

## SECOND DIVISION

[ G.R. NO. 128305, March 28, 2005 ]

**FELINO QUIAMBAO, PETITIONER, VS. THE COURT OF APPEALS, NATIONAL APPELLATE BOARD, REPRESENTED BY ITS CHAIRMAN FEDERICO S. COMANDANTE AND MEMBERS, ATTYS. ROBERTO T. AGAGON AND ADELAIDA T. AGUILOS OF THE NATIONAL POLICE COMMISSION, RAUL S. IMPERIAL, POLICE CHIEF, PHILIPPINE NATIONAL POLICE AND ESPIE S/L CATOLICO, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This petition assails the *Resolution*<sup>[1]</sup> dated 10 January 1997 of the Court of Appeals which affirmed the *Decision*<sup>[2]</sup> dated 25 October 1993 and the *Resolution*<sup>[3]</sup> dated 27 December 1993 of National Appellate Board (Board), Third Division, National Police Commission (NAPOLCOM). The Board's ruling in turn, which likewise affirmed the *Decision*<sup>[4]</sup> dated 31 October 1992 of Acting PNP Chief and Police Deputy Director General dismissing PO3 Felino Quiambao from the police service.

The operative facts of the case follow:

On 22 December 1990, at around 8:00 in the evening, Espie Catolico (Catolico) was walking along Capulong Street in Tondo, Manila, inquiring as to the whereabouts of her housemaid Gynalin Garais who left the house the day before. After having asked her neighbors and bystanders to no avail, an old woman told her that a certain policeman was looking for her as her housemaid was in his custody. She went to the area as directed by the old woman but there she was allegedly accosted by petitioner, PO3 Felino Quiambao, a member of the Philippine National Police (PNP), Western Police District Command, and five (5) other persons. Quiambao and his companions forcibly took Catolico's handbag and carried away its contents consisting of precious assorted merchandise, jewelry and other personal items worth approximately Nine Thousand Pesos (P9,000.00). Thereafter, petitioner forcibly herded Catolico to his owner-type jeep and brought her to the dimly lit portion of North Harbor and, while thereat, he slapped her on the face several times and warned her not to look anymore for her housemaid.<sup>[5]</sup>

In view of the incident, Catolico filed a sworn statement on 24 June 1991 with the PNP Inspectorate Division, accusing petitioner and six (6) others, with robbery-holdup and mauling committed on 22 December 1990.<sup>[6]</sup> The complaint was corroborated by Grace Commendador who witnessed the actual incident and confirmed the statement of Catolico.<sup>[7]</sup>

On 22 August 1991, Catolico filed another administrative complaint with the Office of the Hearing Officer at NAPOLCOM, Western Police District, Manila, charging

petitioner with grave misconduct for the same incident which occurred on 22 December 1990.<sup>[8]</sup> An investigation was conducted on this administrative charge by the Office of the Hearing Officer of NAPOLCOM. On 30 March 1993, the case was forwarded to the City of Manila's People's Law Enforcement Board (PLEB) for adjudication.<sup>[9]</sup>

The PNP Inspectorate Division likewise conducted an investigation on the charges filed. On 31 October 1992, the Summary Dismissal Hearing Officer (SDHO) recommended the dismissal of petitioner. This recommendation was approved by Acting PNP Chief and Police Deputy Director General, Raul S. Imperial (Acting PNP Chief).<sup>[10]</sup>

Petitioner appealed the 31 October 1992 resolution to the National Appellate Board (NAB) of the NAPOLCOM. On 25 October 1993, the Third Division of the NAB, rendered a decision affirming the dismissal of petitioner from police service.<sup>[11]</sup> The motion for reconsideration filed by petitioner was denied in a Resolution dated 27 December 1993.<sup>[12]</sup> But it was only on 23 September 1996 when petitioner received a certified xerox copy of the *Resolution* of the NAB denying his petition for reconsideration.<sup>[13]</sup>

On 7 October 1996, petitioner filed a petition for review with the Court of Appeals.<sup>[14]</sup> On 10 January 1997, the appellate court dismissed the petition for review for lack of merit.

