

THIRD DIVISION

[G.R. No. 143538, February 13, 2009]

**VICENTE A. MIEL, PETITIONER, VS. JESUS A. MALINDOG,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision^[2] dated 29 July 1999 and Resolution^[3] dated 26 May 2000 of the Court of Appeals in CA-G.R. SP No. 48045.

The facts gathered from the records are as follows:

On 19 July 1994, petitioner Vicente A. Miel, then employed as Engineer II of the Samar Engineering District, Department of Public Works and Highways, Catbalogan, Samar (SED-DPWH), filed with the Civil Service Commission, Region Office No. 8, Tacloban City (CSC-RO No. 8), a Complaint for falsification of official documents, dishonesty, conduct prejudicial to the best interest of the service and grave misconduct, against respondent Jesus A. Malindog, then employed also as Engineer II of SED-DPWH, Samar.

Petitioner alleged in his Complaint that respondent submitted three separate Personal Data Sheets (PDS), or Civil Service Form No. 212, pertinent portions of which are reproduced below:

According to the **first PDS**^[4]:

PERSONAL DATA
SHEET
(20 DECEMBER
1988)

x x x x

SERVICE RECORD (Include experience outside government service).

INCLUSIVE DATES
From To

POSITION

DEPARTMENT/AGENCY

x x x x

July 1, 1984 -
October 9, 1986

C.E. Supervisor

PHILPOS BAGACAY
MINES

The **second PDS**^[5] stated:

PERSONAL DATA
SHEET
(2 MARCH 1992)

x x x x

SERVICE RECORD (Include experience outside government service)

<u>INCLUSIVE DATES</u>	<u>POSITION</u>	<u>DEPARTMENT/AGENCY</u>
From To		

x x x x

June 1, 1984 - Dec. 31, 1986	Civil Engineer	PJHL, DPWH
Jan.1, 1984 - June 30,1986	Civil Engineer	-do-
July 1, 1986 - Oct. 9, 1986	Civil Engineer	-do-

And the **third PDS**^[6] declared:

PERSONAL DATA
SHEET
(Year 1994)

x x x x

SERVICE RECORD (Include experience outside government service).

<u>INCLUSIVE DATES</u>	<u>POSITION</u>	<u>DEPARTMENT/AGENCY</u>
From To		

x x x x

Jan. 1, 1984 - October 9, 1986	on leave
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Petitioner compared respondent's three PDSs and pointed out the following contradictory and apparently deceitful information therein: respondent stated under the service record section of his first PDS that he worked for PHILPOS BAGACAY MINES, a private company in Hinabangan, Samar, as C.E. Supervisor from **1 July 1984 up to 9 October 1986**; then respondent indicated under the service record section of his second PDS that he worked at the Philippine-Japan Highway Loan Division (PJHLD) of the DPWH Region 8 from **1 May 1984 until 9 October 1986**; and, finally, respondent wrote under the service record section of his third PDS that he was "on leave" from his job as civil engineer in DPWH Region 8 from **1 January 1984 up to 9 October 1986**. By reason of these false statements made by respondent in his PDS, he was granted an amount of P1,500.00 as loyalty cash award by SED-DPWH. Respondent was also recommended for promotion to the vacant position of Engineer III in SED-DPWH, but petitioner contended that respondent should be disqualified from the said promotion by reason of the

falsification he made on his three PDSs. Petitioner, thus, prayed in his Complaint^[7] that appropriate sanctions be imposed on respondent based on the foregoing allegations.

On 5 September 1994, respondent filed before CSC-RO No. 8 an Answer^[8] to petitioner's Complaint. In his Answer, respondent denied the charges against him and averred that they were malicious and pure harassment. Respondent claimed that petitioner held a grudge against respondent because they were in "bitter contest" for the vacant position of Engineer III in SED-DPWH. Petitioner scanned respondent's personal records just to make a case against him. Respondent explained that he indeed worked for PHILPOS BAGACAY MINES and at the PJHLD of DPWH Region 8, but he could no longer recall the exact dates of said employments, considering the length of time that had lapsed since then. Also due to the frailty of human memory, respondent could not exactly remember his whereabouts during the period he was supposedly on leave from his job as civil engineer in DPWH Region 8 for the period of 1 January 1984 to 9 October 1986. Respondent asserted that he did not commit any wrong when he accepted the loyalty cash award. He did not bribe or use unlawful schemes in order to be recommended for the vacant Engineer III position. Respondent pleaded that petitioner's Complaint be dismissed for lack of merit.

After conducting a preliminary investigation of petitioner's Complaint, Lorenzo S. Danipog (Danipog), Director III of CSC-RO No. 8, issued a Resolution^[9] formally charging respondent with dishonesty. Director Danipog found that respondent had willfully and maliciously written false information on his three PDSs. He opined that respondent purposely fabricated his second and third PDSs so he could be entitled to the loyalty cash award of P1,500.00. Director Danipog did not give much credence to respondent's defense of "frailty of memory," because respondent's false statements on his PDSs were carefully written and complete as to days, months and years, which could only be done by a conscious mind. The falsification of statements in the PDS constituted dishonesty, and Danipog concluded that there was *prima facie* case to charge respondent with the same.

On 7 July 1997, the Civil Service Commission Head Office (CSC-HO) issued Resolution No. 973301^[10] finding respondent guilty of dishonesty and imposing upon him the penalty of dismissal from the service. The CSC-HO believed that respondent falsified his second and third PDSs so he could be entitled to the loyalty cash award of P1,500.00 from SED-DPWH; under Section 7(e), Rule X of the Omnibus Rules Implementing Book V of the 1987 Administrative Code of the Philippines and CSC Memorandum Circular No. 42 dated 15 October 1992, the loyalty award shall be given only to a government employee who has completed at least ten (10) years of continuous and satisfactory service to the particular office granting the award. The CSC-HO held that respondent's actuation constituted dishonesty under the Civil Service Rules. The dispositive portion of the CSC-HO Resolution reads:

WHEREFORE, Jesus A. Malindog is hereby found guilty of Dishonesty. Accordingly, he is meted the penalty of dismissal from the service with all the accessory penalties including perpetual disqualification from holding public office and from taking future government examinations.^[11]

Respondent filed a Motion for Reconsideration of CSC-HO Resolution No. 973301 dated 7 July 1997, but it was denied by the CSC-HO in its Resolution No. 980648^[12] dated 25 March 1998. Thus, respondent appealed to the Court of Appeals *via* Rule 43 of the Rules of Court. Respondent's appeal was docketed as CA-G.R. SP No. 48045.

The Court of Appeals promulgated on 29 July 1999 its Decision in CA-G.R. SP No. 48045, affirming with modification CSC-HO Resolution No. 973301 dated 7 July 1997. The appellate court sustained the finding of the CSC-HO that respondent was guilty of dishonesty for making false statements in his second and third PDSs. Nevertheless, it held that the penalty of dismissal imposed on respondent should be reduced to one-year suspension from work without pay considering that: (1) respondent had been in the government service for almost 20 years; (2) this was his first offense; (3) he rose from the ranks as a mere laborer until he was promoted to Engineer II at the SED-DPWH; and (3) he returned the loyalty cash award of P1,500.00. Hence, the Court of Appeals decreed:

WHEREFORE, the Resolutions of the Civil Service Commission are hereby AFFIRMED, with the MODIFICATION that petitioner is penalized to suffer one year suspension without pay, with the warning that a repetition of the same or similar act will be dealt with more severely.^[13]

In its Resolution dated 26 May 2000, the Court of Appeals denied petitioner's Motion for Reconsideration of the aforementioned Decision.

Consequently, petitioner lodged the instant Petition before us assigning the following errors:

I.

THE COURT OF APPEALS ERRED IN FAILING TO APPLY SECTION 4, RULE 43 OF THE RULES OF PROCEDURE THAT THE APPEAL OF RESPONDENT WAS FILED OUT OF TIME BY IGNORING OUR DOCUMENTARY EVIDENCE ISSUED BY THE CIVIL SERVICE COMMISSION THAT RESPONDENT'S FORMER COUNSEL OR THROUGH RESPONSIBLE PERSON IN HIS OFFICE ADDRESS RECEIVED CSC RESOLUTION DENYING HIS MOTION FOR RECONSIDERATION FIFTY ONE (51) DAYS BEFORE FILING HIS PETITION FOR REVIEW WITH THE COURT OF APPEALS. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO EXCESS OF JURISDICTION;

II.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION BY IMPOSING THE PENALTY OF ONE YEAR SUSPENSION INSTEAD OF AFFIRMING THE CIVIL SERVICE COMMISSION'S PENALTY OF DISMISSAL AGAINST THE LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT, SINCE IT COULD NOT FAULT THE CIVIL SERVICE COMMISSION FOR HAVING COMMITTED ANY GRAVE ABUSE OF DISCRETION.

Apropos the first issue, petitioner asserts that respondent's appeal of CSC-HO Resolution No. 980648 before the Court of Appeals was filed beyond the period

allowed for appeal and should have been therefore dismissed.^[14]

Under the provisions of Rule 43 of the Rules of Court, the appeal from the judgments, final orders or resolutions of the CSC shall be taken by filing a verified petition for review to the Court of Appeals within fifteen (15) days from notice of the judgment, final order or resolution. Jurisprudence instructs that when a party is represented by counsel, notice of the judgment, final order or resolution should be made upon the counsel of record.^[15] Thus, the fifteen-day period to appeal under Rule 43 of the Rules of Court commenced to run from receipt of the judgment, final order or resolution by the party's counsel on record.^[16]

Records show that in the filing of respondent's Motion for Reconsideration of CSC-HO Resolution No. 973301, respondent was represented by Atty. Alexander L. Bulautan.^[17] The CSC-HO issued Resolution No. 980648 denying respondent's Motion for Reconsideration on 25 March 1998. Atty. Bulautan received a copy of CSC-HO Resolution No. 980648 on **29 April 1998**.^[18] Respondent then had fifteen (15) days from such date of receipt, or until **14 May 1998**, to appeal to the Court of Appeals under Rule 43 of the Rules of the Court. Respondent, however, filed his appeal of CSC-HO Resolutions No. 973301 and No. 980648 with the Court of Appeals only on **19 June 1998**, which was obviously beyond the 15-day reglementary period for doing so.^[19]

The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law.^[20] Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal.^[21]

Nonetheless, we have held that a delay in the filing of an appeal under exceptional circumstances may be excused on grounds of substantial justice and equity.^[22] Filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein.^[23] Courts may suspend its own rules, or except a particular case from its operations, whenever the purposes of justice require it.^[24] In *Baylon v. Fact-Finding Intelligence Bureau*,^[25] we laid down the range of reasons which may provide justification for a court to resist strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

In the case at bar, the CSC-HO found respondent guilty of dishonesty and imposed upon him the penalty of dismissal from the service. The penalty of dismissal is a severe punishment because it blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and