

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 06487, January 30, 2015 ]**

**JULIO LOBOS ATENCIO, PETITIONER, VS. RODULFO J. ARIESGA,  
THE REGIONAL DIRECTOR OF THE COMMISSION ON AUDIT,  
REGIONAL OFFICE NO. VIII, CANDAHUG, PALO, LEYTE,  
RESPONDENTS,**

**OFFICE OF THE OMBUDSMAN, Intervenor.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

#### **THE CASE**

Before this Court is a Petition for Review<sup>[1]</sup> filed by petitioner Julio Lobos Atencio from the Decision<sup>[2]</sup> of the Office of the Ombudsman dated April 18, 2011 in OMB-V-A-10-0078-B and Order<sup>[3]</sup> dated August 25, 2011 in OMB-V-C-10-0063-B.

#### **THE PARTIES**

Petitioner Julio Lobos Atencio, is of legal age and a resident of University Town, University of Eastern Philippines, Catarman, Northern Samar and may be served with court processes thereon.

Respondent Rodolfo J. Ariesga, is the COA Regional Director and is the Executive Officer of the COA, Regional Office in Candahug, Palo, Leyte. He is impleaded in his nominal capacity for being the complainant in the cases filed against petitioner before the Office of the Ombudsman.<sup>[4]</sup>

The Office of the Ombudsman (OMB) is the Intervenor in the instant case and is the disciplinary authority which promulgated the assailed Decision and Order.<sup>[5]</sup>

#### **THE ANTECEDENTS**

Petitioner Julio L. Atencio was the former Cashier-IV designated as the Collecting and Disbursing Officer of the University of the Eastern Philippines (UEP), Catarman, Northern Samar.<sup>[6]</sup>

On July 20, 2004, the Audit Team assigned at the University composed of State Auditors Gregorio T. Agus, Jr. and Roma J. Gomba of the Commission on Audit (COA) conducted an examination of the cash and accounts under the custody of petitioner for the period of May 22, 2002 to July 20, 2004.<sup>[7]</sup>

As a result of the examination, the Audit Team found petitioner to have been short

in his cash and account by **P2,841,973.57**. The total amount of cash shortage is composed of the following:

Undeposited Collections (Collections from 29 trust funds, income fund, and revolving fund)	P144,570.85
Unliquidated Cash Advances/ Withdrawals (Cash Advances from the General Fund both from personal services (PS) and Maintenance and Other Operating Expenses (MOOE- P966,251.95) Income Fund (P3,246.00)	P2,636,006.16
Cash and Cash Items presented during the audit but remained undeposited/unliquidated nor turned-over to the newly- designated Collecting and Disbursing Officer	P61,396.56 <sup>[8]</sup>

The Audit disclosed that there were twenty-eight (28) withdrawals made from various trust funds which were not covered by Disbursement Vouchers (DVs) and the required supporting documents amounting to **P2,882,630.50**. The 28 withdrawals were not posted in the individual cashbook maintained by petitioner nor reported in his Monthly Report of Disbursements. Not being covered by the necessary DVs, the withdrawals did not pass through the Accounting Office or the Office of the President for approval.<sup>[9]</sup>

Upon verification of the withdrawal slips obtained, it was found out that fourteen (14) of which were signed by the President and the Petitioner. Twelve (12) were signed by the Vice-President for Administration and Business Affairs (VPABA). One (1) withdrawal slip was signed by the petitioner alone. Despite, bearing only petitioner's signature, the same was allowed by Land Bank of the Philippines for encashment. On the other hand, one (1) withdrawal slip with the amount of P4,070.00 for withdrawal from the ANEC trust fund is still in the custody of the Development Bank of the Philippines.

Having accomplished said withdrawals without the required DVs and supporting documents, the audit team concluded such acts to constitute improper/ illegal disbursements.<sup>[10]</sup>

On August 5, 2005, a meeting was arranged between the Audit Team and Petitioner. In the said meeting, the Audit Team discussed to petitioner as to how they were able to arrive at the balance of accountability both for collections and cash advances of petitioner as of July 20, 2004.

