishonesty, which necessarily entails the presence of any of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the Government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) **where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;** (d) the dishonest act exhibits moral depravity on the part of respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; and (h) other analogous circumstances.

Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.<sup>[32]</sup>

Both grave misconduct and serious dishonesty, of which petitioner was charged, are classified as *grave offenses* for which the penalty of dismissal is meted even for first time offenders.<sup>[33]</sup>

After a judicious study of the case, the Court finds that the evidence on record sufficiently demonstrate petitioner's culpability for the charges and fully satisfy the standard of substantial evidence, which is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.<sup>[34]</sup>

1. With respect to petitioner's excess cellular phone charges aggregating to P25,594.76.

Office Order No. CLS-001-2005 dated August 25, 2005 issued by petitioner himself set a P10,000.00 cap in the maximum monthly allocation of PCGG Commissioners in the official use of PCGG-issued cellular phones<sup>[35]</sup> and disallowed the previous practice of justifying any and all amounts in excess thereof, which shall henceforth be paid by the end-user.<sup>[36]</sup> On January 30, 2008, petitioner issued Office Order No. CLS-092-2008 clarifying that the monthly allocation fixed above shall not apply in cases where the official concerned is abroad, on official business, and the charges on text messages and voice calls are made by virtue thereof.<sup>[37]</sup>

However, a reading of the complaint in OMB-C-A-09-0611-J shows that petitioner is being charged for excess monthly cellular phone charges for the periods December 27, 2005 to March 26, 2006, April 27 to May 26, 2006, July 27 to September 26, 2006, December 27, 2006 to May 26, 2007, and July 27 to August 26, 2007 for Account No. 38659931/Phone No. 9178589299 and the periods December 11, 2005 to March 10, 2006, April 11 to May 10, 2006, June 11 to August 10, 2006, December 11, 2006 to May 10, 2007, and July 11 to August 10, 2007 for Account No. 26780102/Phone No. 9175775266.<sup>[38]</sup> The charges cover a total of twelve (12) billing periods and clearly, were incurred prior to the issuance of Office Order No. CLS-092-2008 dated January 30, 2008, which, hence, would not apply.

As aptly pointed out by the CA, petitioner cannot disregard with impunity Office Order No. CLS-001-2005 limiting the use of the PCGG-issued cellular phones, which he himself issued in line with the austerity measures implemented by the government to lessen operating expenses.<sup>[39]</sup> Notably, in seven (7) of the 12 billing cycles concerned, the excess usage amounted to between 15.96%<sup>[40]</sup> and 62.77%<sup>[41]</sup> over the P10,000.00 cap given for cellular phone usage, rendering such excesses to be expenses that are irregular, or even excessive and extravagant<sup>[42]</sup> under the auspices of COA Circular No. 85-55-A.

While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, a public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or **flagrant disregard of established rule are manifest**,<sup>[43]</sup> as in this case. Flagrant disregard of rules has been jurisprudentially demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**<sup>[44]</sup>

Here, petitioner's flagrant disregard of the rule imposing a P10,000.00 cap on cellular phone usage is readily apparent from his repeated incurrence of irregular, excessive, and/or extravagant cellular phone charges over and above said cap for 7 of the 12 billing periods when excess usages were noted. Likewise, the intent to procure some benefit for himself is manifest from the undisputed fact that said charges have remained unpaid to date<sup>[45]</sup> despite the clear provisions of Office Order No. CLS-001-2005 that any and all amounts in excess of the said cap shall be paid by the end-user.

Consequently, the Court finds the CA to have correctly upheld petitioner's administrative liability for Grave Misconduct. However, it was not shown that the incurrence of excess charges involved any act of dishonesty to sustain liability for the charge of Serious Dishonesty.

2. With respect to petitioner's failure to remit to the CARP fund through the BOT the P10,350,000.00 remittances from the sequestered corporations that he used as cash advances, which he likewise failed to liquidate.<sup>[46]</sup>

Under Section 63<sup>[47]</sup> of RA 6657, as amended, **all** amounts derived from the sale of ill-gotten wealth recovered through the PCGG shall accrue to the CARP fund<sup>[48]</sup> and shall be **considered automatically appropriated** for such purpose pursuant to Sections 20<sup>[49]</sup> and 21<sup>[50]</sup> of EO 229.

