

EN BANC

[G.R. No. 112354, August 04, 1997]

**LUVIMINO P. CASUELA, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN AND JOSE L. VALERIANO, RESPONDENTS.**

D E C I S I O N

HERMOSISIMA, JR., J.:

This is a petition for *certiorari* praying for the reversal and setting aside of the Resolution^[1] dated July 22, 1993 and the Order^[2] dated October 5, 1993, both issued by the Administrative Adjudication Bureau of the Office of the Ombudsman (hereafter, the Ombudsman), imposing a three-month suspension on petitioner who was found liable for inefficiency and incompetence in the performance of official duties.^[3]

The undisputed facts of the case are the following:

"On February 6, 1992, Mary Elaine Bonito filed a complaint against private respondent Jose Valeriano, then an employee of the Philippine Overseas Employment Administration (POEA), for allegedly receiving P5,000.00 for the processing of her papers with the POEA x x x.

On February 6, 1992, Bonito withdrew her complaint against Valeriano for the reason that the amount was returned through Romeo Solis, brother-in-law of Bonito.

Private respondent Valeriano was furnished a copy of the complaint on February 6, 1992, and was given a period of 72 hours from receipt of the notice to file his written answer.

On February 6, 1992, the POEA Administrative Complaint Committee, composed of Atty. Vicente Jariol as Chairman, and Attys. Josefina Bilar and [petitioner] Luvimino Casuela as members, set the case for hearing at 11:00 a.m. on the same day for the reason that Bonito was set to leave for overseas employment at 10:15 p.m. of that day x x x. Petitioner was preventively suspended effective February 10, 1992 x x x.

The case was set for further hearings on February 14, 18, 21, March 2, 10 and 19, 1992. On February 21, 1992, Romeo Solis, brother-in-law of Bonito, and Nony Albarracin, executed a sworn statement 'absolving Mr. Jose L. Valeriano for whatever liability be it administratively and/or whatsoever, for his role only was to advise us that POEA gives assistance to all overseas contract workers' x x x.

In a Decision dated May 4, 1992, signed by then POEA Deputy

Administrator and Officer-in-Charge Manuel Imson, private respondent was 'declared liable for acts of dishonesty and conduct prejudicial to the best interest of the service. Accordingly, private respondent is adjudged and meted out the penalty of DISMISSAL from the service pursuant to Section 23 (a), Rule XIV of the CSC Omnibus Rules' x x x.

The decision of the POEA was affirmed by the Secretary of Labor and Employment in an Order dated November 27, 1992 x x x.

On August 12, 1992, private respondent filed a complaint with the Office of the Ombudsman against petitioner and the other members of the Administrative Complaint[s] Committee for willful violation of Section 36, Article IX of the Civil Service Law.

Petitioner and the other members of the Administrative Complaint[s] Committee filed with the Ombudsman a joint comment on the complaint, alleging that they acted within the scope of their functions and in good faith."^[4]

After considering all the evidence, it was not lost on the Ombudsman that the Administrative Complaints Committee, of which petitioner was a member, in conducting the investigation respecting Bonito's complaint on the very day that private respondent Valeriano was furnished a copy of said complaint, violated the five-day bar imposed on any administrative investigation as provided in Section 38, Rule XIV of the Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987. Thus ruled the Ombudsman:

"x x x On February 6, 1992, Valeriano was furnished a copy of the complaint-affidavit with the instruction to file his answer within seventy-two (72) hours from receipt thereof. This notwithstanding, the hearing of the case was set at 11:30 a.m. of the same day, February 6, 1993, with the warning that should Valeriano fail to attend the scheduled hearing, it will be considered as a waiver for Valeriano to cross-examine the complainant and her witnesses and the committee will proceed with the hearing for the reception of evidence of the complainant x x x.

x x x

x x x Respondent Valeriano was furnished a copy of the complaint on February 6, 1993. While he was given 72 hours from receipt to submit his answer, the hearing of the complaint was held on the same day in flagrant violation of Rule XIV, Sec. 38 of the Rules Implementing Book V of Execution Order No. 292 and other pertinent Civil Service Laws, which provides:

