

## **FIFTH DIVISION**

**[ CA-G.R. SP. NO. 123382, November 21, 2014 ]**

**BURT B. FAVORITO, PETITIONER, VS. FIELD INVESTIGATION  
OFFICE (FIO) OF THE OFFICE OF THE OMBUDSMAN, AS  
REPRESENTED BY ATTY. MICHAEL PAUL ISRAEL, GRAFT  
INVESTIGATION AND PROSECUTION OFFICER I, RESPONDENT.**

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

**CRUZ, R.A., J.:**

This is a Petition for Review under Rule 43 of the Rules of Court assailing the Decision dated April 15, 2011<sup>[1]</sup> issued by the Office of the Ombudsman ("OMB") in OMB C-A-08-0657-L finding petitioner guilty of serious dishonesty and imposing the penalty of dismissal from service and the Order dated October 18, 2011<sup>[2]</sup> denying reconsideration thereof.

### **THE ANTECEDENTS**

From January to December 2001, Conrado Valdez, Clerk III assigned at the Project Management Office - Metropolitan Flood Control Project ("PMO-MMFCP"), requested and signed job orders ("JOs") for the emergency repairs of twenty-seven (27) Department of Public Works and Highways ("DPWH") service vehicles even though he was not the end-user of any of them. Through a systematic scheme, public officials and employees of DPWH were able to make it appear in the supporting documents that spare parts were brought and repairs were undertaken on the service vehicles. These DPWH officials and employees signed, countersigned, recommended, endorsed, journalized, indexed, issued and/or approved the required official documents<sup>[3]</sup> which resulted in the issuance of 192 checks amounting to P4,337,862.00, Philippine Currency. The transactions were irregular because: (1) There were repetitive repairs. Spare parts were reimbursed more than once for the same vehicle; (2) There was splitting of requisitions, purchase orders, vouchers and other papers to avoid inspection of deliveries, action, review or approval by higher authorities and/or public bidding<sup>[4]</sup>; (3) There were irregular, unnecessary, excessive or extravagant expenditures or uses of funds and property; (4) Overpricing of spare parts and materials; (5) Purported repairs on vehicles which are beyond economic repair; (6) Central Office claims reimbursements on emergency repairs of vehicles while these vehicles are being rehabilitated at the Regional Equipment Service, National Capital Region ("NCR"); (7) Spare parts are procured at the same cost for different models or types of vehicles.

Pursuant to the Memorandum of the Department of Public Works and Highways ("DPWH") Secretary dated January 17, 2002 and the Department Order No. 15, Series of 2002, an audit was conducted on the alleged anomalies and illegal disbursements for the repair of department-owned motor vehicles and equipment. This yielded a Preliminary Report prepared by Irene Ofilada, CESO IV, Director III-

IAS.<sup>[5]</sup>

On March 14, 2008, the Field Investigation Office ("FIO") of the OMB, as nominal party filed a criminal and administrative complaint<sup>[6]</sup> against 47 employees and officials of DPWH and four other individuals alleging that said employees and officials conspired and confederated in defrauding the government and causing undue damages in the amount of P4,337,862.00, Philippine Currency. Petitioner Burt Favorito, former Director III of the Administrative and Manpower Management Service ("AMMS") of the DPWH, Central Office, was one of those charged. The complaint alleges that as Director III of the AMMS, he approved 186 Requisitions for Supplies and Equipment.<sup>[7]</sup>

Notwithstanding their participation in the scheme, 8<sup>[8]</sup> officials and employees were dropped due to one of the foregoing reasons: (a) retirement; (b) dismissal; (c) death.

The employees and officials were given an opportunity to answer the charges hurled against them. In a Decision dated April 15, 2011, the OMB: (1) Found 19 employees, including the petitioner, guilty of serious dishonesty and imposed the penalty of dismissal from service; (2) Found 5 employees guilty of gross neglect of duty and imposed the penalty of dismissal from service; (3) Found 5 employees guilty of simple neglect of duty and imposed the penalty of suspension for 1 month and 1 day without pay.

The penalty of dismissal from service of the employees carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and disqualification to re-enter public office. Since the penalty of dismissal cannot be carried out against the 7 employees, either because they were dismissed from service in connection with another case, went on absence without leave, retired prior to the issuance of the decision, the OMB ordered the incorporation of the copy of the decision in their respective 201 files.

The case against 8 employees were dismissed for lack of substantial evidence.