By its very nature, **ill-gotten wealth**<sup>[51]</sup> **assumes a public character as they supposedly originated from the government itself, and must, perforce, be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts.<sup>[52]</sup> **Accordingly, the proceeds from the sales thereof should likewise be remitted to the public treasury.**

However, despite the express provisions of Section 63 of RA 6657, as amended, petitioner converted the P10,350,000.00 remittances from the sequestered corporations (P9,850,000.00 and P500,000.00 of which were placed

in the names of petitioner and IRC Chairman and President Ernesto R. Jalandoni, respectively)<sup>[53]</sup> and the proceeds of the sale of A. Soriano Corporation shares, which formed part of the ill-gotten wealth of former President Ferdinand E. Marcos,<sup>[54]</sup> as his cash advances, and admittedly failed to verify the exact amount of resources made available to him to successfully carry out his tasks.<sup>[55]</sup>

While it is acknowledged that the PCGG performs the herculean task of recovering ill-gotten wealth, petitioner failed to show any law, rule, regulation or authority that permits him to utilize receipts from the sale of the aforesaid shares – being classified as ill-gotten wealth – to be channelled for any other purpose than that provided under Section 63 of RA 6657, as amended. His reliance on the Special Provision of the General Appropriations Act for the Fiscal Year 2007<sup>[56]</sup> is misplaced because the subject cash advances were disbursed to him in the Fiscal Year 2006.<sup>[57]</sup> Neither was there any showing that the PCGG had no other funds<sup>[58]</sup> which may be utilized to serve the purposes for which such cash advances were applied. As aptly pointed out by the CA, receipts from the sale of ill-gotten wealth are not meant to be used for the operation of the PCGG, which is funded from a separate source, *i.e.*, through the general appropriation allocated by Congress. Thus, it is immaterial whether petitioner utilized the amount for the operational expenses of the PCGG for the achievement of its mandate.<sup>[59]</sup>

Moreover, even assuming that petitioner may utilize a portion of the proceeds from the sale of ill-gotten wealth as cash advances, he failed to liquidate the same pursuant to COA Circular No. 97-002, which requires the liquidation of all cash advances at the end of each year and the refund of any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt.<sup>[60]</sup> Notably, in order to excuse himself from complying with the liquidation procedure under COA Circular No. 97-002, petitioner claimed that he used the receipts from the sale of ill-gotten wealth in replacement of his unreleased CIF,<sup>[61]</sup> thereby implying that he could account therefor with a mere certification that the same was utilized for a public purpose in the performance of duty.<sup>[62]</sup> The claim must be rejected for the reason that since the CIF is covered by an appropriation<sup>[63]</sup> specifically identifying and authorizing it as such, it is governed by a different set of liquidation procedures<sup>[64]</sup> which was, however, also not shown to have been followed in this case.

To add, the Court cannot subscribe to petitioner's claim that no bad faith can be attributed to him since he signed the vouchers and the checks by virtue of his position as head of the PCGG, but *left the encashment of the checks and their use to his fellow Commissioners Ricardo Abcede and Nicasio Conti, who were supposedly responsible for applying those cash advances to the use of the PCGG.*<sup>[65]</sup> On the contrary, it fortified petitioner's liability for Grave Misconduct and Serious Dishonesty because it sufficiently demonstrated his propensity to disregard the law and established rules, and his predilection to distort the truth. In addition, transfer of cash advance from one accountable officer to another is not allowed, and hence, constitutes a violation of another provision<sup>[66]</sup> of COA Circular No. 97-002.

In a last ditch effort to escape administrative liability for the complained acts, petitioner invoked<sup>[67]</sup> his acquittal in the allied criminal cases for Violation of Section 3 (e) of RA 3019<sup>[68]</sup> and Malversation of Public Funds under Article 217<sup>[69]</sup> of the Revised Penal Code.<sup>[70]</sup> However, the Court holds that such acquittal on the basis of insufficiency of evidence which engendered reasonable doubt, cannot work in petitioner's favor. An administrative case is, as a rule, independent from criminal proceedings. As such, the dismissal of a criminal case on the ground of insufficiency of evidence or the acquittal of an accused who is also a respondent in an administrative case does not necessarily preclude the administrative proceeding nor carry with it relief from administrative liability. This is because the quantum of proof required in administrative proceedings is merely substantial evidence, unlike in criminal cases which require proof beyond reasonable doubt or that degree of proof which produces conviction in an unprejudiced mind.<sup>[71]</sup>

In this case, petitioner's administrative liability for Grave Misconduct and Serious Dishonesty does not rest on whether or not he has appropriated, took or misappropriated or consented or, through abandonment or negligence, permitted another person to take public funds for which he is accountable (which an accused in malversation of public funds must be shown to have committed), but rather on whether or not he flagrantly disregarded the law and established rules, or committed any distortion of the truth with respect to his handling and accounting of the public funds which came into his hands, as affirmatively shown in this case. Here, there was competent showing of a pattern of petitioner's open and repeated defiance of: (a) the law requiring the turn-over of receipts from the sale of ill-gotten wealth to the Agrarian Reform Fund when he channelled receipts from the sale of ill-gotten wealth to other purposes without any authority; and (b) the proper liquidation procedures, rendering him liable for Grave Misconduct. On the other hand, his inconsistent categorizations of the subject cash advances sufficiently evince his intent to distort the truth in order to evade the proper liquidation procedure therefor, warranting his liability for Serious Dishonesty.

