

THIRD DIVISION

[G.R. No. 211239, April 26, 2021]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MIROFE C. FRONDA AND FLORENDO B. ARIAS, RESPONDENTS.

DECISION

LOPEZ, J., J.:

This treats the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the October 16, 2013 Decision^[1] and the February 5, 2014 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 123088. The challenged rulings reversed the dismissal from government service of herein respondents Mirofe C. Fronda (*Fronda*) and Florendo B. Arias (*Arias*). As held by the CA, there was no direct evidence establishing the involvement of respondents in the alleged conspiracy to defraud the government.

THE FACTS

As culled from the records, respondents were among the forty-seven (47) employees of the Department of Public Works and Highways (*DPWH*), Port Area, Manila criminally and administratively charged in a complaint filed by petitioner Office of the Ombudsman's Field Investigation Office for dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service. The complaint filed on March 14, 2008 was docketed as OMB-C-A-08-0657-L.

Respondent Arias was the Officer-in-Charge (*OIC*)-Assistant Director of the Bureau of Equipment (*BOE*) of the DPWH. His duties included the approval of disbursement vouchers (*DVs*) for repairs and purchases of supplies and equipment. From January to December 2001, he signed and recommended seventy-eight (78) requisitions for supplies and Equipment (*RSE*) and approved one hundred fourteen (114) waste material reports and eighty-four (84) DVs.^[3]

On the other hand, respondent Fronda was the Supply Officer IV of the Comptrollership and Financial Management Service of the DPWH. Her duties included reviewing and improving the systems and procedures of inspection, monitoring, and conduct of studies of supply management practices and procedure to determine the usability of supplies, materials, and equipment of the Department. From January to December 2001, she recommended and monitored prices for one hundred twenty (120) motor vehicles belonging to the DPWH.^[4]

It was alleged in the complaint that from January to December 2001, Conrado Valdez (*Valdez*), a Clerk III assigned to the Project Management Office – Metropolitan Flood Control Project, requested and signed job orders for the emergency repairs of twenty-seven (27) DPWH service vehicles. This was despite the fact he was not the end-user of any of them, in violation of DPWH Department

Order No. 33, Series of 1988.^[5] Valdez allegedly made a total of one hundred ninety-two (192) requests for job orders for repairs on vehicles in 2001. These included repairs of five (5) vehicles alleged to neither be in existence nor have been issued to any official.^[6] The job orders for the repair of some vehicles were also found to have been split to make it appear that only minor repairs were to be made and that the cost of each repair did not exceed the P25,000.00-limit. By doing so, the job orders no longer underwent bidding procedure and inspection by the Commission on Audit.^[7]

According to the Ombudsman, the participation of the forty-seven (47) respondents, consisted of the falsification of supporting documents either by signing, countersigning, recommending, endorsing, journalizing, indexing, initialing, issuing, and/or approving the required official documents. The concerted actions of the respondents allegedly resulted in the fraudulent issuance of one hundred ninety-two (192) checks in the aggregate amount of P4,337,862.00, to the damage and injury of the government.^[8]

Out of the forty-seven (47) individuals implicated in the conspiracy, however, the case only proceeded against thirty-two (32). The case against the other respondents was either dropped or dismissed due to their retirement, demise, or previous dismissal from service.^[9]

RULINGS OF THE OMBUDSMAN

After the respondents were accorded due process in the investigation and after painstaking review, the Ombudsman rendered its Decision in OMB C-A-08-0657 on April 15, 2011, finding twenty-four (24) of the respondents administratively liable, dismissing nineteen (19) for serious dishonesty, and meting out one-month suspension for the remaining five (5) respondents. The pertinent portion of the *fallo* of the Decision reads:

PREMISES CONSIDERED, finding substantial evidence against respondents, **CONRADO S. VALDEZ, LUIS A. GAYYA, MAXIMO A. BORJE, JR., ERDITO Q. QUARTO, LUISITO M. TABLAN, RAUL B. BORILLO, FLORENDO B. ARIAS, BURT B. FAVORITO, MOSULINI JOEL C. BENITO, ROLANDO C. CASTILLO, ANTONIO J. DE JESUS, MIROFE C. FRONDA, RAMON G. CHAVEZ, EDGAR V. AGBUNAG, ROMAN M. MABILIN, JESUS SJ. CRUZ, RENAN C. SIKAT, CARMEN F. RAMOS, and MELQUIADESA T. GUBATINA**, they are hereby found **GUILTY of SERIOUS DISHONESTY, and meted the penalty of DISMISSAL** from the service.

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In accordance with the Uniform Rules on Administrative Cases of the Civil Service Commission, the DISMISSAL FROM THE SERVICE of the above-named respondents attaches the following accessory penalties: i) cancellation of eligibility; ii) forfeiture of retirement benefits; and iii) disqualification to re-enter public office.

x x x x

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Secretary of Public Works and Highways, Port Area, Manila, is hereby directed to implement this Order and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128, Quezon City.

Compliance is respectfully enjoined consistent with Section 15(3) of RA 6770 (Ombudsman Act of 1989).

SO ORDERED.^[10]

As ratiocinated by the Ombudsman, there existed a scheme of fictitious repairs perpetrated by the respondent officials. Out of the twenty-seven (27) vehicles claimed to have been fictitiously repaired one hundred ninety-two (192) times, only one hundred eighteen (118) repairs involving thirteen (13) vehicles were substantiated with documentary evidence, to wit:

MODEL/VEHICLE PLATE NO.	MEMORANDUM RECEIPT IN THE NAME OF	NO. OF REPAIRS	TOTAL AMOUNT PAID TO VALDEZ
Mitsubishi L-200 / SFC-350	Macariola S. Bartolo	10	P218,470.00
Mitsubishi L-200 / WNA-596	Nonito F. Fano	2	49,010.00
Isuzu Mini Dump Truck / SBD-630	Inexistent	2	46,078.00
Toyota Crown / SAS-562	Gil B. Mendoza	1	24,460.00
Nissan Sentra / TTG- 514	Nonito F. Fano	31	599,757.00
Isuzu Stake Truck / SEB-937	Jesus B. Macaspac	15	437,980.00
Mitsubishi Space Wagon / PJN-143	Helen A. Solis	14	218,017.00
Isuzu Stake Truck / SEB-715/ H2- 223	Jesus B. Macaspac	20	490,195.00
Toyota Corona / PCF-263	No MR in the central office/ Assigned to Regional XI	13	301,280.00
Isuzu Elf / SDG- 617	Jesus B. Macaspac	1	21,880.00
Toyota Land Cruiser SAS-894 / H1-4475	Medel F. Chua		49,900.00
Mercedes Benz /	Medel F. Chua	5	123,800.00

NRV-687 or 867			
Cherokee Jeep / SDG-456	Inexistent	2	49,650.00
Total		118	P2,630,477.00^[11]

As the Ombudsman brought to fore, badges of fraud were patently shown on the faces of the supporting documents for these one hundred eighteen (118) transactions:^[12]

First, it was Valdez, not the end-users of the vehicles, who requested for the repairs, in violation of DPWH Department Order No. 33, Series of 1988. *Second*, the Ombudsman noted the short interval of time in between repairs, with some repairs on the same vehicle being performed on the same day. *Third*, the nature of an emergency purchase would have required Valdez to advance the amounts necessary for the repairs, which would not have been possible given his monthly income of P7,606.00 as Clerk III. *Fourth*, the disposal of the vehicles subjected to repairs and the procurement of new ones would have been more appropriate given that the cost of the repetitive repairs exceeded 50% of the vehicles' market value at the time material. *Fifth*, most of the supporting documents were unnumbered or undated. *Sixth*, some of the vehicles that underwent repairs were inexistent.^[13]

