

THIRD DIVISION

[CA-G.R. SP No. 132334, January 20, 2015]

EVELYN O. MARINDUQUE, PETITIONER, VS. THE CIVIL SERVICE COMMISSION, THE DEPARTMENT OF JUSTICE SECRETARY LEILA M. DE LIMA, AND THE BUREAU OF IMMIGRATION, RESPONDENTS.

DECISION

GONZALES-SISON, M., J.:

Before this Court is a Petition for Review^[1] which seeks to reverse and set aside the Decision No. 12-0368 and Resolution No. 12-01639 both rendered by the Civil Service Commission dated 27 June 2012 and 2 October 2012 respectively. The 27 June 2012 Decision affirmed petitioner Evelyn O. Marinduque's dismissal from service while the 2 October 2012 Resolution denied her motion for reconsideration thereof.

Briefly, the facts of the case, as culled from the records, are as follows:

The case stemmed from accusation of supposed irregularities allegedly perpetrated by the officers and employees of the Bureau of Immigration (BI) within the confines of Diosdado Macapagal International Airport (DMIA)^[2]. One of the those accused of misdeed is herein petitioner Evelyn O. Marinduque (petitioner) then an Immigration Officer II at the DMIA until her termination from service. More specifically, petitioner together with the other employees and officers of the BI were charged and suspended for 90 days by the Department of Justice (DOJ) for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, Dishonesty and Gross Neglect of Duty under Section 52 of the Revised Union Rules on Administrative Cases in the Civil Service (URACCS). The accusatory portion of the Formal Charge dated 16 July 2010 reads:

"Sometime during the period of May to July 2008, you, as officers and employees of the Bureau of Immigration assigned at the Diosdado Macapagal International Airport (DMIA), in conspiracy with, and mutually helping one another, and in gross violation of your oath of office, facilitated illegal transactions at the DMIA by escorting and assisting passengers of illegal recruiters, allowing OFWs without E6 visas to leave the country without the required overseas employment contract, and allowing girls from China and Korea to enter the country as tourists when they will in fact be working as entertainers, all in exchange of money and other favors or consideration, including dating off-load passengers and allowing them to leave the country thereafter, by means of which you cultivated a culture of corruption at the DMIA through your practice called "SOP", "piso kada ulo", "piso ulit para sa kahon", and isang libo ulit para sa supervisor". You have also willfully, knowingly, and deliberately did not

process 2,080 passengers from different airlines at the DMIA within the same period, by not encoding the passengers' pertinent data in the Bureau of Immigration's records/database although the said passengers are included in the Airline's final Passengers Manifest and have actually passed the immigration counter and boarded the aircraft.

CONTRARY TO LAW.”^[3]

The main bases of the DOJ in charging petitioner and the other employees and officers of BI are the two (2) sworn statements of Racel Ong, also an employee of BI assigned at DMIA, who readily admitted to have also participated in the alleged nefarious scheme. The first sworn statement dated 9 February 2010 mentioned petitioner with the following:

“8. Na ang mga tumatanggap ng pera at kontak din ng mga Illegal na travel agency, para makaalis na walang problema ang isang pasahero, lalo na sa mga pasahero ni Edelsa Romero Quiambao ay sina:

a. Immigration Officers:

1. Romeo Danug
2. Jose Melendres
3. Ramoncito Barro (nakatalaga na sa NAIA)
4. Rey Hernandez
5. Adonis Fontanilla
6. Ramon Lapid
7. Evelyn Marinduque

xxxx.”^[4] (underscoring supplied)

The second sworn statement dated 17 February 2010, meanwhile cited petitioner in this manner:

“15. Si Evelyn Marinduque ay isang *immigration officer* na miyembro ng Iglesia ni Kristo na tumatanggap ng S.O.P. sa mga pasahero.”^[5]
(underscoring supplied)

In her answer before the DOJ Hearing Panel, petitioner denied the allegations against her, arguing that the same are sweeping and presumptive. As affirmative defenses, she argued that: (1) the DOJ had already cleared her of any participation in the alleged human trafficking case; (2) she did not allow any OFW to leave without overseas employment contract; (3) she cannot curtail the right of passengers to travel; and (4) her alleged participation is very minimal, and the allegations against her were very vague, if not totally baseless.^[6]

After the presentation of Racel Ong, petitioner and her co-respondents were ordered by the DOJ Hearing Panel to present their evidence-in-chief through position papers together with the affidavits of the witnesses and other documents that they intend to present, including those documents that have been previously marked.^[7]