**3. With respect to petitioner's failure to liquidate despite demand the amount of P1,555,862.03 out of the total cash advances that he used in his travels and litigation of foreign cases.**

Petitioner claims that the amount of P1,555,862.03 forms part of his CIF which he utilized to successfully accomplish his mission and to carry out his tasks as then PCGG Chairman,<sup>[72]</sup> and that his acquittal in the related criminal case<sup>[73]</sup> negates any gross misconduct and serious dishonesty on his part. Corollarily, as discussed in the immediately preceding section, such contentions must be dismissed as mere evasive tactics to skirt compliance with the proper liquidation procedures under COA Circular No. 97-002. As aptly observed by the CA:

Instead of presenting documentary evidence, such as receipts and vouchers, to satisfactorily show that the amount was spent for the purposes for which it was released, [petitioner] proceeded to glorify the achievements of the PCGG under his watch and discussed the historical origin of its mandate. His lengthy exposition, to be sure, is not responsive to the charge and is deemed an extraneous matter that would not sway this Court in exonerating him from administrative liability.<sup>[74]</sup>

Petitioner's liability for grave misconduct and serious dishonesty must, perforce, be sustained.

Finally, the totality of petitioner's acts tarnished the image and integrity of his public office, which is tantamount to Conduct Prejudicial to the Best Interest of the Service.<sup>[75]</sup> Conduct prejudicial to the best interest of the service is a *grave offense* which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal on the second offense.<sup>[76]</sup> However, in view of petitioner's culpability for all the three (3) charges, Section 50,<sup>[77]</sup> Rule 10 of the RRACCS dictates that the penalty to be imposed should be that corresponding to the most serious charge.

Petitioner's administrative liability for Grave Misconduct and Serious Dishonesty would have warranted his dismissal from the service even for the first offense,<sup>[78]</sup> if not for his separation from the office.<sup>[79]</sup> Accordingly, the Court finds the Ombudsman and the CA to have correctly imposed the corresponding administrative disabilities of forfeiture of petitioner's retirement benefits, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government.

As a final note, this Court has repeatedly emphasized the time-honored rule that a "[p]ublic office is a public trust [and] [p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."<sup>[80]</sup> This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. Thus, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.<sup>[81]</sup> Unfortunately, petitioner miserably failed in this respect. As appositely pointed out by the CA:

We emphasize that despite the exalted position that [petitioner] had occupied in the executive arm of the government, he is not immune from administrative suit. As Chairman of the PCGG, he had no blanket authority to do as he pleased with the money and property of the government. He is covered by the same code of conduct and the rules and regulations pertaining to the handling and accounting of public funds. In fact, as an accountable public officer endowed with trust and confidence, [petitioner] is expected to comport himself with utmost responsibility and to observe the highest standard of ethical conduct. As holder of a public office[,] he must observe honesty, candor and faithful compliance with the law; nothing less is expected. Instead of demonstrating a conduct that is beyond reproach, [petitioner] abused his power and position to the detriment of the government and the public as a whole.<sup>[82]</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated January 31, 2017 of the Court of Appeals in CA-G.R. SP No. 123692, which upheld the Joint Decision dated July 28, 2011 of the Office of the Ombudsman in the consolidated cases OMB-C-A-09-0611-J, OMB-C-A-09-0609-J, and OMB-C-A-09-0608-J, is hereby **AFFIRMED**. Petitioner Camilo L. Sabio is found **GUILTY** of the administrative offenses of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and accordingly, meted the penalty of forfeiture of all his retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

**SO ORDERED.**

*Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Bersamin, Perlas-Bernabe, Jardeleza, Tijam, and Reyes, JJ., concur.*

*Peralta and Del Castillo, JJ., no part.*

*Leonen, Caguioa, and Gesmundo, JJ., on official business.*

*Martires, J., on official leave.*

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**NOTICE OF JUDGMENT**

**Sirs/Mesdames:**