The appellate court ruled that the petition did not state all the specific material dates showing that it was filed within the reglementary period provided by law as it failed to state the date when petitioner received a copy of the *Resolution* of NAB dated 27 December 1993, denying his motion for reconsideration of NAB's decision dated 25 October 1993. It found out that NAB's decision dated 25 October 1993 was received by petitioner on 22 November 1993, and on 2 December 1993, he filed his motion for reconsideration. The said motion, however, was denied on 27 December 1993, but according to the appellate court, petitioner did not disclose the date when he received such denial. The fifteen-day reglementary period for filing a petition for review with the Court of Appeals started to run from such date.<sup>[15]</sup>

Further, the appellate court ruled that the issue of which administrative disciplinary authority had jurisdiction over the case was raised by petitioner only for the first time before it. He did not raise it before the SDHO nor before the NAB. More importantly, it found that the PNP Inspectorate Division had original, exclusive and summary jurisdiction over the instant case, and that NAB did not commit any reversible error in deciding the appealed case without a *priori* pronouncement as to which among the disciplinary authorities under Republic Act No. 6975 had jurisdiction over the case.<sup>[16]</sup> It also added that NAB's not having all the records requested by petitioner after it had rendered its decision did not necessarily mean that it did not have such documents at the time it rendered its decision.<sup>[17]</sup> Petitioner's claim was further belied by the fact that Catolico was able to obtain certified true copies of the relevant documents which the PNP Chief transmitted to the NAPOLCOM.

Additionally, the appellate court found that a perusal of the annexes to the comment

of Catolico would readily show that NAB resolved petitioner's case based on substantial evidence appearing on the record before it.<sup>[18]</sup> It observed that petitioner's claim that his case was decided on the basis of an incomplete record was merely an afterthought. Said defense was not raised by petitioner in his motion for reconsideration of NAB's decision dated 25 October 1993.<sup>[19]</sup> Likewise, petitioner was not denied due process as he was afforded reasonable opportunity to be heard and to submit his evidence before the SDHO and to appeal to NAB the decision of the Acting PNP Chief dismissing him from the police service, the Court of Appeals ruled.<sup>[20]</sup>

On 27 January 1997, petitioner filed a *Motion for Extension of Time to File Motion for Reconsideration* followed by the filing of his *Motion for Reconsideration* on 17 February 1997. On the same day, the appellate court issued a *Resolution* denying petitioner's motion for extension of time. On 5 March 1997, it issued a resolution stating that the *Motion for Reconsideration* was merely "NOTED," the *Resolution* dated 10 January 1997 being already final.<sup>[21]</sup> Hence, the instant judicial recourse.

The primordial thrust of the petition seeks the reversal of the decisions and resolutions of Acting PNP Chief, the NAB and the Court of Appeals, all upholding the validity of the dismissal of petitioner from police service, and his corresponding reinstatement in the police service.

Petitioner argues that the appellate court erred and acted without or in excess of jurisdiction and/or with grave abuse of discretion in holding that the petition is not meritorious.<sup>[22]</sup> He specifically assigns the following as errors which need to be rectified, to wit: (1) that the appellate court ruled that petition did not state the date when petitioner received a copy of the *Resolution* of NAB dated 27 December 1993 to determine if it was filed within the reglementary period;<sup>[23]</sup> (2) that the appellate court sustained the findings of the Acting PNP Chief and the NAB without first resolving and/or giving a reason why it was the Acting PNP Chief and neither the NAPOLCOM Hearing Officer nor the PLEB that had the power to hear and decide the case;<sup>[24]</sup> (3) that the appellate court sustained, through misapprehension of facts and/or contrary to evidence, the decision of NAB which was not based on the complete records of the case;<sup>[25]</sup> (4) that the appellate court ruled that the petition was not meritorious and sustained the findings of the Acting PNP Chief and the NAB although such findings were arrived at without a hearing and absent substantial evidence;<sup>[26]</sup> (5) that the appellate court's denial of the motion for reconsideration was based on purely technical considerations;<sup>[27]</sup> and (6) that the appellate court had been passive to Catolico's surreptitious introduction into the records of the case evidentiary documents of which petitioner was not furnished and to the latter's prejudice.<sup>[28]</sup>

The petition is not imbued with merit.

Readily glaring upon examination of the petition filed by petitioner is its title "Petition for Review on Certiorari."<sup>[29]</sup> The title would immediately lead us to conclude that the petition is primarily anchored on Rule 45 of the 1997 Revised Rules of Civil Procedure. Under this mode of appeal, only questions of law may be entertained by this Court and factual issues raised are beyond the ambit of this

review. Yet, the issues raised by petitioner in the petition are fundamentally factual in nature which are inappropriate for resolution via the mode of review he availed of.

