

EN BANC

[G.R. No. 187317, April 11, 2013]

CARLITO C. ENCINAS, PETITIONER, VS. PO1 ALFREDO P. AGUSTIN, JR., AND PO1 JOEL S. CAUBANG, ** RESPONDENTS.

D E C I S I O N

SERENO, C.J.:

This is a Rule 45 Petition for Review on Certiorari assailing the Decision dated 20 November 2008^[1] and Resolution dated 30 March 2009^[2] issued by the Court of Appeals (CA). Affirming the findings of the Civil Service Commission (CSC), the CA found petitioner Carlito C. Encinas (petitioner) administratively liable for grave misconduct and conduct prejudicial to the best interest of service- offenses proscribed by Section 46(b)(4) and (27), Book V of Executive Order No. 292, or the Administrative Code of 1987 - and affirmed his dismissal.

The relevant facts are summarized as follows:

Respondents were then both holding positions as Fire Officer I in Nueva Ecija. They claim that on 11 March 2000, at around 9:00 p.m., petitioner – who was then Provincial Fire Marshall of Nueva Ecija – informed them that unless they gave him five thousand pesos (₱5,000), they would be relieved from their station at Cabanatuan City and transferred to far-flung areas. Respondent Alfredo P. Agustin (Agustin) would supposedly be transferred to the Cuyapo Fire Station (Cuyapo), and respondent Joel S. Caubang (Caubang) to Talugtug Fire Station (Talugtug). Fearing the reassignment, they decided to pay petitioner. On 15 March 2000, in the house of a certain “Myrna,” respondents came up short and managed to give only two thousand pesos (₱2,000), prompting petitioner to direct them to come up with the balance within a week. When they failed to deliver the balance, petitioner issued instructions effectively reassigning respondents Agustin and Caubang to Cuyapo and Talugtug, respectively. ^[3]

Based on the above-narrated circumstances, respondents filed with the Bureau of Fire Protection (BFP) a letter-complaint (BFP Complaint) on 27 March 2000 for illegal transfer of personnel under Republic Act (R.A.) No. 6975 or the Department of Interior and Local Government (DILG) Act of 1990.^[4] The record is not clear as to why this Complaint was later docketed by the BFP for preliminary investigation for violation of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act.^[5] The BFP Complaint provides in pertinent part:

Chief Inspector Carlito C. Encinas relieved us from our present assignment and transferred us to different far places without any cause and due process of law based from the BFP Manual (Republic Act 6975)

The reason why he relieved us was due to our failure to give the money he was asking from both of us in the amount of Five Thousand Pesos (P5,000) in exchange for our present assignment to be retained. x x x.

On 12 April and 25 April 2000, on the basis of similar facts, respondents likewise filed with the CSC Regional Office in San Fernando, Pampanga (CSCRO), as well as with the CSC Field Office in Cabanatuan City,^[6] their Joint Affidavit/Complaint (CSCRO Complaint).^[7] This time, they accused petitioner of violation of Section 4(c) of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The relevant portion of the CSCRO Complaint provides:

6. That we executed this affidavit to file a complaint against C. Insp. Carlito C. Encinas BFP for violation of Section 4 (C) R.A. 6713, that is "Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."

The CSCRO Complaint erroneously pertained to the above-quoted provision as Section 4(c), but it should be denoted as Section 4(A)(c).

On 27 October 2000, after a fact-finding investigation was conducted in connection with his alleged extortion activities, petitioner was formally charged with dishonesty, grave misconduct, and conduct prejudicial to the best interest of service. He was required to file an answer within five (5) days from notice.^[8] The Formal Charge specifically reads in part:

WHEREFORE, Carlito C. Encinas is hereby formally charged with the offenses of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. Accordingly, he is given five (5) days from receipt hereof to submit to this Office a written answer under oath, together with the affidavits of his witnesses and documentary evidence, if any, and a statement whether or not he elects a formal investigation. He is advised of his right to the assistance of his counsel of his own choice.

