

FIRST DIVISION

[G.R. No. 170512, October 05, 2011]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ANTONIO T. REYES, RESPONDENT.

DECISION

LEONARDO-DE CASTRO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision^[2] dated July 4, 2005 and the Resolution^[3] dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 70571. The judgment of the appellate court reversed and set aside the Decision^[4] dated September 24, 2001 and the Joint Order^[5] dated February 15, 2002 of the Office of the Ombudsman for Mindanao in OMB-MIN-ADM-01-170; while the appellate court's resolution denied the motion for reconsideration^[6] assailing its decision.

On January 11, 2001, Jaime B. Acero executed an affidavit against herein respondent Antonio Reyes and Angelito Peñaloza, who were the Transportation Regulation Officer II/Acting Officer-in-Charge and Clerk III, respectively, of the Land Transportation Office (LTO) District Office in Mambajao, Camiguin. Acero narrated thus:

That, on January 10, 2001, at about 2:00 o'clock P.M. I went to the Land Transportation Office, at Mambajao, Camiguin to apply for a driver's license;

That, I was made to take an examination for driver's license applicants by a certain Tata Peñaloza whose real name is Angelito, a clerk in said office;

That, after the examination, [Peñaloza] informed me that I failed in the examination; however if I am willing to pay additional assessment then they will reconsider my application and I am referring to [Peñaloza] and [Reyes];

That, I asked how much will that be and [Peñaloza] in the presence of [Reyes] answered P680.00, so I agreed;

That, I then handed P1,000.00 to [Peñaloza] and [Peñaloza] handed it to the cashier;

That, [Peñaloza] in turn handed to me the change of P320.00 only and a little later I was given the LTO Official Receipt No. 62927785 (January 10, 2001) but only for P180.00 which O.R. serves as my temporary license

for 60 days; and the balance of P500.00 was without O.R. and retained by Peñaloza;

That, I feel that the actuation of Antonio Reyes and Angelito Peñaloza are fraudulent in that they failed to issue receipt for the extra P500.00 paid to them; and [Reyes] know that I am with [the Commission on Audit];

That, I execute this affidavit to file charges against the guilty parties.^[7]

Attached to Acero's affidavit was the LTO Official Receipt No. 62927785, showing his payment of P180.00.^[8]

The above affidavit was apparently filed with the Office of the Provincial Prosecutor in Camiguin, but the same was later referred^[9] to the Office of the Ombudsman-Mindanao. The latter office thereafter ordered^[10] Reyes and Peñaloza to submit their counter-affidavits within ten days from notice.

On June 19, 2001, Peñaloza filed his Counter-Affidavit.^[11] He denied telling Acero that if the latter were willing to pay additional costs, Reyes and Peñaloza would reconsider his application. Peñaloza stated that he did administer the examination to Acero but since he was very busy, he requested their security guard, Dominador Daypuyat, to check the answers of Acero using their answer guide. After Daypuyat checked Acero's paper, Peñaloza noted the score of 22/40. Peñaloza informed Acero of the failing grade and told him that it was up to Reyes to decide on the matter. Acero then went to the office of Reyes and after a few minutes, he came back and returned his application documents to Peñaloza. After examining the application form, Peñaloza saw that the same did not contain Reyes' signature but a plus sign (+) and the number 27 beside the score of 22/40. Peñaloza knew that it was Reyes who wrote the "+ 27" and the same indicated that Acero had to pay additional costs in order to pass the examination, as was done in the past.

Thereafter, when Peñaloza allegedly informed Reyes that Acero was an auditor, the latter was summoned into Reyes' office. Reyes asked if Acero wanted to retake the examination or just pay the additional costs. Acero eventually said "yes" and Peñaloza inferred that the former agreed to pay Reyes the extra costs. Peñaloza recounted that Reyes instructed him to prepare the driver's license of Acero. Peñaloza gave Acero's application documents to Lourdes Cimacio, the senior statistician, who processed the driver's license. When the cashier asked for Acero's payment, the latter gave Peñaloza a one-thousand-peso bill. The cashier, in turn, handed to Peñaloza a change of P820.00. From the said amount, Peñaloza gave to Acero P320.00, while P500.00 was given to Reyes. Acero soon left the office. Peñaloza said that Acero called their office not long after, asking for a receipt for the P500.00. Peñaloza then asked if Acero had not come to an understanding with Reyes that a receipt would not be issued for the additional cost. Acero insisted on a receipt then hanged up. Peñaloza told Reyes of Acero's demand and Reyes told him to cancel the driver's license. When told that the same could not be done anymore, Reyes allegedly gave Peñaloza P500.00, instructing the latter to return the money to Acero under circumstances where nobody could see them. Peñaloza stated that he waited for Acero to come back to their office but the latter did not do so anymore.

