

SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP NO. 132694, October 14, 2014]

**PO3 JERRY INES, PETITIONER, VS. MUHAD M. PANGANDAMAN,
RESPONDENT.**

D E C I S I O N

ZALAMEDA, R.V., J.:

This resolves the Petition for Review^[2] filed by petitioner, PO3 Jerry Ines,^[3] assailing the Decision^[4] dated 21 January 2013 rendered by the Office of the Ombudsman in OMB-P-A-0879-H entitled, "Muhad H. Pangandaman vs. P/Supt. Crisostomo P. Mendoza, et al."

The facts of the case, as borne by the records, are as follows:

Respondent Muhad Pangandaman^[5] executed a Sinumpaang Salaysay^[6] dated 16 January 2010 stating that he was illegally arrested by several policemen while tending his store on 11 January 2010, allegedly for violating the gun ban. Apparently, the policemen extorted from respondent the sum of two hundred thousand (P200,000.00) pesos in exchange for his liberty.

Respondent's relatives, Diamungan M. Pangandaman and Mampao D. Rasul, who likewise executed their Pinagsamang Salaysay,^[7] maintained that they sought the help of Mangorsi Ampaso,^[8] President of the Muslim Vendor's Association in Litex. It was Ampaso who handed the money to the police, in particular, to SPO2 Dante Nagera.^[9] Both Ampaso and SPO2 Nagera were included as respondents in the administrative complaint filed by respondent before the Office of the Ombudsman. An Amended Complaint^[10] dated 24 February 2010 was later filed naming the other policemen who colluded with SPO2 Nagera in illegally arresting and extorting money from respondent, including herein petitioner, PO3 Jerry Ines.

Petitioner denied the charges against him and insisted that his participation in the alleged extortion was not even described by the respondent and his witnesses.

The Office of the Ombudsman later found petitioner and the rest of his co-respondents guilty of Grave Misconduct. The dispositive portion of the assailed Decision states:

"X x x

WHEREFORE, PSupt. Crisostomo Mendoza, SPO1 Amor Guiang, PO2 Rodger Ompoy, SPO2 Dante Nagera and PO3 Jerry Ines are hereby found **GUILTY** of grave misconduct and are meted the penalty of

Dismissal from the Service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.

PROVIDED, that in case respondents are already retired from the government service, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary is hereby imposed, with the same accessory penalties mentioned above.

Let a copy of this Decision be forwarded to the Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police for appropriate action and implementation.

As to the other respondents, namely, Mangorsi Ampaso, PO3 Polito, PO3 Perez and PO2 Vacang, the instant administrative case against them is **DISMISSED**.

SO ORDERED.

X x x"^[11]

Petitioner jointly filed with the rest of his co-respondents a Motion for Reconsideration^[12] in the administrative case. However, petitioner failed to attach a copy of the said Motion in the instant Petition.

The Office of the Ombudsman denied the said Motion, along with the separate Motion for Reconsideration in OMB-P-C-100801-H on the its Decision pertaining to the criminal case for robbery, extortion, unlawful arrest, arbitrary detention and violation of R.A. 3019. The dispositive portion of the Ombudsman's Joint Order states:

"X x x

WHEREFORE, respondent-movants' *Motions for Reconsideration* are **DENIED**. This Office's January 21, 2013 *Resolution* finding probable cause and recommending the filing of Informations for Robbery Extortion and Arbitrary Detention against them is **AFFIRMED**. The *Decision* finding them guilty of Grave Misconduct with penalty of Dismissal from service is likewise **AFFIRMED**.

Let copy of this *Joint Order* be forwarded to the Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police for information and appropriate action.

SO ORDERED.

X x x"^[13]

Feeling aggrieved, petitioner filed the instant Petition for Review before the Court, raising the following issues:

3.1 The Office of the Ombudsman erred and committed grave abuse of discretion, in dismissing the undersigned Petitioner-Appellant (sic) from service with its accessory penalties; considering that Respondent-Appellee (sic) failed to prove by substantial evidence that Petitioner-Appellant (sic) participated in the alleged arrest and detention of Respondent-Appellee (sic). Neither is there any evidence on record to support the findings and conclusion that Petitioner-Appellant (sic) demanded money from Defendant-Appellee or from any person acting in his behalf, nor did Petitioner-Appellant receive any money from Defendant-Appellee (sic) or from any person acting for and in behalf of defendant-appellee.

3.2 The Office of the Ombudsman committed (sic) erred and committed grave abuse of discretion by not conducting a clarificatory hearing as mandated by Administrative Order No. 17, dated September 13, 2013, which amended Administrative Order No. 07 dated April 10, 1990, entitled "*Rules of Procedure in the Office of the Ombudsman*". The undersigned Petitioner-Appellant (sic) did not waive his right to be present at said clarificatory hearing/formal hearing which is part of the procedural due process. Had the Office of the Ombudsman conducted clarificatory hearing in accordance with the rules, this would have enabled the parties to positively identify those allegedly involved in the act complained of. Therefore, positive identification and conspiracy were not established by the evidence on record.

3.3 The Office of the Ombudsman committed grave abuse of discretion and erred in failing to appreciate the evidence appearing on file in the Office of the Ombudsman that Muhad M. Pangandaman appears to be a fictitious person.^[14]

The issues can be simplified, thus: 1) whether or not petitioner was deprived of due process for failure of the Office of the Ombudsman to set a clarificatory hearing; and 2) whether or not the Ombudsman erred in finding petitioner guilty of grave misconduct.

At the outset, the Court notes that the first issue on the alleged denial of due process, for failure to set a clarificatory hearing, is being raised for the first time on appeal.

It is well-settled that no question shall be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at a late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.^[15]

Even if We disregard the aforesated doctrine, We find no merit in petitioner's argument that he was denied due process.

The conduct of administrative complaints filed before the Office of the Ombudsman is provided for under the Ombudsman Rules of Procedure, to wit:

"X x x

1. If the complaint is docketed as an administrative case, the respondent shall be furnished with a copy of the affidavits and other evidence submitted by the complainant, and shall be ordered to file his counter-affidavit and other evidence in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file his reply-affidavit within ten (10) days from receipt of the counter-affidavit of the respondent;
2. If the Hearing Officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall issue an Order (or Orders) for any of the following purposes:
 - a. To direct the parties to file, within ten (10) days from receipt of the Order, their respective verified position papers. The position papers shall contain only those charges, defenses and other claims contained in the affidavits and pleadings filed by the parties. Any additional relevant affidavit and/or documentary evidence may be attached by the parties to their position papers. On the basis of the position papers, affidavits and other pleadings file, the Hearing Officer may consider the case submitted for resolution.
 - b. **If the Hearing Officer decides not to consider the case submitted for resolution after the filing of the position papers, affidavits and pleadings, to conduct a clarificatory hearing** regarding facts material to the case as appearing in the respective position papers, affidavits and pleadings filed by the parties. At this stage, he may, at his discretion and for the purpose of determining whether there is a need for a formal trial or hearing, ask clarificatory questions to further elicit facts or information;

In the conduct of clarificatory hearings, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coursed through the Hearing Officer who shall