

THIRD DIVISION

[G.R. No. 151121, July 21, 2008]

RUBEN S. GALERO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, DEPUTY OMBUDSMAN (VISAYAS), AND PHILIPPINE PORTS AUTHORITY, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

For review is the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57397 dated April 26, 2001 affirming the Resolution^[2] of the Office of the Ombudsman (Visayas) in OMB-VIS-ADM-97-0565 finding petitioner Ruben S. Galero guilty of *Dishonesty, Falsifying Official Documents and Causing Undue Injury to the Government* and imposing the penalty of dismissal from service, forfeiture of all benefits and perpetual disqualification to hold public office. Likewise assailed is the CA's Resolution^[3] dated December 21, 2001 denying his motion for reconsideration.

The factual and procedural antecedents follow:

On January 17, 1997, Rogelio Caigoy (Mr. Caigoy), then the resident Ombudsman of the Philippine Ports Authority - Port Management Office (PPA-PMO), Pulupandan, Negros Occidental, received an anonymous letter from concerned citizens, reporting that Robert Geocadin (Mr. Geocadin), a security guard of United Field Sea Watchmen and Checkers Agency (UFSWCA), officially assigned at the National Power Corporation (Napocor) in Bacolod City, at the same time submitted a Daily Time Record (DTR) at PPA-PMO but did not report to the said office.^[4] He received a second anonymous letter on December 16, 1997 stating that Mr. Geocadin was receiving double salary from Napocor and PPA-PMO, and implicating the petitioner, who was then the Acting Station Commander, Port Police Division, and Winfred Elizalde (Mr. Elizalde), the Port Manager, both of the PPA-PMO. The said letter specifically claimed that petitioner and Mr. Elizalde were each receiving shares in the security guards' salary.^[5] In short, the letters charged that Mr. Geocadin was a ghost employee.

On the strength of the two anonymous letters, Mr. Caigoy recommended the filing of criminal and administrative charges against petitioner and Mr. Elizalde in their capacities as Acting Port Police Division Commander and Port Manager, respectively.^[6] The administrative case was docketed as OMB-VIS-ADM-97-0565 and was assigned to Graft Investigation Officer I Helen Catacutan-Acas.

From the affidavits and counter-affidavits of the parties and witnesses, as well as their testimonies and the documentary evidence presented, it appears that Mr. Geocadin was officially assigned at the Napocor with the following areas of supervision:

1. Bacolod Sub-Station in Mansilingan;
2. Engineering Office in Bacolod City;
3. Tumonton Cable Station which is more or less twenty-two (22) km. away from Bacolod Station;
4. Bulata Sipalay small stockyard which is more or less 20 km. away from Bacolod City.^[7]

At Napocor, petitioner was required to report for duty from 8:00 in the morning until 4:00 in the afternoon, from April 16, 1996 until April 16, 1997. Covering almost the same period from April 16, 1996 until November 30, 1996, Mr. Geocadin, who was also appointed as the Station Commander of the security guards of PPA-PMO, filled up Civil Service Form No. 48 (DTR) allegedly for services rendered for PPA-PMO from 8:00 in the morning until 5:00 in the afternoon. The DTRs he submitted for seven (7) months were certified correct by petitioner being Mr. Geocadin's immediate superior.^[8]

For his part, petitioner denied that Mr. Geocadin was a ghost security guard. He alleged that Mr. Geocadin was designated by UFSWCA as Detachment Commander who was tasked to supervise the security guards posted at PPA-PMO Bacolod City and Pulupandan and to inspect their security equipment. Apart from these, Mr. Geocadin was assigned to issue mission orders; prepare duty schedules; and act as paymaster and liaison officer. He, likewise, did clerical work and prepared memoranda on disciplinary actions taken against erring security guards.^[9] To justify his lack of knowledge of Mr. Geocadin's fraudulent acts, petitioner explained that because PMO-Pulupandan was then in the process of reorganization, Mr. Geocadin was initially tasked to conduct security inspection of the posts in Bacolod City and random inspections in other stations.^[10] In other words, petitioner was not expected to see Mr. Geocadin the whole day as he could be in another station. Mr. Elizalde, on the other hand, claimed that whenever he needed Mr. Geocadin, the latter was always available.