However, a perusal of issues in the petition would indicate that the petition is actually anchored on Rule 65 as the issues principally sought to assail the resolution rendered by the appellate court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[30]</sup>

Nonetheless, even assuming that the petition was brought under Rule 65, the petition would still not lie as the implausibility of the grounds on which the petition rests are convincingly manifest and the grave abuse of discretion amounting to lack or excess of jurisdiction as the core of this mode of review is strikingly wanting.

Grave abuse of discretion means such capricious and whimsical exercise of judgment which is equivalent to an excess, or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.<sup>[31]</sup> In *certiorari* proceedings under Rule 65, questions of fact are not generally permitted, the inquiry being limited essentially to whether or not the respondent tribunal had acted without or in excess of its jurisdiction or with grave abuse of discretion.<sup>[32]</sup> These grounds under Rule 65 are not attendant in the instant case. Even if we take this case as so exceptional as to permit a factual review, the petition at bar fails to persuade us to rule in favor of petitioner.

Petitioner contends that the appellate court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the petition was not meritorious since the petition filed with the appellate court did not state the date when petitioner received a copy of the *Resolution* of NAB dated 27 December 1993 to determine if the petition was indeed filed within the reglementary period. There is reason basis for such contention.

The petition with the appellate court by petitioner substantially complied with Revised Administrative Circular No. 1-95<sup>[33]</sup>. The pertinent portion of the circular reads,

SECTION 6. *Contents of the petition.* – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in Revised Circular No. 28-91. **The petition shall state the specific material dates showing that it was filed within the period fixed herein.**<sup>[34]</sup>

The records reveal that the petition filed with the Court of Appeals by petitioner provides the following,

18. On December 27, 1993, respondent National Appellate Board rendered its Resolution denying the motion in this manner:

WHEREFORE, finding no merit on this instant petition, the same is hereby denied.

**A certified xerox copy thereof, duly RECEIVED BY PETITIONER ON SEPTEMBER 23, 1996 is hereto attached as ANNEX "M."**<sup>[35]</sup>

A reading of the foregoing allegation, however, disclosed the fact that on 27 December 1993, NAB rendered a resolution denying petitioner's motion for reconsideration. Although it would seem anomalous as it is unnatural that the purported resolution was received only by petitioner on 23 September 1996, we are inclined to sustain petitioner's assertion for the same is supported by the certified xerox copy of the resolution<sup>[36]</sup> and the evidence is bereft of any showing that will warrant a contrary conclusion. Thus, the aforecited allegation substantially complied with the requirements under Section 6. The appellate court believed that petitioner had already been served with a copy of the resolution prior to 23 September 1996.

<sup>[37]</sup> Such a conclusion, however, is bereft of any evidentiary basis and, thus, has no leg to stand on. It is noteworthy that the date when petitioner received NAB's resolution denying his motion for reconsideration is material in determining when the fifteen (15)-day reglementary period for filing a petition for review with the Court of Appeals starts to run.<sup>[38]</sup>

The failure to specifically state in the petition on material dates such as the date when the resolution or order denying a motion for reconsideration was received is a ground for dismissal in accordance with Section 7 of the administrative circular and Rule 43.<sup>[39]</sup> But the scenario is not present in the case at bar for the aforecited paragraph 18 of the petition filed with the appellate court reflected the date when petitioner actually received the resolution denying his motion for reconsideration, which is 23 September 1996. Procedural rules must be liberally interpreted and applied so as not to frustrate substantial justice that this Court seeks to achieve.

Now, on substantial issues rather than on mere technicality. The pivotal questions posed in this petition are whether the Acting Chief of the PNP had authority to conduct summary dismissal proceedings over members of the PNP and whether the summary dismissal of petitioner was sufficiently established by the evidence on record.

Republic Act (R.A.) No. 6975 or the *Department of the Interior and Local Government Act of 1990*, which took effect on 1 January 1991, defines the structural components, powers and functions of the PNP as the citizens' guardian of peace and order and enforcer of the law. The statute likewise delineates the procedural framework in pursuing administrative complaints against erring members of the police organization. Section 41 of the law enumerates the authorities to which a complaint against an erring member of the PNP may be filed, thus;

Section 41. (a) *Citizen's Complaints*. – Any complaint by an individual person against any member of the PNP shall be brought before the