Peñaloza also submitted in evidence the affidavit^[12] of Rey P. Amper. Amper narrated that he started working at the LTO in Mambajao, Camiguin in September 1988 as a driver-examiner. In February 1994, Reyes became the acting Head of Office, and eventually the Head of Office, of the LTO in Mambajao. About four months thereafter, Reyes verbally instructed Amper to send to him (Reyes) all the applicants for driver's licenses who failed the examinations. In case Reyes was absent, the applicants were to wait for him. Subsequently, Reyes gave Amper a piece of paper containing the rates to be charged to the "applicant-flunkers" in addition to the legal fees. Amper was also told to deliver the additional payments to Reyes. Amper stated that his office table and that of Reyes were located in one room. Reyes would allegedly tell the applicant-flunkers to either re-take the examinations or pay additional costs. In most cases, Amper said that the applicant-flunkers would only be too willing to pay the extra costs. Reyes would then instruct Amper to add more points to applicant-flunkers' scores, which meant that Reyes and the applicants concerned had come to an agreement for the payment of additional costs. Amper added that the said practice of Reyes was a "goad to his conscience" and he talked about it to Peñaloza. They allegedly reported the matter to their District Representative Pedro Romualdo, but the latter could only express his regrets for having recommended Reyes to his position. The practice of Reyes of claiming additional costs continued up to the time Amper left the LTO. Amper declared that he knew that it was Reyes alone who took and benefitted from his illegal exactions. The employees of the LTO in Mambajao were purportedly aware of the practice of Reyes but they were afraid to come out against their Head of Office.

The affidavit^[13] of Margie B. Abdala was also presented by Peñaloza. Abdala stated that she accompanied Peñaloza and the latter's wife, Ebony, to the house of Acero on January 13, 2001. Ebony urged Acero not to include Peñaloza anymore in the complaint. Acero assured them that his complaint was principally directed against Reyes for requiring him (Acero) to pay additional costs for which he was not issued any official receipt. Peñaloza brought with him Acero's application form for a driver's license, which had already been approved by Reyes, and he asked the latter to complete the same. Peñaloza also tried to return the P500.00 from Reyes that was not covered by a receipt. Acero, however, refused to fill up the application form and to accept the money. When Ebony asked why Acero agreed to pay the additional cost required by Reyes, the latter answered that he did not understand what was meant by additional cost.

On June 19, 2001, Reyes manifested^[14] that, for purposes of the instant case, he was adopting the counter-affidavit he filed in another Ombudsman case, docketed as OMB-MIN-01-0090,^[15] as both cases involved the same parties and the same incident.

In his counter-affidavit,^[16] Reyes claimed that Acero's complaint was a "blatant distortion of the truth and a mere fabrication of the complainant."^[17] Reyes asserted that a perusal of the affidavit-complaint revealed that the only imputation against him was that Peñaloza allegedly told Acero to pay P680.00 in his (Reyes') presence. The affidavit revealed that it was Peñaloza who processed the application of Acero; the money was allegedly given to Peñaloza and it was he who handed the change back to Acero; and he had no participation and was not present when the money changed hands. Reyes stated that when he conducted an informal investigation on the complaint, Peñaloza admitted to having pocketed the extra

P500.00. Reyes allegedly reprimanded Peñaloza and ordered the latter to return the money to Acero. Based on the receipt submitted by Acero, the same proved that as far as the LTO and Reyes were concerned, what was received by the office was only P180.00. Reyes contended that he did not ask or receive money from Acero and it was Peñaloza who pocketed the P500.00.

In an Order^[18] dated June 20, 2001, the Office of the Ombudsman-Mindanao directed the parties to appear before its office on July 11, 2001 for a preliminary conference. The parties were to consider, among others, the need for a formal investigation or whether the parties were willing to submit their case for resolution on the basis of the evidence on record and such other evidence as they will present at the conference.

On July 6, 2001, Acero sent the Office of the Ombudsman-Mindanao a telegram,^[19] stating that he was waiving his right to avail of the preliminary conference.

On July 11, 2001, the Office of the Ombudsman-Mindanao issued an Order,^[20] stating that none of the parties appeared in the preliminary conference scheduled for that day. In view of the non-appearance of the respondents therein, they were considered to have waived their right to a preliminary conference. The case was then deemed submitted for decision.