'Sec. 38. The investigation shall be held not earlier than five days nor later than ten days from the date of receipt of respondent's answer.' x x x

Such acts should not be countenanced. As lawyers, the members of the Administrative Complaints Committee should be familiar with existing rules in the hearing of administrative cases. The act of the Committee in conducting hearing on the case even before respondent could file his

answer shows excessive use of authority if not unlawful behaviour, inefficiency and incompetence in the performance of official duties.”^[5]

Petitioner was consequently found liable for inefficiency and incompetence in the performance of official duties and meted out the penalty of three (3) months suspension pursuant to Section 23 (p), Rule XIV of the CSC Omnibus Rules and Regulations.

Petitioner sought a reconsideration of the aforesaid Resolution on the following grounds: (1) that the charge against him as set forth in private respondent’s complaint was one for oppression and rendering a judgment through negligence; (2) that private respondent was not deprived of his right to due process; (3) that the presumption of regularity of the committee proceedings should prevail; and (4) that private respondent’s complaint was frivolous and patently without merit, thus justifying an outright dismissal thereof.^[6]

The Ombudsman, however, was utterly unconvinced and forthwith denied petitioner’s motion for reconsideration. Such denial was contained in the Order dated October 5, 1993 and was worded in this wise:

[Petitioner] Casuela argued that since the complaint against him was limited to oppression and rendering a judgment through negligence, he cannot be held liable for inefficiency and incompetence in the performance of official duties. This claim is no more than a vagrant assertion for the simple reason that it is well settled in this jurisdiction that the real nature of the offense charged is determined not from the caption or preamble of the information nor from the specification of the law alleged to have been violated but by actual recital of the facts in the complaint. x x x In the instant case, it is undisputed fact that the initial hearing was conducted by the Committee before [petitioner] x x x could file his answer. It is also an uncontrovertible fact that the initial hearing of the case was made in total disregard of Sec. 38 of the Rules Implementing Book V of Executive Order No. 292 which clearly shows inefficiency and incompetence in the performance of official duties on the part of herein respondent.

It is also argued that [petitioner], as a member of the Administrative Complaints Committee, did not deprive complainant of his right to due process xxx. When the members of the Committee acted immediately upon the complaint of Ms. Bonito x x x they acted perfectly within the bounds of their duties x x x. The innocence or guilt of [private respondent Valeriano] and as to whether or not due process was accorded him is not the issue in this case but whether or not there is something amiss in the conduct of the members of the Committee in the investigation of the case. As earlier stated, it is an undisputed fact that the initial hearing was conducted even before complainant could file his answer and the same was made in total disregard of Sec. 38 of the Rules Implementing Book V of Executive Order No. 292. While it is a laudable act on the part of the members of the Committee to immediately act on a complaint to protect and give immediate assistance to Filipino overseas workers, it is equally deplorable not to recognize the rights of people being complained of. If this Office is swayed by the argument that the

provision of Sec. 38 of the Implementing Rules of Book V of Executive Order No. 292 should be relaxed in this particular case, it would render nugatory if not illusory the aforementioned provision of law.

This office is not unaware that mistakes committed by public officers are not actionable absent any clear showing that they were motivated by bad faith. It is, however, very clear in the records that while complainant was given 72 hours within which to file his answer, the initial hearing was conducted on the same day in flagrant violation of Sec. 38 of the Rules Implementing Book V of Executive Order No. 292. As stated in our resolution, such act shows excessive use of authority if not unlawful behavior, inefficiency and incompetence in the performance of official duties.

This complaint is not frivolous x x x. This Office cannot overstress the need for a more circumspect and proper behavior on the part of x x x hearing officers upon whom the life of a man depends.

x x x

As stated earlier, while this Office fully appreciates the x x x giving [of] immediate assistance and protection to overseas workers^[7] x x x it is equally deplorable not to give protection to the rights of the people being complained of. It is the perception of this Office that Sec. 38 of the Implementing Rules of Book V of Executive Order No. 292 is mandatory and not merely directory."