In her position paper, petitioner tried to expose the lack of credibility of Racel Ong. According to petitioner, Racel Ong, in a related case of illegal recruitment, previously

executed two (2) affidavits dated 26 March 2009 and 7 April 2009 wherein she vehemently denied knowing Aldesa Romero Quiambao, an alleged illegal recruiter. Meanwhile in Racel Ong's two (2) affidavits against petitioner dated 9 February 2010 and 17 February 2010, the former contradicted herself by admitting that she assisted the passengers of (Edelsa) Aldesa Quiambao Romero in passing through the Immigration Counters at DMIA. Furthermore, petitioner asserted that the testimony of Racel Ong on 19 November 2010 stating that on 6 June 2008 the latter gave petitioner P2,000 out of P12,000 at the departure area of the immigration is improbable as petitioner was off duty at that time and did not process any passenger.^[8]

Nonetheless, in a Resolution dated 13 May 2011, DOJ Secretary Leila De Lima (DOJ Secretary) brushed aside the defenses raised by petitioner. Petitioner and some of her co-defendants were thereafter found guilty of the charges resulting in their immediate dismissal from service.^[9]

On appeal, the Civil Service Commission (CSC) affirmed the above Resolution of the DOJ Secretary in the assailed Decision dated 27 June 2012. The CSC thus decreed:

"WHEREFORE, the consolidated Appeals of Romulo F. Dannug, Immigration Officer I; Jose G. Melendres, Immigration Officer II; Rey Alfred Y. Hernandez, Immigration Officer III; Evelyn O. Marinduque, Immigration Officer II; Gayle B. Sanglay-De Guzman, Stenographer II and Acting Immigration Officer; Robin S. Pinzon, Sheryll P. Manguerra, Clerk I and Acting Immigration Officer; and James G. Guevarra, Clerk I and Acting Collection/Immigration Officer of the Bureau of Immigration (BI), are hereby DISMISSED. Accordingly, the decision of Secretary Leila De Lima, Department of Justice (DOJ), as embodied in Resolution dated August 5, 2011 denying appellant's Motion for New Trial and Resolution dated May 13, 2011 finding them guilty of Dishonesty, Grave Misconduct, Conduct Grossly Prejudicial to the Best Interest of the Service, and Gross Neglect of Duty thereby imposing them the penalty of dismissal from the service, are AFFIRMED. The penalty of dismissal shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.

Quezon City."^[10]

Unperturbed, petitioner filed a motion for reconsideration of the above Resolution but to no avail as evidenced by the assailed Resolution dated 2 October 2012. The *fallo* of the said Resolution reads:

"WHEREFORE, the Motions for Reconsideration of Jose G. Melendres, Immigration Officer II, Rey Alfred Y. Hernandez, Immigration Officer III, Ramonsito G. Nuqui, Security Guard and Acting Immigration Officer, Evelyn O. Marinduque, Immigration Officer II, Gayle B. Sanglay-De Guzman, Stenographer II and Acting Immigration Officer all of the Bureau of Immigration (BI), are hereby DENIED for lack of merit. Accordingly, Civil Service Commission (CSC) Decision No. 12-0368 dated June 27, 2012, STANDS.

Quezon City.”^[11]

Petitioner now comes to this Court *via* this instant Petition for Review raising the following issues:

I.

WHETHER OR NOT THE DOJ SECRETARY AS WELL AS THE CIVIL SERVICE COMMISSION GRAVELY ERRED IN FINDING MARINDUQUE ADMINISTRATIVELY LIABLE AND IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE DESPITE THE LACK OF FACTUAL BASES FOR HIS(sic) PARTICIPATION IN THE ALLEGED ILLEGAL ACTIVITIES;

II.

WHETHER OR NOT THE OFFICE OF THE DOJ SECRETARY AND THE CSC GRAVELY ERRED IN FINDING MARINDUQUE ADMINISTRATIVELY LIABLE AND IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE DESPITE THE INCONSISTENCIES OF THE DECLARATIONS OF RACEL ONG, AND THE LACK OF SUBSTANCE OF HER ACCUSATIONS AGAINST MARINDUQUE;

In essence, petitioner asserts that there is no substantial evidence to justify her dismissal from service and prays for the immediate dropping of the charges against her.

After sifting through the facts of the case as guided by the applicable laws and jurisprudence, we find the instant petition meritorious.

At the outset, it bears to stress that misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In *Grave Misconduct*, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.^[12]

Meanwhile, *Dishonesty* is defined as a disposition to lie, cheat, deceive, or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings.^[13]

Conduct Prejudicial To The Best Interest Of Service, on the other hand, pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result.^[14]

Finally, *Gross Neglect of Duty*, denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.^[15]

None of the above charges have been proven with the required amount of evidence