Nevertheless, the Ombudsman considered the admission of Valdez in his counter-affidavit that all the supporting documents were already signed by his superiors before they were brought to him for his signature. For fear of being terminated, he was left with no other option than to follow instructions. Given his position; Valdez could not have masterminded the entire scheme.^[14]

The Ombudsman, likewise, held that the anomalous transactions would not have materialized without the cooperation and participation of the liable respondents.^[15] In particular, respondent Arias, OIC-Assistant Director of the BOE-DPWH was allegedly responsible for approving forty-four (44) DVs, sixty-two (62) Waste Material Reports, and forty-five (45) RSEs. According to petitioner, Arias and two (2) other co-respondents^[16] *"failure to exercise due diligence in the performance of their official functions, more so that their recommendations and/or approval of the transactions, ultimately paved the way for the release of the public funds."*^[17] Meanwhile, respondent Fronda, Supply Officer IV, was said to have been grossly negligent since she was responsible for the price monitoring of the spare parts in seventy-two (72) of the repairs. She was also among those who recommended payment to Valdez.^[18] Thus, there existed substantial evidence to support the conclusion that respondents were administratively guilty of serious dishonesty, warranting their dismissal from service, so the Ombudsman held.

Respondents filed separate Motions for Reconsideration from the Ombudsman's April 15, 2011 Decision, which were denied in an Order^[19] dated October 18, 2011. Aggrieved, respondents elevated the matter before the CA.

RULINGS OF THE COURT OF APPEALS

Through the assailed October 16, 2013 Decision of the CA, respondents Arias and Fronda were exonerated from administrative liability in the following wise:

WHEREFORE, the petition is **GRANTED** and OMB-C-A-08-0657-L is dismissed with respect to petitioners Mirofe C. Fronda and Florendo B. Arias.

SO ORDERED.^[20]

Citing *Galero vs. Court of Appeals*,^[21] the appellate court ruled that the Ombudsman committed reversible error in holding respondents liable despite the absence of substantial evidence that Arias and Fronda conspired with the erring employees and officers of the DPWH. A bare charge of conspiracy, with no direct evidence linking Arias and Fronda thereto, is not sufficient to warrant their dismissal from service.

Moreover, the CA declared that the Ombudsman contradicted its own conclusion that Arias and Fronda were guilty of serious dishonesty after it discussed in the body of its Decision in OMB-C-A-08-0657-L that they were negligent in performing their functions. The distinction between dishonesty and negligence is the presence or absence of intent. And since evidence on record failed to disclose that respondents' acts were intentional, it would be incorrect to dismiss them for serious dishonesty.^[22]

In any event, neither could respondents be held liable for negligence, according to the CA. The records allegedly revealed that around twenty (20) employees had already taken part in the processing and approval of the requests for repair as a prerequisite to Arias' approval and Fronda's issuance of price monitoring slips. To the mind of the CA, it was reasonable for respondents to expect that these employees performed their tasks in a regular manner.^[23] Echoing the doctrinal ruling in the landmark case of *Arias v. Sandiganbayan*:^[24]

We would be setting a bad precedent if a head of office is plagued by all too common problems – dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence – is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

Lastly, the CA reiterated its pronouncement in CA-G.R. SP No. 75379, which involved the dismissal of administrative charges against respondent Arias involving his similar participation in different subject transactions, to wit:

We find no sufficient basis to hold petitioner Arias administratively liable. The aforesaid documents appear to be regular on their faces as the requisite signatures of the proper officials, particularly the three members of the Special Inspectorate Team who were tasked to conduct pre-repair and post-repair inspection of the subject vehicles appear thereon.

Moreover, considering the fact that during the period under consideration (July, 2001 to June 7, 2002), almost 7,000 vouchers to emergency repairs of service vehicles passed through the desk of petitioner. As such, it is difficult to notice any duplication of work/requisition of spare parts and splitting of job orders.