^[9]

Although it was not specifically mentioned in the records, the offenses of dishonesty, grave misconduct, and conduct prejudicial to the best interest of service can be found in Section 46(b)(1), (4) and (27), Book V, respectively, of the Administrative Code of 1987.^[10] The record does not indicate whether petitioner was formally charged with violation of R.A. No. 6713.

BFP Complaint

In answer to the BFP Complaint against him, petitioner claimed that in an alleged

Confidential Investigation Report dated 31 July 2000 (Confidential Report), no copy of which was attached to the record, [11] the investigating body recommended that charges against him be dropped for insufficiency of evidence. Instead, it recommended that respondents be charged with conducting unauthorized fire safety inspection and engaging in the sale of fire extinguishers, both in violation of the rules.

It appears on record that the Internal Audit Services (IAS) of the BFP issued a Resolution dated 05 July 2005, [12] recommending that the administrative complaint against petitioner be dismissed for insufficiency of evidence. [13] The IAS ruled that the reassignment of respondents was within the ambit of authority of the head of office. Thus, said reassignment may have been ordered as long as the exigencies of the service so required. [14] The Resolution dated 05 July 2005 states in pertinent part:

The re-assignment of the complainants is within the ambit of authority, CSC Resolution No. 93402 dated 11 February 1993, the commission ruled as follows:

"That reassignment may be ordered by the head of office of the duly authority [sic] representative when the exigencies of the service so require but subject to the condition that there will be no reduction in rank, status or salary, further on Bongbong vs Paracaldo (57 SCRA 623) the supreme court ruled held [sic] that "on general principle petitioner may be transferred as to the exigencies of the service require". x x x

In view of the documents on record, the undersigned investigator finds no sufficient ground to warrant the filing of appropriate administrative offense against the respondent.

WHEREFORE, premises considered, this office (IAS) most respectfully recommends that the administrative complaint against C/INSP **CARLITO ENCINAS, BFP** be dismissed for insufficiency of evidence.

CSCRO Complaint

In his Answer to the formal charge of dishonesty, grave misconduct, and conduct prejudicial to the best interest of service, [15] petitioner claimed that the CSCRO Complaint was an offshoot of the reassignment of respondents. He alleged that they were reassigned after it was discovered that they had conducted a fire safety inspection of establishments within Nueva Ecija without any mission order. In relation to this operation, they supposedly sold fire extinguishers to the owners of the establishments they had inspected. [16] He cited the alleged Confidential Report in which the investigating body recommended the dropping of charges against him. [17] He further added that, in view of his exemplary and faithful service, the then-incumbent governor even requested the continuance of his stint as Provincial Fire Marshall of Nueva Ecija. [18] In his Position Paper, [19] petitioner claimed that respondents' transfer had been made in compliance with the directive of Supt. Simeon C. Tutaan (Supt. Tutaan) and pursuant to law. [20]

CSCRO Ruling

Subsequently, the CSCRO issued its Decision dated 30 July 2004,^[21] finding petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of service, and ordered his dismissal from service.

The CSCRO ruled that respondents, through their respective testimonies, were able to establish the fact that petitioner demanded from them the amount of ₱5,000 in exchange for their non-reassignment to far-flung fire stations.^[22] The fact that they did not present any document to show that petitioner received ₱2,000 did not preclude a finding of administrative liability.^[23] The consistency of their oral testimonies already constituted substantial evidence. Granting that they committed illegal acts prior to their reassignment, this allegation nevertheless did not rebut their claims that petitioner had extorted money from them. The admission of Supt. Tutaan that he gave instructions for their reassignment did not disprove the accusation of extortion, but merely established that there was indeed an order to reassign them.^[24]

Petitioner filed a Motion for Reconsideration.^[25] He argued that the Sworn Statements of his witnesses should have been given weight instead of respondents' testimonies. He explained that Mrs. Angelina Calanoc (Mrs. Calanoc), owner of Reynand Gas Dealer, confirmed that respondents had conducted a physical inspection of her establishment, after which they recommended that she pay conveyance permit fees as a requisite for the issuance of a Fire Safety Certificate.^[26] Also, Carlito Umali confirmed that he had indeed accompanied petitioner when the latter investigated the Complaint filed by Mrs. Calanoc against respondents.^[27] Furthermore, Myrna Villanueva – the owner of the house where respondents supposedly paid petitioner ₱2,000 – claimed that she did not know them personally or recall either petitioner or respondents ever visiting her house.^[28] Likewise, Supt. Tutaan confirmed that he had instructed petitioner to cause the transfer of respondents.^[29] The latter also argued that the BFP Complaint had already been dismissed by virtue of the Confidential Report, and that the dismissal had already served as a bar to the further prosecution of any administrative charge against him.^[30]

