

## THIRD DIVISION

[ G.R. No. 173865, August 20, 2008 ]

**FACT-FINDING AND INTELLIGENCE BUREAU, REPRESENTED BY  
ATTY. MELCHOR ARTHUR H. CARANDANG, OFFICE OF THE  
OMBUDSMAN, PETITIONER, VS. J. FERNANDO U. CAMPAÑA,  
RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman assails in this instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, the Decision<sup>[1]</sup> dated 27 April 2006 of the Court of Appeals and its Resolution<sup>[2]</sup> dated 19 July 2006, which denied the separate Motions for Reconsideration filed by the Office of the Solicitor General (OSG) in CA-G.R. SP No. 91934. The Court of Appeals modified the Decision of the Ombudsman in OMB-ADM-0-00-0547.

On 30 June 2000, respondent J. Fernando U. Campaña, Senior Vice President (SVP) of the Government Service Insurance System (GSIS) was criminally<sup>[3]</sup> and administratively charged<sup>[4]</sup> by petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman before the Evaluation and Preliminary Investigation Bureau (EPIB) and the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman with violation of Section 3(e)<sup>[5]</sup> and (g)<sup>[6]</sup> of Republic Act No. 3019, also known as the Anti-Graft and Corrupt Practices Act in OMB-0-00-1135, and with violation of Section 22(b), (p) Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987 in OMB-ADM-0-00-0547. It is OMB-ADM-0-00-0547 which is the subject of the instant Petition.

The uncontested factual antecedents leading to the filing of the charges are adequately summarized by the Court of Appeals, thus:

On October 24, 1997, ECOBEL Land, Inc. (ECOBEL) through its Chairman, Josephine Edralin Boright, applied for a medium term financial facility with the GSIS Finance Group to finance the construction of ECOBEL Tower at 1962 Taft Avenue, Manila. The loan application was denied for the following reasons: insufficiency of collateral, the applicant lacks the needed track record in property development and the loan applied for might prove risky.

Subsequently, ECOBEL re-applied for a two year surety bond with the GSIS to guarantee payment of a Ten Million US Dollar loan to be obtained from a foreign creditor with the Philippine Veterans Bank acting as the obligee. ECOBEL's application was approved in principle "subject to analysis/evaluation of the project and the offered collaterals." After

evaluation by the GSIS Bond Reinsurance Treaty Underwriting Committee, the collateral offered was found to be a second mortgage. Accordingly, the Committee informed ECOBEL of the rejection of the collateral offered but requested for additional collateral.

Meanwhile, Alex M. Valencerina (Valencerina), then Vice-President for Marketing and Support Services, GIG, submitted through a Memorandum dated January 27, 1998, ECOBEL's bond application for the evaluation and endorsement by the GSIS Investment Committee (INCOM). In the Memorandum, Valencerina made it appear that the payment guarantee bond is fully secured by reinsurance and real estate collaterals and that the principal was given a limited time to avail of the loan from the funder. In [his] Memorandum addressed to the President/General Manager of the GSIS, Amalio Mallari (Mallari) then Senior [V]ice-President of GSIS, GIG, scribbled his own endorsement by stating "Strong reco. Based on info and collaterals herein stated."

During a meeting on February 17, 1998, a proposal to grant the guarantee payment bond to ECOBEL was presented by Mallari to the INCOM. On March 10, 1998, ECOBEL's application was approved and the GSIS Surety Bond (G(16) GIF Bond No. 029132) was correspondingly issued the following day, March 11, 1998 in favor of ECOBEL with PVB as the obligee. Mrs. Boright signed an indemnity agreement in favor of the GSIS apparently on February 11, 1998 or a month previous to the issuance of the bond. A bill for US\$ 165,000.00 as ECOBEL's bond premium for one year was prepared by the GSIS which Mrs. Boright paid with a postdated check. However, Mallari instructed Valencerina to return the check due to the doubtful capability of ECOBEL to obtain foreign funding for its loan but in an apparent change of heart, Mallari rescinded his own instruction.

Meanwhile, Mallari was reassigned to the Housing and Real Property Development Group under Office Order No. 73-98 dated July 27, 1998. Later, Federico Pascual, President and General Manager of GSIS suspended the processing and issuance of guarantee payment bonds.