The findings of the OMB were to the effect that: (1) Out of the 27 vehicles claimed to have been fictitiously repaired 192 times, only 118 repairs involving the 13 vehicles were substantiated with documentary evidence; and (2) Badges of fraud are patently shown on the face of the supporting documents in connection with the 118 transactions.

In particular, Burt Favorito was found guilty of serious dishonesty for: (a) approving 117 Requisitions for Supplies and Equipment ("RSEs"); (b) failing to exercise due diligence in the performance of his official functions because his approval of the transactions paved the way for the release of the public funds. He was meted out the penalty of dismissal from service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and disqualification to re-enter public office.

Fourteen (14) employees including petitioner filed separate motions for reconsideration which were subsequently denied in an Order dated October 18,

2011<sup>[9]</sup>. Aggrieved, petitioner is now before us raising as posers, to wit:

### **THE ASSIGNED ISSUES**

#### **I.**

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED IN ORDERING THE DISMISSAL OF THE PETITIONER FROM SERVICE FOR SERIOUS DISHONESTY ON THE GROUND THAT HE ALLEGEDLY SIGNED 117 REQUISITIONS FOR SUPPLIES AND/OR EQUIPMENT (RSEs);

#### **II.**

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED IN FINDING THAT PETITIONER WAS PART OF A CONSPIRACY TO DEFRAUD THE GOVERNMENT;

#### **III.**

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED IN FINDING THAT THE QUESTIONED REPAIRS WERE FICTITIOUS;

#### **IV.**

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED IN INCURRING INORDINATE DELAY IN INVESTIGATING AND RESOLVING THE ADMINISTRATIVE COMPLAINT AGAINST THE PETITIONER;

Petitioner contends that the ruling in *Arias vs. Sandiganbayan*<sup>[10]</sup> applies in this case. Public officers, like him, have the right to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids purchase supplies, or enter into negotiations. Petitioner insists that even assuming that he affixed his signature on the 117 RSEs, he is still not liable because the legal duty of verifying and updating the authorized end-users of the subject vehicles is vested solely on the members of the Bureau of Equipment ("BOE"). He had the right to rely on the competence of the members of the BOE and the Special Inspectorate Team ("SIT") as well as on the veracity and accuracy of the documents prepared and submitted by them. Moreover, there is no law or DPWH rule requiring petitioner or the AMMS to verify and update the authorized end-users of the subject vehicles. Every person who signs or initials a document in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation.

He stresses that the signing or approval of the RSEs is a delegated authority that is not an inherent function of his office. An examination of the procedure for repairs of the subject vehicles reveals that before the processing reaches his office, pre-repair inspections and on-the-spot examinations, were already undertaken by the SIT to determine the scope of works to be done. His mandate, after being satisfied of the presence of the supporting documents to the RSEs as primarily determined by the rank-and-file below him, is to approve within such limits. It is not within his power to disallow beyond satisfaction of the presence of the said documents as they were already signed and duly approved by authorized personnel from the BOE, the end-users and the SIT.

He counters that he could not possibly exercise specific individual scrutiny on each and every RSE, JO and Pre-IR beyond checking the necessary supporting documents. It is not within the competence of the petitioner to routinely inspect, check and technically evaluate equipment. Petitioner pleads that he was just doing his part and function in the processing of claims for emergency repairs.

Contrary to the claim of the OMB, there is nothing in the procedure which requires the attachment of Memorandum Receipts (MRs) to the Pre-IRs and that the RSEs are not prepared by the AMMS. The *DPWH Memorandum Circular No. 33, Series of 1988* does not actually provide anything about vehicle repairs. There is nothing in said order which requires that memorandum receipts be physically attached to the Pre-IRs. As a matter of fact, the duty to verify the MRs is on the BOE.

Petitioner contends that the OMB failed to establish "added reason" why he should have extensively examined and investigated the 117 RSEs, the supporting documents and the persons or departments which prepared and submitted them to his office. The OMB is under the mistaken impression that the AMMS prepares the RSEs. *Item D, Section 1.4 of the DPWH Memorandum dated July 31, 1997* states that the RSEs are prepared by the end-users. Petitioner asseverates that the OMB failed to rebut the following presumptions: (1) presumption of innocence under Section 3(a), Rule 131 of the Rules of Court; (2) presumption of regularity in the performance of official duty under Section (m), Rule 131 of the Rules of Court; and (3) presumption of good faith in the discharge of official duty.

