

THIRD DIVISION

[G.R. No. 119645, August 22, 1996]

SPO3 NOEL CABADA AND SPO3 RODOLFO G. DE GUZMAN, PETITIONERS, VS. HON. RAFAEL M. ALUNAN III, SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT & CHAIRMAN, NATIONAL POLICE COMMISSION (NAPOLCOM); HON. ALEXIS CANONIZADO, COMMISSIONER, NAPOLCOM, MANILA; CHAIRMAN LEODEGARIO ALFARO, REGIONAL APPELLATE BOARD VIII; REGIONAL DIRECTOR EDMUNDO LAVILLA LARROZA, PHILIPPINE NATIONAL POLICE (PNP) REGIONAL COMMAND VIII; AND MARIO VALDEZ, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

This is a special civil action for *certiorari* under Rule 65 of the Rules of Court^[1] to set aside the *decision* (in the form of a letter) of 24 March 1995^[2] of public respondent National Police Commission (NAPOLCOM), which denied due course for lack of jurisdiction the appeal and the petition for review filed by petitioners SPO3 Noel Cabada and SPO3 Rodolfo G. de Guzman, respectively. Challenged in the said appeal and petition for review were the decision of 15 August 1994^[3] and resolution of 25 October 1994^[4] of the Regional Appellate Board of the Eighth Regional Command (RAB 8), which affirmed their dismissal from the service.

The pleadings and annexes filed by the parties disclose the following factual and procedural backdrop of this case:

On 29 October 1993, a complaint against the petitioners for Grave Misconduct, Arbitrary Detention, and Dishonesty was filed with the Office of the Commission on Human Rights in Tacloban City by private respondent Mario Valdez.^[5] The complaint was referred to the Philippine National Police Eighth Regional Command (PNP-RECOM 8) which, after conducting its own investigation, filed an administrative charge of Grave Misconduct against the petitioners and instituted summary dismissal proceedings.

On 7 April 1994, the Regional Director of PNP-RECOM 8 handed down a decision^[6] finding the petitioners guilty of grave misconduct and ordering their dismissal from the police service. Pursuant to this decision, Special Order No. 174, dated 23 April 1994,^[7] was issued ordering, among other things, the dismissal of the petitioners from the service.

The petitioners claimed that they were not formally furnished with a copy of the decision and that they were able to secure a copy thereof "thru their own effort and initiative" only on 13 June 1994.^[8] However, they received a copy of Special Order

No. 174 on 26 April 1994.

Although they insist that the basis of the appeal before RAB 8 was Special Order No. 174,^[9] petitioner Cabada stated under oath in his Appeal^[10] filed with the Department of Interior and Local Government (DILG) that he in fact seasonably filed a motion for reconsideration of the decision of the Regional Director of PNP-RECOM 8, who, however, failed or refused to act on the said motion, and that he asked that the said motion be treated as an appeal to the RAB.

In its decision of 15 August 1994,^[11] the RAB 8 affirmed the decision of the Regional Director. In its resolution of 25 October 1994,^[12] it denied the petitioners' motion for reconsideration of its decision. The petitioners received a copy of this resolution on 26 January 1995.

Petitioners Cabada and De Guzman then filed with the Honorable Secretary of the DILG and Chairman of the NAPOLCOM their "Appeal"^[13] dated 5 February 1995 and "Petition for Review"^[14] dated 4 February 1995, respectively.

In its *decision* of 24 March 1995, the NAPOLCOM, through Commissioner Alexis Canonizado, denied due course to the petitioners' appeal and petition for review for lack of jurisdiction "it appearing x x x that both the Decision and the Resolution of the Regional Appellate Board had long become final and executory and there being no showing that the RAB failed to decide respondents' appeal within the reglementary period of sixty (60) days."^[15] In support thereof, the NAPOLCOM cited Section 23, Rule IV of NAPOLCOM Memorandum Circular No. 91-002 and Section 5, Rule III of NAPOLCOM Memorandum Circular No. 91-006, which provide as follows:

Section 23. *Effect of Failure to Decide Appeal.* - Failure of the Regional Appellate Board to decide the appeal within the reglementary period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary of the Department of the Interior and Local Government.

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Section 5. *Finality of Decision/Resolution.* - The decision of the Regional Appellate Board on an appealed case shall become final and executory after ten (10) days from receipt of a copy thereof by the appellant, if no Motion for Reconsideration is filed within said period.