Thus, Valencerina prepared three cancellation notices for the signature of Mallari, but was told that the ECOBEL surety bond could not be cancelled because it is a "done deal." Valencerina, upon the request of Mallari, signed a Certification dated January 14, 1999, stating that ECOBEL's Surety Bond No. 029132 "is genuine, authentic, valid and binding obligation of GSIS and may be transferred to Bear, Stearns International Ltd., and any of its assignees within the period commencing at the date above. GSIS has no counterclaim, defense or right of set-off with respect to the surety bond provided that DRAWING CONDITIONS have been satisfied."

Another Certification dated March 30, 1998 set forth the "drawing conditions" as follows: (1) presentation of original surety bond to GSIS at its office in Manila or London, together with (2) presentation of a demand payment stating non-payment in full or in part by the Bond Principal; and (3) notification of assignment to GSIS of US Dollar Loan obligations of

the Bond Principal."

Mallari prepared an amended certification and presented it to Valencerina for signature but the latter refused to sign it. Instead, he (Valencerina) instructed Atty. Nora M. Saldares of the Underwriting Department to verify the authenticity of the parcels of land submitted as collaterals by ECOBEL. Based on her report, it appears that the realty covered by TCT No. 66289 was spurious.

Valencerina immediately informed Boright that Surety Bond No. 029132 is "invalid and unenforceable" and that FEB TCT Check No. AC00000445, postdated to February 26, 1999 was disregarded by the GSIS. In spite of the bond cancellation notices, ECOBEL made a drawdown on the loan in the sum of US\$9,307,000.00 from Bear and Stearns International Ltd., using the surety bond earlier issued by GSIS. With the drawdown, ECOBEL offered to pay GSIS, through [respondent] Campaña, VP International Operations, General Insurance Group and sole representative of GSIS in London, the surety bond premium in the amount of US\$330,004.00.

[Respondent] Campaña was neither furnished with copies nor informed of the cancellation notices. He did not know that the surety bond had already been cancelled. Thus, he accepted ECOBEL's premium payment paid in two (2) cheques: one for US\$200,629.00 and another for US\$129,375.00. However, the second cheque was for the reinsurance premium payable to Transatlantic. Thus, it was "held in abeyance pending receipt of the cover and debit notes in respect of its (Transatlantic's) 75% share." (Annex "I"). As the cover and debt notes were not forwarded, the said cheque was not actually paid and later became stale.

It was only on May 14, 1999 or after petitioner Campaña accepted ECOBEL's premium payment that Valencerina gave information of the decision of GSIS canceling Surety Bond No. 029132. Petitioner Campaña explained his actions, but GSIS still investigated the incident and forwarded its report to the Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman, which conducted its own fact-finding investigation.

Based on the FFIB's report, a criminal case was filed against [respondent] Campaña, Mallari, Valencerina, and Manager Leticia Bernardo for alleged violation of Sec. 3 (e) and (g) of R.A. 3019, as amended, as well as administrative complaint for alleged gross neglect of duty, inefficiency and incompetence in the performance of official duties.

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As can be gathered from the report<sup>[8]</sup> of petitioner Fact-Finding and Intelligence Bureau, respondent exercised manifest partiality, evident bad faith, or gross negligence by issuing a surety bond to Ecobel Land Incorporated (ECOBEL), which ECOBEL did not deserve; and by entering into a transaction representing GSIS which was grossly disadvantageous to the latter since the issuance of the bond was done without ensuring the authenticity of the title to the collateral posted by ECOBEL, which turned out to be spurious; hence, the government stands to lose

US\$9,307,000.00 without the chance of recovering the same by way of foreclosing said property.<sup>[9]</sup> There was, likewise, substantial evidence to show that respondent grossly neglected his duty, and was inefficient and incompetent in the performance of his official duties.

After due proceedings, the Office of the Ombudsman rendered a Decision,<sup>[10]</sup> dated 27 January 2005, in OMB-ADM-0-00-0547, finding respondent liable for gross neglect of duty, inefficiency and incompetence in the performance of official duties. According to the Ombudsman, respondent Campaña represented to third persons that the bond was valid and binding as between GSIS and ECOBEL when in fact no premium was paid. Moreover, the Ombudsman faulted respondent Campaña for accepting the late payments of ECOBEL premium without definitive clearance from his superiors.<sup>[11]</sup>

Consequently, respondent Campaña was found guilty of gross negligence and inefficiency and incompetence in the performance of official duties. Respondent Campaña was meted the penalty of dismissal from service.<sup>[12]</sup> On 8 June 2005, the Ombudsman issued an Order,<sup>[13]</sup> modifying its 27 January 2005 Decision, finding respondent Campaña guilty of grave misconduct and imposing the penalty of dismissal from service.<sup>[14]</sup>