Thereafter, the Audit Team served to petitioner a Demand Letter requiring him to

produce the missing funds. In response thereof, petitioner requested for a copy of the Statement of Accountability and the Summary of the Schedule of his Cash Advances and Liquidations for his review. The Audit Team acceded and gave petitioner until August 12, 2005 to review the same.<sup>[11]</sup>

On August 12, 2005, the second meeting between petitioner and the Audit Team took place. The Audit Team again discussed how the cash shortage was incurred. Thereafter, petitioner admitted to have solely perpetrated the withdrawals without the Disbursement Vouchers from the banks. In his statement however, he insisted that the signatures of the President and the VPABA as appearing in the withdrawal slips were genuine and true. The withdrawals were accomplished by recycling or reusing the file copies of the withdrawal slips in his possession which bore the signatures of the other signatories.

The Audit Team attempted to secure the signature of petitioner on the Statement of Accountability of his Cash Advances and Collections and the Demand Letter. However, petitioner still refused to sign. In view of petitioner's refusal, the Audit Team secured the signatures of Atty. Marlonfritz B. Broto and Mr. Bryan Navarosa on the face of the documents to attest to petitioner's refusal to sign. As stated in the Demand Letter, the Audit Team likewise required petitioner to explain in writing within seventy-two (72) hours the shortage incurred. However, no compliance was made by petitioner.

On July 23, 2004, a turnover was made by petitioner to the newly-designated Collecting and Disbursing Officer, Ms. Ma. Leyda C. Barlaan. However, what were turned-over by petitioner were only "accountable forms without any money value, cash and cash items in his possession."<sup>[12]</sup>

After the completion of the examination, the Audit Team made a follow-up with the University President as to whether or not petitioner has turned-over the cash and cash items in his possession. To this query, the University President replied in the negative.<sup>[13]</sup>

Such non-compliance by the petitioner caused the Audit Team to issue another Demand Letter to the former. However, despite receipt thereof, petitioner failed to heed to the same.<sup>[14]</sup>

A Cash Examination Report<sup>[15]</sup> dated June 29, 2006 was then submitted by Gregorio T. Agus, Jr. with the following recommendation:

1. Appropriate charges should be filed against Mr. Julio L. Atencio, Cashier-IV, for malversation and illegal use of public funds totaling P2,841,973.57 and illegal withdrawals of trust funds consisting of twenty-eight (28) withdrawals or a total of P2,882,630.50, as embodied in the Revised Penal Code (RPC).<sup>[16]</sup>

On the basis of such report, a complaint for Dishonesty was filed by respondent Ariesga against petitioner before the Office of the Ombudsman.

On April 18, 2011, the Office of the Ombudsman promulgated a Decision<sup>[17]</sup> with the following findings:

xxx

As a result of the cash examination, the auditors found respondent to be short in his cash and account in the amount of TWO MILLION NINE HUNDRED SIXTY THOUSAND TWO HUNDRED SIXTY FOUR and 81/100 PESOS (**P2,960.264.81**) arrived at as follows:

Accountability:

Balance shown by Reports of Collections & Disbursements/ Cashbook on July 20, 2004, certified correct by respondent & verified by the auditors.	P 3,216,782.78
---	-------------------

Credits to Accountability:

Cash and valid cash items produced by respondent & counted by the auditors	P 256,517.97
--	--------------

SHORTAGE	<u>P<sub>xxx</sub><sup>[18]</sup></u> <u>2,960,264.81</u>
----------	--

From the above findings, the Office of the Ombudsman ruled:

WHEREFORE, finding substantial evidence that the administrative infraction of Serious Dishonesty was committed, Julio Lobos Atencio, Cashier IV, Collecting and Disbursing Officer of the University of Eastern Philippines of Catarman, Northern Samar, is hereby meted the penalty of DISMISSAL FROM THE PUBLIC SERVICE WITH FORFEITURE OF RETIREMENT BENEFITS, DISQUALIFICATION FROM REEMPLOYMENT IN THE GOVERNMENT SERVICE AND CANCELLATION OF RESPONDENTS' CIVIL SERVICE ELIGIBILITY. Xxx<sup>[19]</sup>