A motion for Reconsideration may be filed by either party from a Decision rendered by the Regional Appellate Board on an appealed case, provided that the same is filed within ten (10) days from receipt of a copy of the decision in question. However, only one (1) Motion for Reconsideration may be allowed.

Hence, the instant petition.

The Office of the Solicitor General seeks to dismiss this petition on the ground of prematurity because the petitioners failed to exhaust administrative remedies; they

should have instead appealed to the Civil Service Commission (CSC) pursuant to Section 47, Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987 (E.O. No. 292), which vests upon the CSC appellate jurisdiction over disciplinary cases of government personnel where the penalty imposed is, inter alia, dismissal from office. The said provision reads:

Section 47. *Disciplinary Jurisdiction.* - (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, or removal or dismissal from office. x x x

(2) The Secretaries x x x shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. x x x In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the Department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case, the same shall be executory only after confirmation by the Secretary concerned.

The Office of the Solicitor General opines that this provision covers PNP personnel, like the petitioners; consequently, they should have appealed to the CSC. It also advances the view that the instant petition should have been filed with the proper forum, the Regional Trial Court.

The core issues that present themselves for our determination are whether

(1) the NAPOLCOM committed grave abuse of discretion in denying due course, for lack of jurisdiction, the petitioners' appeal from and petition for review of the decision and resolution of the RAB 8; and

(2) this special civil action was prematurely filed for failure of the petitioners to exhaust administrative remedies.

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Section 45 of the DILG Act of 1990^[16] provides for the finality of disciplinary actions against members of the PNP as follows:

SEC. 45. *Finality of Disciplinary Action.* - The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: *Provided furthermore*, That, the regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: *Provided, finally, That failure of the regional appellate board to act on the appeal within said*

period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.
(Italics supplied)

The last proviso of this section is restated in Section 23, Rule IV of NAPOLCOM Memorandum Circular No. 91-002. And Section 3, Rule III of NAPOLCOM Memorandum Circular No. 92-006 provides:

Section 3. *Period Within Which to Decide Appealed Cases; Finality of RAB/NAB Decisions.* - The NAPOLCOM appellate board concerned shall decide the appealed cases within sixty (60) days from receipt of the entire records of the case from the PNP summary dismissal authority. However, failure of the NAPOLCOM Regional Appellate Board (RAB) to act on the appeal within said period renders the decision final and executory without prejudice to the filing of an appeal by the respondent-appellant with the Secretary of the Department of the Interior and Local Government. The decision rendered by the NAPOLCOM National Appellate Board (NAB) disposing an appealed case shall be final and executory unless a timely Motion for Reconsideration is filed within ten (10) days from receipt thereof, in which case, it shall become final and executory upon receipt by the respondent-appellant of the resolution of the aforesaid board denying, modifying or affirming the decision.

Section 45 of the DILG Act of 1990 specifically provides that if a RAB fails to decide an appeal within the reglementary period of sixty days, the appealed decision becomes final and executory without, however, prejudice to the right of the aggrieved party to appeal to the Secretary of the DILG. The said provision is, however, silent as regards the availability of an appeal from a decision rendered by a RAB within the reglementary period.

This gap in Section 45 cannot be construed to prohibit appeals from decisions of the RAB rendered within the reglementary period, for while the epigraph of the section is worded *Finality of Disciplinary Action*, there is nothing therein that explicitly bars any further appeal. Complementary laws on discipline of government officials and employees must then be inquired into considering that in conformity with the mandate of the Constitution that the PNP must be national in scope and civilian in character,^[17] it is now a part, as a bureau, of the reorganized DILG.^[18] As such, it falls within the definition of the *civil service* in Section 2(1), Article IX-B of the Constitution.^[19] For this reason, Section 91 of the DILG Act of 1990 provides:

SEC. 91. *Application of Civil Service Laws.* - The Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.

The Civil Service Law referred to in Section 91 of the DILG Act of 1990 is Subtitle A, Title I, Book V of the Administrative Code of 1987 (E.O. No. 292). Section 47 of Chapter 6 thereof provides, *inter alia*, that in cases where the decision rendered by a bureau or office is appealable to the Commission, the same may initially be appealed to the department and finally to the Commission.

The rules and regulations implementing the Civil Service Law referred to in Section 91 of the DILG Act of 1990 is the Omnibus Rules Implementing Book V of Executive