Still unable to accept the postulations of the Ombudsman, petitioner filed the instant petition for certiorari with the following assignment of errors:

"I

THE OFFICE OF THE OMBUDSMAN ERRED IN HOLDING THE PETITIONER LIABLE FOR ACTS WHICH THE LATTER WAS NOT AFFORDED THE OPPORTUNITY TO EXPLAIN DURING THE HEARING OF THE CASE AGAINST HIM AND GRAVELY ABUSED ITS DISCRETION BY MAINTAINING INCONSISTENT THEORIES ON THE LIABILITY OF PETITIONER.

II

THE OFFICE OF THE OMBUDSMAN ERRED IN FINDING PETITIONER LIABLE INASMUCH AS THE OFFICE OF THE OMBUDSMAN ITSELF STATED IN ITS ORDER THAT THE IMMEDIATE INVESTIGATION OF THE CASE AGAINST PRIVATE RESPONDENT BY THE ADMINISTRATIVE COMPLAINTS COMMITTEE WAS A LAUDABLE ACT.

III

THE OFFICE OF THE OMBUDSMAN ERRED IN NOT GIVING DUE CREDENCE TO PETITIONER'S DEFENSE OF PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF PUBLIC DUTIES.

IV

THE OFFICE OF THE OMBUDSMAN ERRED IN NOT HAVING OUTRIGHTLY DISMISSED THE COMPLAINT AGAINST PETITIONER FOR BEING WITHOUT MERIT.”

The petition lacks merit.

I

Petitioner begrudges the Ombudsman for finding him guilty of violating Section 38, XIV of the Rules Implementing Book V of E.O. No. 292,^[8] which, he claims, was a virtual non-issue insofar as private respondent Valeriano’s complaint was concerned as said violation was not alleged therein. As such, petitioner claims not to have been duly informed of the true charges against him and accorded the opportunity to refute the same.

An examination of private respondent’s complaint, however, reveals that the private respondent did allege “[t]hat on February 6, 1992, I, Jose L. Valeriano, received an ‘alleged complaint’ from a former neighbor, a certain May Elaine O. Bonito x x x dated Feb. 5, 1992”^[9] and “[t]hat x x x the entire hearing of the alleged complaint x x x began on February 6, 1992.”^[10] This only shows that the service of Bonito’s complaint upon private respondent Valeriano on February 6, 1992 and the commencement of the investigation on that same day, were circumstances actually alleged by private respondent Valeriano in his complaint and which may thus be taken cognizance of by the Ombudsman in the course of its adjudicatory proceedings.

Significantly, petitioner does not at all take exception to these factual findings made by the Ombudsman. In fact, petitioner has not proffered any rebuttal evidence to controvert the events of February 6, 1992.

Petitioner may not also successfully plead violation of his right to due process because he readily admits having filed a Motion for Reconsideration of the Resolution dated July 22, 1993 which first established his culpability for having violated Section 38, Rule XIV of the Rules Implementing Book V of E.O. No. 292. At this juncture, we quote, with approval, the postulations of the Solicitor General:

“Petitioner’s claim that ‘the Ombudsman virtually deprived [him] of his right to due process by failing to inform [him] of the charges against him’ x x x is bereft of merit. In the first place, as petitioner admits he had raised the alleged ‘lack of sufficient opportunity to be informed of the charges against him in a motion for reconsideration.’ This Honorable Court has repeatedly stressed that the requirements of due process are complied [with] when a party is heard on a motion for reconsideration (Dormitorio v. Fernandez, 72 SCRA 388; Cebu Institute v. Minister of Labor, 113 SCRA 257; Tajonera v. Lamoroza, 110 SCRA 438; Bermejo v. Barrios, 31 SCRA 764). Secondly, the Constitution has vested the Ombudsman with plenary authority in the scope of his investigation.

‘Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties: