

## EN BANC

[ G.R. No. 147009, March 11, 2004 ]

### **CIVIL SERVICE COMMISSION, PETITIONER, VS. COURT OF APPEALS (FORMER SECOND DIVISION) AND NEOLITO DURLAO, RESPONDENTS.**

#### **DECISION**

##### **AZCUNA, J.:**

The Civil Service Commission (CSC), through the Office of the Solicitor General, brings before the Court the issue of regularity of the CSC's institution of disciplinary administrative proceedings against an erring civil servant on the basis of an anonymous letter-complaint.

This is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court which seeks a reversal of the Court of Appeals Decision<sup>[1]</sup> dated October 30, 2000 and Resolution<sup>[2]</sup> dated February 6, 2001 in CA G.R. SP No. 56098.

The facts of the case are as follows:<sup>[3]</sup>

On February 4, 1997, the CSC received an anonymous letter-complaint against Neolito Durlao (Durlao), a Department of Education Culture and Sports Supervisor of Binalonan, Pangasinan. The letter-complaint contained allegations that Durlao: 1) never received a college degree; 2) never received a Master of Arts degree in English; and 3) has many pending criminal cases.

On March 13, 1997, the CSC requested Director Antonio R. Madarang to look into these allegations and, if necessary, conduct an investigation. On August 4, 1997, Madarang submitted his Report of Investigation stating that Durlao failed to finish his four-year Liberal Arts Course.

On August 7, 1997, the CSC wrote to the Commission on Higher Education (CHED) to verify the educational attainment of Durlao. On September 15, 1997, the CHED confirmed that Durlao did not finish his four-year Liberal Arts Course from the University of Pangasinan.

On September 18, 1997, the CSC formally charged Durlao with Dishonesty and Falsification of Official Document.<sup>[4]</sup>

After receiving Durlao's Answer, the CSC conducted formal hearings wherein both parties presented testimonial and documentary evidence. On May 21, 1999, the CSC issued Resolution No. 99-1056 finding Durlao guilty under the administrative charge and ordered his dismissal from the service.<sup>[5]</sup> Durlao filed a motion for reconsideration but it was denied on October 27, 1999.<sup>[6]</sup>

Dumlao elevated the matter to the Court of Appeals through a petition for review on *certiorari*. The Court of Appeals rendered a Decision that granted the petition and set aside the resolution dismissing Dumlao from the service. It ruled that the CSC was without jurisdiction to conduct an investigation and file a formal charge on the basis of a mere anonymous letter-complaint. The relevant portion of the Decision is reproduced below, as follows:<sup>[7]</sup>

Section 46, Chapter 6, Subtitle A, Book V, Executive Order No. 292, otherwise known as the "Administrative Code of 1987", provides:

"SEC. 46. Discipline: General Provisions. –

x

x

x

(c) Except when initiated by the disciplining authority, no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant." (Italics Ours)

Section 48 (1) and (2), of the same Subtitle further provides:

"SEC. 48. *Procedure in Administrative Cases Against Non-Presidential Appointees*. – (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

(2) In the case of a complaint filed by any other person, the complainant shall submit sworn statements covering his testimony and those of his witnesses together with his documentary evidence. If on the basis of such papers a prima facie case is found not to exist, the disciplining authority shall dismiss the case. If a prima facie case exists, he shall notify the respondent in writing, of the charges against the latter, to which shall be attached copies of the complaint, sworn statements and other documents submitted, and the respondent shall be allowed not less than seventy-two hours after receipt of the complaint to answer the charges in writing under oath, together with supporting sworn statements and documents, in which he shall indicate whether or not he elects a formal investigation if his answer is not considered satisfactory. If the answer is found satisfactory, the disciplining authority shall dismiss the case." (Underscoring Ours).

On the other hand, Section 8, Rule II of Resolution No. 99-1936, otherwise known as the "Uniform Rules on Administrative Cases in the Civil Service", provides:

"SEC. 8. Complaint. – A complaint against a civil service official or employee shall not be given due course unless it is

in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complainant need not be under oath.

*No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which the person complained of may be required to comment.*

The complaint should be written in a clear, simple and concise language and in a systematic manner as to appraise the civil servant concerned of the nature and cause of the accusation against him and to enable him to intelligently prepare his defense or answer.

The complaint shall contain the following:

- a. full name and address of the complainant;
- b. full name and address of the person complained of as well as his position and office of employment;
- c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the civil servant;
- d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and
- e. certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed."

As may be observed, while E.O. No. 292 is silent as to anonymous complaints, Resolution No. 99-1936 provides for cognizance of such complaints in two (2) instances, to wit: (a) there is obvious truth or merit to the allegations therein, and (b) they are supported by documentary or direct evidence. It may be recalled that E.O. 292 was promulgated by former President Corazon C. Aquino on 25 July 1987, pursuant to Section 6, Article XVII of the 1987 Constitution (Transitory Provisions) which reads:

"SEC. 6. The Incumbent President shall continue to exercise legislative powers until the first Congress is convened"

On the other hand, resolution No. 99-1936 was promulgated by the Civil Service Commission pursuant to the power vested upon it under Section 12 (2), Chapter 3, title I, Subtitle (A), Book V of E.O. No. 292 which reads:

"SEC. 12. Powers and Functions. – The Commission shall have the following powers and functions:

(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws:

x x x"

May the Civil Service Commission arrogate upon itself to provide something which the Administrative Code of 1987 did not provide for? We rule in the negative. Administrative rules and regulations are intended to carry out, not supplant or modify, the law. With this, We cannot but hold with disapprobation the pertinent provision, viz., the second paragraph of Section 8 of Resolution No. 99-1936. Where the law makes no distinction, one does not distinguish.

Does this affect jurisdiction?

x x x x x x

In Our considered opinion, what is contemplated under Sections 46 and 48 aforecited, is the initiation of a complaint against a civil service official or employee, much like the "institution" of a criminal complaint, by filing a complaint for preliminary investigation by the fiscal, which vests the fiscal with the quasi-judicial discretion to determine whether to file a criminal case in court. In the case at bar, the CSCRO was without jurisdiction to conduct a preliminary investigation on the anonymous complaint. May the CSCRO then file a formal charge against petition? *We rule in the negative.*

The complaint is dismissible at the outset. – Section 48 (2), Chapter 6, Subtitle A, Book V of E.O. No. 292 provides: x x x

(2) In the case of a complaint filed by any other person, the complainant shall submit sworn statements covering his testimony and those of his witnesses together with his documentary evidence. If on the basis of such papers a prima facie case is found not to exist, the disciplining authority shall dismiss the case..." (Underscoring Ours).

Section 8, Rule II of the Uniform Rules on Administrative Cases in the Civil Service, provides: x x x

"SEC. 8. Complaint. – x x x.

x x x

The complaint shall contain the following:

x x x

d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and