During the hearing of the case, Mr. Geocadin admitted that he was assigned both to Napocor and PPA-PMO with 16-hour duty everyday.^[11]

On May 31, 1999, the Office of the Ombudsman (Visayas) issued a Resolution^[12] against petitioner, the pertinent portion of which reads:

WHEREFORE, in the light of all the foregoing, this Office finds Ruben Galero guilty of Dishonesty, for Falsifying Official Documents, and for causing undue injury to the government, thus metes upon him, the penalty of DISMISSAL FROM SERVICE, FORFEITURE OF ALL BENEFITS, and PERPETUAL DISQUALIFICATION TO PUBLIC OFFICE in accordance with Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission.^[13]

SO RESOLVED.

The Office of the Ombudsman declared that Mr. Geocadin was officially assigned at Napocor and was not tied to only one post as he was then tasked to supervise four stations. Making use of this set-up to his advantage, Mr. Geocadin took undeclared undertime with Napocor which enabled him to accept his appointment with PPA-PMO. Though it may have been possible for Mr. Geocadin to accept dual positions, it is impossible for him to be at different work stations at the same time, as reflected in his DTRs both with Napocor and PPA-PMO. Considering that Mr. Geocadin repeatedly committed the fraudulent act for a continuous period of seven (7) months, the Office of the Ombudsman concluded that the petitioner, being his immediate superior who verified his DTRs, was aware of such irregularity.^[14] Hence, the extreme penalty of dismissal as to the petitioner. Mr. Elizalde, on the other hand, was exonerated for lack of evidence to show conspiracy. Petitioner's motion for reconsideration was also denied on December 10, 1999.^[15]

Petitioner likewise failed to obtain a favorable judgment from the CA when his petition for review was denied.^[16] The appellate court declared that petitioner's verification of Mr. Geocadin's DTRs was sufficient to hold him guilty as charged. His verification, according to the court, enabled Mr. Geocadin to receive from the government such amounts not due him. The court did not give credence to the affidavits of some security guards that Mr. Geocadin was indeed their station commander. Neither did the appellate court consider the affidavit of retraction executed by one of the witnesses.^[17] In conclusion, the court said that there was substantial evidence to establish petitioner's guilt.

Aggrieved, petitioner comes before this Court in this petition for review raising the following errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE FINDINGS OF THE OMBUDSMAN WHICH FINDING IS GROUNDED ENTIRELY ON SPECULATION, SURMISES OR CONJECTURES.

II.

THE HONORABLE COURT OF APPEALS FAILS (SIC) TO NOTICE CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION.

III.

THE FINDINGS OF THE HONORABLE COURT OF APPEALS AS TO THE VALIDITY OF PETITIONERS' DISMISSAL FROM SERVICE ARE CONTRADICTED BY THE EVIDENCE ON RECORD.^[18]

Before we rule on these assigned errors, we note that petitioner belatedly questioned in his Reply^[19] the scope of the Ombudsman's power and authority to dismiss government employees. If only to erase doubts as to the Ombudsman's power to impose the penalty of dismissal, we would like to stress the well-settled principle laid down in the two *Office of the Ombudsman v. Court of Appeals*^[20] cases and in *Estarija v. Ranada*.^[21]

The powers, functions and duties of the Ombudsman are set forth in Section 15(3) of Republic Act No. 6770 (R.A. 6770) otherwise known as the "Ombudsman Act of 1989" which substantially restates Section 13(3),^[22] Article XI of the 1987 Constitution, thus:

SEC. 15. *Powers, Functions and Duties.* - The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and *recommend* his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act; *Provided, That* the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.^[23]

The restrictive interpretation of the word "recommend" had long been rejected by this Court for being inconsistent with the wisdom and spirit behind the creation of the Office of the Ombudsman.^[24] Instead, to be faithful to the constitutional objective, the word has been construed to mean that the implementation of the Ombudsman's order of dismissal, suspension, etc., is mandatory but shall be coursed through the proper officer.^[25]

We have already ruled that although the Constitution lays down the specific powers of the Ombudsman, it likewise allows the legislature to enact a law that would grant added powers to the Ombudsman. To be sure, the provisions of R.A. 6770, taken together, reveal the manifest intent of the lawmakers to bestow the Office of the Ombudsman full administrative disciplinary authority. Specifically, it is given the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty.^[26] Clearly, the Office of the Ombudsman was given teeth to render this constitutional body not merely functional but also effective.^[27]

We now proceed to the meat of this petition on the validity of petitioner's dismissal from service.

The CA affirmed the Office of the Ombudsman's conclusion that petitioner was guilty of dishonesty for falsifying official documents and causing undue injury to the government. Both the CA and the Ombudsman anchored such finding on the alleged collusion between petitioner and Mr. Geocadin which enabled the latter to receive compensation from the government for services not actually rendered.