

SECOND DIVISION

[G.R. NO. 149539, January 19, 2005]

**NESTOR M. CAYAGO AND VIRGILIO M. FERRER, PETITIONERS,
VS. HON. JOEY LINA, SECRETARY OF THE DEPARTMENT OF
INTERIOR AND LOCAL GOVERNMENT, AND CHAIRMAN,
NATIONAL POLICE COMMISSION; AND CHIEF, PHILIPPINE
NATIONAL POLICE, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review under Rule 45 of the Revised Rules of Court, as amended, of the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 53633 upholding Civil Service Commission (CSC) Resolution No. 991276, which, in turn, affirmed the Decision dated August 12, 1998 of then Department of Interior and Local Government (DILG) Undersecretary Ronaldo V. Puno, dismissing petitioners Nestor M. Cayago and Virgilio M. Ferrer from the police service for grave misconduct, as well as the Resolution dated August 9, 2001, denying the motion for reconsideration thereof.

The Antecedents

The petitioners were police officers^[2] who were charged with kidnapping for ransom in an Information dated January 30, 1995, filed in the Regional Trial Court (RTC) of Quezon City, Branch 94, docketed as Criminal Case No. Q-95-60144. Summary dismissal proceedings against the petitioners then ensued. In a Decision dated July 24, 1995, then Police Director General, Philippine National Police (PNP) Chief Recaredo A. Sarmiento II dismissed the petitioners from the service. The pertinent portion of the order reads:

This Headquarters finds that there exists substantial evidence to prove the administrative culpability of all the respondents. The totality of the defense evidence submitted, as obtaining on record, is not legally sufficient to overcome the overwhelming evidence adduced proving their guilt.

WHEREFORE, premises considered, SPO1 Nestor Cayago, SPO1 Loreto Francisco, PO3 Cesar Nakar and PO3 Virgilio Ferrer are hereby ordered dismissed from the police service.

SO ORDERED.^[3]

Thereafter, Police Chief Superintendent Anselmo Sayson Avenida, Jr., issued Special Order No. 2017^[4] dismissing the petitioners from the police service effective September 19, 1995. The petitioners filed a Motion for Reconsideration^[5] of the said

Order dated August 3, 1995, alleging that the findings of fact made by the disciplinary body were not supported by substantial evidence. Instead of waiting for their motion to be resolved, however, the petitioners appealed the decision to the National Appellate Board (NAB) of the National Police Commission (NAPOLCOM), docketed therein as NAB SD Case No. 2-96-113. The NAB rendered its Decision on July 17, 1996, finding that the petitioners' appeal was without merit and affirming the latter's dismissal from the service. The dispositive portion of the decision reads:

In light of all the foregoing, this Board finds the Appeals filed by SPO1 Nestor Cayago and PO3 Virgilio Ferrer without merit, and accordingly, affirms their summary dismissal from the police service as contained in the Decision dated July 24, 1995 of the Chief, PNP.

So Ordered.^[6]

The petitioners did not file a motion for reconsideration of the said decision.

In the meantime, the RTC of Quezon City, Branch 94, issued a Resolution dated February 24, 1997, granting the "Motion to Dismiss By Way of Demurrer to Evidence" filed by the petitioners in Criminal Case No. Q-95-60144 for insufficiency of evidence. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the case is hereby dismissed against accused Nestor Cayago and Virgilio Ferrer as prayed for, and dismissed as against the other accused motu proprio, on [the] ground of insufficiency of evidence with costs *de officio*.

Consequently, the bail bonds put up by all the herein accused, are cancelled in accordance with law.

SO ORDERED.^[7]

The petitioners submitted a copy of the said resolution to the PNP Chief in support of their still unresolved motion for reconsideration.

More than a year after the NAB rendered its decision, the PNP Chief issued a Resolution dated August 19, 1997, partially granting the petitioners' motion for reconsideration. The petitioners were found liable for *less grave irregularities in the performance of duties* for which they were meted the penalty of suspension for a period of ninety (90) days. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Decision sought to be reconsidered is hereby SET ASIDE and the orders issued implemental thereof is likewise hereby CANCELLED/NULLIFIED. Let another Decision be entered finding SPO1 Nestor Mejia Cayago and PO3 Virgilio Manzon Ferrer guilty of Less Grave Irregularities in the Performance of Duties and, accordingly, the penalty of ninety (90) days suspension without pay is hereby imposed on each of them which penalty is now deemed served.