Respondent Campaña moved for a reconsideration of the 27 January 2005 Decision, as modified by the Ombudsman in his Order dated 8 June 2005. On 1 September 2005, the Ombudsman issued an Order,<sup>[15]</sup> denying the same. The Ombudsman did not give credit to respondent Campaña's invocation of his length of service to be considered as a mitigating circumstance in his favor. Instead, the Ombudsman deemed respondent Campaña's length of service in conjunction with his membership in the Philippine Bar to be aggravating. It was held that respondent Campaña's technical expertise and legal experience should have prodded him to be more cautious and vigilant in the performance of his official duties.<sup>[16]</sup>

Thus, respondent Campaña filed with the Court of Appeals a Petition for Review seeking to annul the Decision and Order of the Ombudsman, dated 27 January 2005 and 8 June 2005, respectively.

On 27 April 2006, the Court of Appeals rendered its Decision, affirming the Ombudsman's finding of guilt against respondent Campaña for grave misconduct. The appellate court observed that notwithstanding his lack of participation in the application, approval and issuance of the ECOBEL bond, respondent Campaña proceeded to certify that the bond was valid and binding.<sup>[17]</sup> It underscored the fact that the GSIS London Representative Office, where respondent Campaña served as Vice-President for International Relations, had no underwriting capacities and was merely a representative office.<sup>[18]</sup> Such fact could not have escaped the attention and knowledge of respondent Campaña, a high-ranking official of the GSIS. Further, the Court of Appeals faulted respondent Campaña for accepting the belated payment of bond premium notwithstanding the established policy of the GSIS that the same should be paid at the main office in Manila. The Court of Appeals affirmed the conclusion of the Ombudsman that respondent Campaña omitted the necessary care demanded of him under the situation with indifference to the consequences thereof.

However, the Court of Appeals modified the penalty imposed by the Ombudsman. Instead of meting out the most severe penalty of dismissal from service against respondent Campaña, the Court of Appeals took note of his thirty-four (34) years of unblemished record in the government service. For said reason, the Court of Appeals found the penalty of suspension from office without pay for one (1) year as reasonable. It cited Section 16, Rule XIV of the Rules Implementing Book V of Executive Order No. 292, which states that in the determination of penalties to be imposed, mitigating and aggravating circumstances may be considered. In reducing the penalty, the Court of Appeals also alluded to Section 53,<sup>[19]</sup> Rule IV of the Uniform Rules on Administrative Cases in the Civil Service and deemed respondent Campaña's length of service to be mitigating. The Court of Appeals disposed, thus:

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated January 27, 2005 of the Preliminary Investigation and Administrative Adjudication Bureau-B as modified by the Honorable Ombudsman on June 8, 2005 finding petitioner guilty of grave misconduct and the September 1, 2005 Order denying his Motion for Reconsideration are AFFIRMED subject to the modification that petitioner is SUSPENDED from office without pay for ONE (1) YEAR.<sup>[20]</sup>

The Solicitor General and the Ombudsman filed separate Motions for Reconsideration of the aforesaid Decision, which were denied by the Court of Appeals in its Resolution<sup>[21]</sup> dated 19 July 2006. The Court of Appeals maintained that respondent Campaña's unblemished record for more than three decades of government service should mitigate the penalty imposed upon him.

Hence, the instant Petition filed by the Fact-Finding and Intelligence Bureau, Office of the Ombudsman, on the primordial question of the propriety of reducing respondent Campaña's penalty of dismissal to suspension for one (1) year without pay.

We emphasize that this is not the time and place to review respondent Campaña's guilt for the administrative offense charged, as that question has been settled. It is now water under the bridge. It was petitioner Fact-Finding and Intelligence Bureau, Office of the Ombudsman, which elevated the assailed Decision of the Court of Appeals questioning the reduction of penalty. Verily, what is herein disputed is whether the Court of Appeals correctly mitigated the administrative penalty originally imposed by the Ombudsman.

Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case.<sup>[22]</sup> Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.<sup>[23]</sup> The same rule underlines the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances. In several cases,<sup>[24]</sup> this Court has mitigated the imposable penalty for humanitarian reasons and considered respondent's length of service in the government and his good faith. In several cases, we refrained from imposing the extreme penalty of dismissal from the service where the erring employee had not been