On July 23, 2001, the counsel for Peñaloza informed the Office of the Ombudsman-Mindanao that his client was waiving his right to a formal investigation and was willing to submit the case for resolution on the basis of the evidence on record. Peñaloza also submitted the additional affidavit of one of their witnesses, Rickie Valdehueza.

In his affidavit,^[21] Valdehueza stated that on January 5, 2001, he applied for a driver's license with the LTO in Mambajao, Camiguin. He took an examination on that day, which was conducted by an employee he later came to know as Dominador Daypuyat. After the latter checked his test paper, Valdehueza was told that he got a failing score. His application was then turned over to Peñaloza, who told him to see Reyes. Valdehueza said that Reyes advised him not to retake the examination anymore and just pay P1,500.00. Valdehueza bargained for P1,200.00 since he had no money and Reyes agreed. Reyes then wrote the sign "+ 20" next to Valdehueza's score of 30, such that what appeared on the test paper was "30 + 20." Reyes returned the test paper and instructed Valdehueza to tell Peñaloza to add "20" to his score. Valdehueza went back to the LTO on January 10, 2001 bringing P1,200.00. Before he could go to Reyes' office, he was accosted by Daypuyat in the lobby who informed him that his license was already completed. Daypuyat also took P700.00 to give to Reyes. Valdehueza gave P500.00 to the cashier as payment for the P240.00 license fee. He told the cashier to just give his change to Reyes.

On September 24, 2001, the Office of the Ombudsman-Mindanao rendered a Decision in OMB-MIN-ADM-01-170, adjudging Reyes guilty of grave misconduct and finding Peñaloza guilty of simple misconduct. The pertinent portion of the decision reads:

Here, as borne out of the record, there is no denying the fact that [Acero] failed in the examination given for a driver's license, yet ultimately, herein complainant was granted a temporary driver's license. It is therefore very logical to presume that something in between was agreed upon between the applicant and the person charged with the grant of license.

Based on the testimony of [Peñaloza] and corroborated by the testimonies of Rey P. Amper (Record, pp. 31-32) and Rickie Valdehueva (Record, pp. 44-45), [Reyes] would give the flunker the option of retaking the examination or to simply pay an additional cost to have a passing grade without actually re-taking the same. As testified to by Rey P. Amper, *"xxx in almost all cases, the applicant-flunker would only be too willing to pay the additional costs, in which case, Mr. Reyes would instruct him to go back to my table. Then Mr. Reyes would call me, saying: 'Ray, just add more to his score.', which to me meant that he and the applicant-flunker had come to an agreement to pay the 'additional costs'."* Mr. Amper testifies further that this matter of extending a passing grade to a flunker for a monetary consideration has been a system within this LTO agency perpetrated by [Reyes] since he assumed as Head of Office thereat.

Verily, [Reyes] took advantage of his position and office in exacting the so-called additional cost from those who flunked the examination. There is nowhere in the record authorizing the Head of Office of the LTO to adjust a failing grade into a passing grade. In addition, there is nowhere in the record that supports the legality of collecting additional costs over and above the legal fees. This is a pure and simple case of extortion and certainly, such act is a breach of his oath of office as well as a deliberate disregard of existing rules and regulations. Based on the foregoing, this Office finds respondent [Reyes] guilty of grave misconduct.

As regards [Peñaloza], while he may have helped or facilitated in the collection of that additional costs, he could not be as guilty as [Reyes].

Understandably, it is normal for a subordinate to keep mum while an anomaly is going on specially when the perpetrator is the Head of Office. There is fear in him and normally, such subordinate would just "ride along", so to speak. But nonetheless, [Peñaloza] has to be sanctioned. While the infraction he had helped accomplished may not have been voluntary on his part but as a public official, he should have registered his objection regardless of the consequence that may occur. Based on the foregoing, this Office finds respondent [Peñaloza] guilty of simple misconduct.

WHEREFORE, there being substantial evidence, this Office finds respondent Antonio T. Reyes guilty of grave misconduct and he is hereby meted the penalty of DISMISSAL from the service pursuant to Section 23(c) [Grave Offenses], Rule XIV of the Rules Implementing Book V of Executive Order No. 292. Likewise, this Office finds respondent Angelito G. Peñaloza guilty of Simple Misconduct and he is hereby meted the penalty of SUSPENSION from office without pay for a period of Six (6)