SO ORDERED.^[8]

The PNP Chief, thereafter, issued Special Order No. 1910^[9] restoring the petitioners to full duty status effective August 19, 1997. However, in a Memorandum^[10] dated October 14, 1997, NAPOLCOM Commissioner Edgar Dula Torres directed the PNP Chief to nullify the said order on the ground that the latter had no jurisdiction to take cognizance of and resolve the petitioners' motion for reconsideration. The Commissioner ruled that the NAB Decision dated July 17, 1996, affirming the dismissal of the petitioners from the service, had long become final and executory. Hence, Special Order No. 2568^[11] dated October 24, 1997 was issued nullifying Special Order No. 1910, effectively dismissing the petitioners from the police service.

Thereafter, the petitioners appealed the July 17, 1996 Decision of the NAB to the CSC. Acting thereon, the CSC issued Resolution No. 980479^[12] on March 11, 1998, dismissing the appeal on the ground that it was the DILG Secretary who had jurisdiction over such appeal. Citing Sections 44 and 45 of Republic Act No. 6975, the CSC ruled that the appeal of the case before it was premature.

Undaunted, the petitioners appealed Special Order No. 2568 to then DILG Secretary Epimaco A. Velasco.^[13] On August 12, 1998, then DILG Undersecretary and Acting Chairman of the NAPOLCOM Ronaldo V. Puno issued an Order^[14] denying the appeal for lack of jurisdiction, considering that the NAB Decision dated July 17, 1996 had long become final and executory. The petitioners again elevated the case on appeal to the CSC, which dismissed the same in Resolution No. 991276 dated June 24, 1999.

Thereafter, the petitioners appealed the decision to the Court of Appeals (CA) via a petition for review on July 19, 1999 on the ground that the NAB Decision dated July 17, 1996 had not yet become final and executory, as they were not furnished a copy thereof. They also maintained that the said decision was void since the PNP Chief retained his jurisdiction over the case when they filed their motion for reconsideration. The petitioners further claimed that they were denied due process since complainant Veloria failed to testify on his sworn affidavit, and that they were not given the opportunity to cross-examine him during the summary dismissal proceedings.

The appellate court denied the petition for lack of merit. It overruled the petitioners' claim of not having received a copy of the NAB decision as a mere bare allegation. The CA pointed out that despite such allegation of non-receipt, the petitioners were, nevertheless, able to file their appeal with the CSC, which was, however, dismissed for having been filed prematurely as it should have first been brought to the DILG Secretary; the petitioners were then able to elevate the decision of the DILG Secretary to the CSC, which was, likewise, dismissed for having been belatedly filed.

The CA also ruled that, contrary to their claim, the petitioners were accorded due process. The pertinent portion of the decision reads:

Applying the foregoing jurisprudence in petitioners' case, there is therefore no denying that petitioners were accorded due process: (1) they were apprised of the charges against them; (2) they presented their counter-affidavits, supplemental affidavits and other pieces of evidence to rebut the Sworn Affidavit of complainant Veloria; (3) they were

represented by counsel before the Summary Dismissal Hearing Officer; and (4) they were able to redress their case all the way from the PNP Director General up to the Civil Service Commission. Contrary to petitioners' contention, cross-examination in summary dismissal proceedings is not mandatory. The Affidavit of complainant Veloria already comprises his direct testimony. Petitioners' Counter-Affidavit and other supplemental Affidavits, on the other hand, take the place of their cross-examination as therein lies their refutation of complainant's charges.

...

In fact, as pointed out in the NAB Decision dated July 17, 1996, "(T)hey were furnished copies of pertinent documents relative to the case and promised to submit their respective additional controverting evidence on June 8, 1995 which they failed to comply." (p. 36, Rollo)

Finally, their acquittal from the criminal charges for Kidnapping filed against them before the Regional Trial Court of Quezon City, Branch 94, bears no consequence with regard to their administrative liability. It is fundamental that in administrative cases, the *quantum* of proof is only preponderance of evidence to establish administrative guilt, as against proof beyond reasonable doubt of the criminal charge. Their acquittal merely relieved them from criminal liability but in no way carried with it relief from the administrative liability of dismissal from the service. (**Jaculina v. National Police Commission**, supra, at page 497)

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**.