There is no basis for the ruling that he is guilty of serious dishonesty because the OMB failed to establish that, by allegedly signing the subject RSEs, he manifested a disposition to lie, cheat, deceive or defraud. There is no necessary connection between the alleged signing of the duly supported RSEs and the disposition to lie, cheat, deceive or defraud.

Petitioner avers that the OMB failed to establish that he had any knowledge of the purported irregularity in the preparation of the said RSEs or that he agreed and decided to commit a crime with other persons. It is a settled rule that mere suspicion, speculation, relationship, association and companionship do not prove conspiracy. Mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate on the part of the accused is not enough to make him a party to a conspiracy. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.

The OMB also unjustifiably excluded the right of the end-user who is listed in the MR to authorize a representative to request for repairs. Hence, the actual end-user need not be the person to whom a certain vehicle is listed under the MR. Assuming *arguendo* that Valdez was not the end-user of the vehicles, his alleged act of requesting for repairs can reasonably be interpreted as done on behalf of, or with the consent of, the listed end-user. Furthermore, there is nothing on the records of the case which indicates that the FIO of the OMB conducted the necessary physical inspection of the subject vehicles to verify whether the repairs were indeed made.

Lastly, petitioner claims that the OMB seriously erred in delaying the investigation and disposition of the administrative case because it resolved the case only in April 2011 or more than 9 years from the alleged commission of the questioned transactions.

In its Comment, the OMB posits that the ruling in *Arias vs. Sandiganbayan*<sup>[11]</sup> does not apply in this case. Badges of fraud were patent on the face of the supporting documents of the 118 repairs undertaken on the DPWH subject vehicles. The existence of suspicious circumstances on these supporting documents should have alerted petitioner to go beyond the face of the RSEs. These are "added reasons" why petitioner should have examined the supporting documents in detail and refrained from approving the RSEs solely on the basis of the representations of his subordinates. The documents show that: (1) Valdez was not the end-user of the subject vehicles; (2) the vehicles were repeatedly repaired within a short span of time; (3) there was splitting of JOs in violation of the *COA Circular No. 76-41 dated February 10, 1976*; (4) Valdez could not have advanced the amount of P2,630,477.00 given his annual salary of P91,272.00; (5) The cost of repairs was higher than the cost of acquiring a new vehicle; (6) The JOs, Pre-IRs and Post-IRs were unnumbered and undated; (7) Repondents issued undated official receipts and/or cash invoices; (8) 3 of the subject vehicles were non-existent.

That the signing or approval of RSEs was merely delegated to petitioner does not mean that he should not exercise the utmost diligence required of an approving authority. The existence of an MR is an indispensable requirement before a pre-repair inspection and a Pre-IR may be accomplished. While it is not required that the same be attached to the Pre-IR, the signing and approving authority of the Pre-IR and all documents subsequent to the same must ensure that an MR for the subject vehicle is updated and in order. It is the petitioner's responsibility as approving authority of the RSE to ensure that all supporting documents, such as the Pre-IR and the MR are properly accomplished in accordance with existing regulations. Petitioner is the official designated to approve the RSE. He should have examined each RSE and its supporting documents, given the patent discrepancies on the face of such documents.

The OMB argues that conspiracy can be inferred from the coordinated actions of the petitioner and the rest of the erring DPWH employees to give semblance of legality to the fictitious service or repairs of vehicles. The presence of conspiracy is implied where the separate acts committed, taken collectively, emanate from a concerted and associated action. It may be inferred from the conduct of the persons charged, during and after the commission of the crime or wrongdoing, showing that they acted with a common purpose and design. The anomalous transactions would not have materialized without the indispensable cooperation and participation of the petitioner and the other charged DPWH employees. The number of times in which each of them signed or approved the supporting documents, taken together with the badges of fraud on the face of said documents belie petitioner's defense that he has no knowledge of the conspiracy to have fictitious repairs reimbursed. The repetitiveness of the transactions despite the deficiencies in the supporting documents indicates that petitioner and the charged DPWH employees were involved in a concerted scheme to "give a semblance of regularity" to the fictitious repairs. The OMB claims that the subject repairs were fictitious as Valdez was not the end-user of the vehicles. Petitioner did not submit proof that Valdez was indeed authorized by each and every listed end-user to request the subject repairs. Moreover, the existence or non-existence of repairs could not be verified through a mere physical inspection of the subject vehicles. The FIO-OMB is not competent to undertake such inspection and the dates of any apparent repair cannot be known by merely inspecting said vehicles. With respect to the allegation that the OMB violated