On the same date, the Office of the Ombudsman likewise issued a Resolution<sup>[20]</sup> finding probable cause that petitioner has committed the felony of Malversation of Public Funds under Article 217 of the Revised Penal Code.<sup>[21]</sup>

Hence, the OMB resolved:

In the light of the foregoing, let an information be filed with the Regional Trial Court of Catarman, Northern Samar, against herein respondent Julio Lobos Atencio, Cashier IV, Collecting and Disbursing Officer of the University of Eastern Philippines of Catarman, Northern Samar, for Malversation of Public Funds under Article 217 of the Revised Penal Code.  
<sup>[22]</sup>

From the dispositions of the OMB, petitioner filed a Joint Motion for Reconsideration. However, the same was denied in an Order<sup>[23]</sup> dated August 25, 2011.

Aggrieved, petitioner now elevates the instant case before Us.

Petitioner argues that the findings of the audit team as stated in the audit report are erroneous, irregular, and incomplete.<sup>[24]</sup> The audit report is incomplete as it failed to include documents that were not considered by the Ombudsman in its decision.<sup>[25]</sup> Petitioner centers on the disparity in the figures reached by the COA and the OMB representing the shortages incurred.<sup>[26]</sup> Petitioner adds, he was completely deprived of his right to go over his records in his office during the audit investigation.

Petitioner intimates, the state auditors who conducted the investigation were tainted with partiality. Atencio avers, the audit team was motivated to pin petitioner in order free themselves of liabilities incurred by them through cash advances.<sup>[27]</sup>

Petitioner likewise disclosed, cash advances had been a long-standing practice in the University where superior officers could easily obtain money from the cashier through the use of bills or "vales" without any prompt payment or liquidation. Petitioner asserts, he could not at his level put an end to such practice for he could not refuse the request of his superiors.<sup>[28]</sup> Atencio asserts, had the rules been observed strictly, he could have been completely exonerated or at least meted with a lower penalty considering there is no evidence that he was materially enriched.

Hence, petitioner prays for the following reliefs:

1) Pending resolution of this instant petition, that a Temporary Restraining Order be issued reinstating petitioner to his former office; and 2.) To hold in abeyance the filing of the information relative to the criminal aspect of the case;

3.) Finally, that the assailed twin Decisions of the Office of the Ombudsman dated April 18, 2011 in OMB-V-A-10-0078-B and Order<sup>[29]</sup> dated August 25, 2011 in OMB-V-C-10-0063-B be reversed.<sup>[30]</sup>

On August 7, 2012, this Court received from the Office of the Ombudsman an Omnibus Motion to Intervene and to admit attached Comment-in-Intervention.<sup>[31]</sup> In the said Motion, the OMB prayed for its office to be allowed to actively participate in the proceedings in the instant case.<sup>[32]</sup>

Responding to the Petition, the OMB raised the impropriety of raising the criminal action against petitioner in the instant proceedings. The OMB argued, appeals from the Decisions of the Office of the Ombudsman in criminal actions must be brought to the Supreme Court under Rule 65 and not to the Court of Appeals under Rule 43. The instant petition is not the proper remedy in the issues involving the Resolution dated April 18, 2011 and Order dated August 25, 2011 of the Office of the Ombudsman-Visayas in OMB-V-C-10-0063-B for violation of Article 217 of the Revised Penal Code.<sup>[33]</sup>

The OMB further argued, contrary to the claim of petitioner, it did not merely rely on the resolution of the criminal complaint against petitioner in OMB-V-C-10-0063-B. Rather, it made an independent judgment in resolving OMB-V-C-10-0063-B and stands by its finding that petitioner incurred a shortage in his cash and account by