

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04369-MIN, January 22, 2014]

**MARTIN C. ZAMAYLA, PETITIONER, VS. COMMISSION ON AUDIT,
REGIONAL OFFICE X AND OFFICE OF OMBUDSMAN- MINDANAO,
RESPONDENTS.**

D E C I S I O N

LOPEZ, J.:

Before us is a Petition for Review^[1] under Rule 43 of the Rules of Court filed by petitioner to assail the January 2, 2006 Decision^[2] of the Office of the Ombudsman-Mindanao, rendered in Case No. OMB-M-A-05-391-J for Dishonesty and Neglect of Duty. The assailed Decision decreed thus:

“WHEREFORE, All the foregoing premises considered, there being substantial evidence against respondent Martin C. Zamayla, he is hereby found guilty of Gross Neglect of Duty and Grave Misconduct. Accordingly, pursuant to Section 52.A.2 and 52.A.3, in relation to Section 58(a), both of Rule IV, of CSC Resolution No. 991936, providing for the Uniform Rules on Administrative Cases in the Civil Service, respondent Martin C. Zamayla, is hereby meted the penalty of DISMISSAL from Service, together with all its accessory penalties.

SO DECREED.”

Petitioner likewise assails its June 24, 2011 Order^[3] denying his motion for reconsideration.

The Antecedents

The facts, as stated by the Office of the Ombudsman-Mindanao in its Decision, are as follows:

Martin Cabano Zamayla, Provincial Board Secretary of the Sangguniang Panlalawigan of Misamis Oriental, is administratively charged with Dishonesty and Neglect of Duty.

In a Joint Affidavit executed by State Auditor IV/Audit Team Leader Florentino N. Nueva and State Auditors III & I Flora M. Cusilit and Mary Ann I. Yu, the Commission on Audit Regional Office No. X (COA for brevity) informed that in the course of the audit of the outstanding cash advances of the Provincial Government of Misamis Oriental, herein petitioner, for the period of September 1997 to November 2003, was granted cash advances in the total amount of P277,700.00 but liquidated only the amount of P100.00, leaving a balance of P277,600.00 as of June 30, 2004. Per letter of demand issued by the COA in June 2004, petitioner was directed to settle the cash advances within thirty days from receipt thereof, but petitioner who received the demand letter on June 17, 2004, failed to do so.

In an Order dated October 13, 2005, petitioner was directed to file his counter-affidavit and other controverting evidence. On November 11, 2005, petitioner filed a Manifestation by Way of Motion for Extension of Time to File Counter-Affidavit within ten (10) days from November 6, 2005. The same was granted but petitioner failed to file his answer. Hence, an Order was issued submitting the case for decision on the basis of the evidence on record.

The issue brought before the Office of the Ombudsman was whether or not petitioner could be held administratively liable for his deliberate failure or intentional refusal to liquidate the long outstanding cash advances drawn from the Provincial Government of Misamis Oriental.

On January 2, 2006, the Office of the Ombudsman rendered the assailed Decision holding herein petitioner liable for Gross Neglect of Duty and Grave Misconduct.

Petitioner's motion for reconsideration of the assailed Decision was further denied in its June 24, 2011 Order.

Hence, the instant Petition for Review under Rule 43 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.

ASSIGNMENT OF ERRORS

Petitioner comes before this Court with the following assignment of errors:

1. The Ombudsman committed serious errors of law in imposing upon petitioner the penalty of dismissal from service considering that this is his first offense.
2. The Ombudsman committed serious errors of law in ruling that petitioner was guilty of Gross Neglect of Duty and Grave Misconduct.

This Court's Ruling

The assigned errors shall be jointly discussed for being interrelated.

Petitioner contends that his act of failure to render account within the period provided for by law is not one of those acts categorized as gross neglect of duty. Accordingly, the evidence would point only to an act of failure to render account under Article 218 of the Revised Penal Code and the corresponding administrative liability is simple neglect of duty. He further avers that the penalty of dismissal from service is very harsh considering that he has been in the service for more than 30 years and considering that he has not been previously charged of an administrative offense prior to this case. Hence, petitioner claims that being a first time offender, he should be meted a penalty of suspension and not dismissal from service.

On the other hand, public respondent Office of the Ombudsman contends that petitioner's failure or intentional refusal to liquidate his long outstanding cash advances drawn from the Provincial Government of Misamis Oriental, constitutes Grave Misconduct and Gross Neglect of Duty.

The petition is bereft of merit.

Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it

is supported by substantial evidence that the respondent has committed acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.^[4]

A reading of the decision of the Office of the Ombudsman and a thorough examination of the records of this case show sufficient evidence to prove petitioner's administrative liability. In its decision, the Office of the Ombudsman cites the pieces of evidence that support its ruling. It discussed its findings thus:

"X x x

The complaint being administrative in nature, the quantum of proof necessary for a finding of guilt is only substantial, defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Records show that for the period September 22, 1997 to November 11, 2003, respondent was granted the following cash advances^[5]:

09-V#3202	Ck #	Office	P5,000.00
22-97	217898	Supplies	
04-1273	892318	Office	15,000.00
04-98		Supplies	
04-1382	301706	Miscellaneous	35,000.00
16-98		Expenses	
12-4108	124955	Registration	99,098.00
12-98		Fee	
11-4048	125979	TEV, Cebu	14,250.00
29-99			
03-0766	8696066	TEV	4,200.00
05-01			
08-0177	9920399	TEV, Davao	5,340.00
05-02			
10-0012	751797	Spareparts	66,330.00
29-02			
07-2791	13829922	TEV, Manila	16,241.00
18-03			
11-4006	15604638	TEV, Manila	<u>17,241.00</u>
11-03			
			P
	TOTAL		277,700.00

Out of the total amount of P277,700.00, respondent liquidated the amount of P100.00, leaving a balance of P277,600.00 as of June 30,

2004.

Under Section 89 and 128 of PD 1445, as implemented by COA Circular No. 97-002 dated February 10, 1997, respondent is duty bound to liquidate or settle his accounts within twenty (20) days after the end of each year when he drew the cash advances. However, twenty days after December 31, 1997, he failed to liquidate the cash advance of P5,000.00 drawn on September 22, 1997. Again, twenty days after the end of the year 1998, he failed to liquidate the cash advance totaling P149,098.00 which he drew on April 4 and 16, 1998 and December 12, 1998.

Records further show that after the end of the year 1999, respondent again failed to liquidate the cash advance of P14,250.00 drawn on November 29, 1999. Again, twenty days after December 31, 2001 and 2002, respondent failed to liquidate the cash advances amounting to P75,870.00 which he drew in 2001 and 2002. The same is true with the cash advances of P16,241.00 and P17,241.00 drawn by respondent on July 18 and November 11, 2003. The two cash advances were not liquidated, including all the cash advances drawn in the years 1997 to 2002. When COA conducted an audit, it made a demand in June 2004^[6] which respondent received on June 17, 2004, for the latter to settle his accounts within thirty days from receipt thereof, by way of submitting the necessary supporting documents, and to refund any excess amount if any, or to submit a written explanation for his failure to do so. But despite the lapse of a considerable period of time, respondent failed to account for the amount or settle the same. He also failed to explain why he could not account for the funds after the lapse of more or less eight years.

Having been entrusted and had received money belonging to the government, respondent is duty bound to account for said funds. However, respondent miserably failed or had deliberately refused to do so, not only in one occasion, but in several occasions. This constitutes willful and intentional neglect of duty. X x x

In the instant case, respondent's neglect of duty is gross in character which as defined is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences.

With the foregoing, it is clear that respondent's flagrant and palpable neglect to account for the funds also constitute misconduct in office. X x x

In the instant case, respondent's acts constitute grave misconduct because there is a persistent disregard of existing laws, particularly Section 89 and 128 of PD 1445, as implemented by COA Circular No. 97-002 dated February 10, 1997, and of Articles 217 and 218 of the RPC. In the case of *Tenza vs. Espinelli*^[7], the Supreme Court ruled:

"Misconduct warranting removal from office of an officer, must have direct relation to and connected with the performance of

official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office”.

As to the charge of Dishonesty, the same has to be dismissed. While respondent's act constitute (sic) Malversation under Article 217 of the Revised Penal Code, the same was premised on the undisputed legal presumption that he misappropriated public funds entrusted and received by him to his own personal use and benefit due to his failure to account for the funds despite the lapse of a considerable period of time and even after demand was made by the Commission on Audit.”

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.^[8] It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

The Supreme Court defined misconduct as an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official.^[9] As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.^[10]

As a general rule, factual findings of administrative bodies are accorded great respect by this Court. We do not see any reason to depart from this policy.

We agree with the conclusions of the Office of the Ombudsman that there was sufficient evidence to support the finding of administrative liability on the part of petitioner. It has been substantially established that petitioner was not able to fully liquidate the cash advances amounting to P277,700.00. The petitioner failed to present any evidence to counter the aforesaid positive and unequivocal declarations of the Office of the Ombudsman and as such, his guilt has been adequately shown.

The Office of the Ombudsman invariably found petitioner guilty of gross neglect of duty and grave misconduct. The Court affirms this finding following the salutary rule that factual findings of administrative bodies are accorded not only respect but even finality by the Court. In administrative proceedings, the quantum of evidence required is only substantial. The gauge of substantial evidence is satisfied where there is reasonable ground to believe that petitioner is guilty of misconduct, even if the evidence might not be overwhelming. Here, there is substantial evidence to support the Ombudsman's finding that petitioner is guilty of the offense charged against him. Absent a clear showing of grave abuse of discretion, the findings of the Ombudsman, when supported by substantial evidence, are conclusive and shall not be disturbed by the Court.^[11]

An examination of the records persuasively shows that the Office of the Ombudsman correctly held petitioner guilty of gross neglect of duty, a grave offense punishable by dismissal even for the first offense.^[12] In the matter that is now before us, petitioner evidently neglected to efficiently and effectively discharge his functions and responsibilities. Petitioner was guilty of gross neglect in not performing the act