SO ORDERED.^[15]

The Present Petition

The petitioners forthwith filed their petition for review on certiorari wherein they reiterated the issues and arguments they raised in the CA, viz:

I

WHETHER OR NOT THE DECISION RENDERED BY THE NATIONAL APPELLATE BOARD (NAB) IS VOID *AB INITIO* AS THE LATTER HAD NO JURISDICTION OVER THE CASE.

II

WHETHER OR NOT PETITIONERS WERE ACCORDED DUE PROCESS IN THEIR DISMISSAL FROM THE SERVICE.^[16]

The petitioners aver that the decision of the NAB was "void *ab initio*" and, as such, had not attained finality. They insist that when they filed their motion for reconsideration before the PNP Chief, the latter retained jurisdiction over the case. In fact, the petitioners aver, they were made to understand by the NAB that it could

not act on their appeal in view of the pendency of the motion for reconsideration before the PNP Chief.

The petitioners further contend that they could not be blamed for their filing of a "precautionary appeal" before the NAB, considering that the PNP Chief slept on their motion for reconsideration. Having been deprived of their source of livelihood, the petitioners had to adopt other means and measures within legal bounds just to regain their employment. They further contend that the "precautionary appeal" before the NAB could hardly be considered as an abandonment of their motion for reconsideration, since more often than not, the NAB would not consider appeals without any motion for reconsideration being first filed and resolved by the PNP Chief.

The petitioners further stress that they were not immediately furnished a copy of the NAB decision; neither was the PNP given a copy of the decision. In fact, the Resolution of then PNP Chief, Director General Sarmiento, dated August 19, 1997, did not even mention the NAB decision. The petitioners stress that they learned of the existence of the said NAB decision only when the PNP Chief issued Special Order No. 2568 nullifying Special Order No. 1910. The petitioners point out that the assailed NAB decision could not have become final and executory, since after receipt of Special Order No. 2568, they immediately filed an appeal before the CSC, which was, however, dismissed in Resolution No. 980479 dated March 11, 1998 for being premature; thereafter, they filed an appeal before the Office of the DILG Secretary. The petitioners also point out that the appeal before the DILG Secretary was forwarded to the NAPOLCOM, the very same body which rendered the July 17, 1996 Decision. The petitioners asseverate that this procedure is not in accord with the ruling in *Cabada v. Alunan III*,^[17] where the Court held that the NAPOLCOM has no appellate jurisdiction over decisions rendered by the NAB. Even assuming that the period to appeal had already lapsed, the petitioners aver that technicality should give way to substantial justice.

Anent the second assignment of error, the petitioners stress that they were not accorded due process. They aver that under NAPOLCOM Memorandum Circular No. 92-006, as amended by Circular Nos. 94-021 and 94-022, respondents in summary dismissal proceedings are entitled to cross-examine the complainant and his/her witnesses. In this case, complainant Veloria and his witnesses failed to appear during the summary hearing and were unable to affirm their respective sworn statements before the summary hearing officer. They stress that the PNP Chief, acting on their motion for reconsideration, set aside his Decision dated July 24, 1995 and admitted that due process was not observed in dismissing the petitioners from the service.

The Office of the Solicitor General (OSG), for its part, asserts that the petitioners themselves were the ones who appealed the case to the NAB even before the PNP Chief could resolve their motion for reconsideration, and that the NAB did not take cognizance of the case of its own accord. The mere fact that the petitioners immediately appealed the case to the NAB without waiting for the PNP Chief's resolution did not divest the NAB of its jurisdiction to decide the appeal. According to the OSG, the petitioners cannot liken their appeal before the NAB to a petition for certiorari under Rule 65 of the Rules of Court, where a prior motion for reconsideration is essential. It points out that a motion for reconsideration of the PNP Chief's Decision and an eventual appeal to the NAB are just two of the