The Motion, however, was subsequently denied by the CSCRO in its Order dated 19 May 2006.^[31] It affirmed its previous ruling that the statements of petitioner's witnesses were incompetent and immaterial, having failed to disprove that petitioner had indeed extorted money from respondents.^[32] It likewise rejected the argument of *res judicata* proffered by petitioner and ruled that the dismissal of the BFP Complaint by virtue of the Confidential Report was not a judgment on the merits rendered by a competent tribunal. Furthermore, the Confidential Report was the result of the recommendation of a fact-finding committee formed to determine the veracity of the Complaint charging petitioner with extortion, unjustified transfer of BFP personnel, and malversation of funds.^[33] *Res judicata* cannot be raised as a defense, since the dismissal of the BFP Complaint did not constitute a bar by former judgment.^[34]

Aggrieved, petitioner filed an Appeal Memorandum^[35] with the CSC main office. In his Appeal, he argued that respondents were guilty of forum-shopping for having filed two (2) separate administrative Complaints before the CSCRO on the one hand, and before the BFP/DILG on the other.^[36] Petitioner argued that respondents failed to attach a certificate of non-forum shopping to either Complaint.^[37] Moreover, the CSCRO should not have entertained the Complaint filed before it, considering that it already knew of the then-pending investigation conducted by the BFP/DILG.^[38]

Petitioner further argued that the CSCRO only had appellate jurisdiction or authority to decide cases brought before it by the head of agency or, in this case, the BFP.^[39] He explained that the administrative Complaint was investigated and heard by the BFP/DILG. The BFP department head or fire director, Rogelio F. Asignado, by virtue of the Resolution dated 05 July 2005, dismissed the complaint for insufficiency of evidence.^[40] On the basis of the dismissal of the case, and there being no appeal or petition filed pertaining thereto, the CSCRO Complaint should have been dismissed as well.^[41] Petitioner further argued that the CSCRO erred in concluding that the resolution of the fact-finding committee was not a judgment on the merits.^[42] The BFP being an agency of the government, any decision or resolution it arrives at is also a judgment on the merits.^[43]

Petitioner likewise reiterated his previous arguments on the appreciation of the testimonies of his witnesses.^[44] He alleged that on 09 June 2006, respondent Agustin executed an Affidavit of Desistance in the former's favor and was no longer interested in pursuing the case against him.^[45]

In answer to the Appeal Memorandum, the CSCRO argued that there was no forum-shopping, considering that the BFP Complaint was based on a different cause of action.^[46] The Complaint, which pertained to the alleged illegal transfer of personnel under R.A. No. 6975, was docketed for preliminary investigation of the alleged violation of the Anti-Graft and Corrupt Practices Act or R.A. No. 3019.^[47] The CSCRO further argued that there could be no *res judicata*, since the dismissal of the BFP Complaint by virtue of the Resolution dated 05 July 2005^[48] was not a judgment on the merits rendered by a competent tribunal. The dismissal was, instead, the result of the recommendation of the preliminary investigators of the Internal Audit Service (IAS) of the BFP.^[49]

CSC Ruling

Petitioner's appeal was subsequently denied by CSC in its Resolution No. 080941 dated 19 May 2008 (CSC Resolution).^[50] It ruled that there was no forum-shopping committed by respondents, and that substantial evidence existed to hold petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.

The CSC explained that the CSCRO Complaint was for violation of R.A. No. 6713, while the BFP Complaint was for violation of R.A. No. 6975.^[51] It further ruled that, although both Complaints were anchored on a similar set of facts, there was no identity of causes of action: thus, even if they were successively filed before