

## **SECOND DIVISION**

**[ G.R. No. 224651, July 03, 2019 ]**

**CIVIL SERVICE COMMISSION AND THE OFFICE OF THE  
SOLICITOR GENERAL, PETITIONERS, VS. EDGAR B. CATA CUTAN,  
RESPONDENT.**

**[G.R. No. 224656]**

**EDGAR B. CATA CUTAN, PETITIONER, VS. CIVIL SERVICE  
COMMISSION AND THE OFFICE OF THE SOLICITOR GENERAL,  
RESPONDENTS.**

### **DECISION**

**REYES, J. JR., J.:**

These two consolidated Petitions for Review assail the July 31, 2015 Decision<sup>[1]</sup> and the April 22, 2016 Resolution<sup>[2]</sup> of the Court of Appeals-Cebu City (CA) in CA-G.R. CEB-SP No. 07624. The assailed decision partly granted the appeal of Edgar B. Catacutan (Catacutan) from the April 12, 2013 Decision<sup>[3]</sup> of the Civil Service Commission (CSC) in Case No. 130369 and found him guilty only of Simple Neglect of Duty. In turn, the CSC affirmed the finding of the Office of the Solicitor General (OSG) that Catacutan, a public servant in its ranks, had committed Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service in connection with the performance of his duties as Administrative Officer V.

### **The Facts**

As Administrative Officer V at the OSG, Catacutan was tasked, among others, to affix bar codes to all incoming documents at the Docket Management Service (DMS) for further transmission to the different departments within the organization. Among these documents are those pertaining to special proceeding cases requiring OSG intervention, such as declaration of nullity of marriage and annulment of marriage, which are routed to the legal department for appropriate action.

In March 2010, the Regional Trial Court (RTC), Branch 31, Agoo, La Union had declared a marriage null and void<sup>[4]</sup> and, in a June 25, 2010 Order,<sup>[5]</sup> denied the motion for reconsideration filed by the OSG in behalf of the State. A copy of this order had reached the DMS on July 5, 2010. By law, the OSG had until July 20, 2010 to file an appeal with the CA. However, the assigned lawyer, Associate Solicitor Jose Covarrubias (A/S Covarrubias), failed to timely file said appeal because the copy of the subject order was transmitted to him only on August 6, 2010.

This lapse led to a request<sup>[6]</sup> for an investigation into Catacutan's possible

accountability, as well as that of Rommel C. Gutierrez (Gutierrez), Administrative Officer I, to whom the bar coded documents are transmitted for digital scanning and for further transmission.<sup>[7]</sup> The request alleged that the subject trial court order was bar coded on August 5, 2010 at 3:16 p.m., and then encoded and scanned at 5:39 p.m. on the same day.<sup>[8]</sup>

### **The Ruling of the OSG**

The OSG Administrative Disciplinary Committee docketed the request as an administrative case.<sup>[9]</sup> Upon its recommendation, the Solicitor General formally charged Catacutan with Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service, and imposed a 90-day preventive suspension.

Responding to the charges, Catacutan admitted that he inadvertently filed the subject order among the documents classified as "Ordinary," and professed that he, unaware of its urgent nature, placed a bar code on it belatedly on July 9, 2010. He apologized for this omission, but claimed the lapse to be a mere oversight and an honest mistake.<sup>[10]</sup> He explained his official duty to be limited to bar coding incoming documents in civil cases and transmitting them to the scanner who, in turn, transmits them to the corresponding legal divisions. He lamented that by reason of the huge volume of the documents that he had to bar code on a daily basis, a sorter has in fact been designated to classify incoming and inbound documents either as "Rush" or "Ordinary" according to their content.

In its January 24, 2011 Decision,<sup>[11]</sup> the OSG found Catacutan guilty of the charges and imposed the supreme penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government. The OSG did not reconsider, hence, Catacutan appealed to the CSC.

### **The Ruling of the CSC**

The CSC affirmed the OSG's findings and the sanctions imposed on Catacutan. Its April 12, 2013 Decision<sup>[12]</sup> disposed of the appeal as follows:

**WHEREFORE,** the appeal of Edgar B. Catacutan, Administrative Officer V, Office of the Solicitor General (OSG), is hereby **DISMISSED**. Accordingly, the Decision dated January 24, 2011 issued by former Solicitor General Jose Anselmo I. Cadiz finding Catacutan guilty of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from [reemployment] in the government service, and the Resolution dated February 24, 2011, denying his motion for reconsideration, are **AFFIRMED**.<sup>[13]</sup>

## The Ruling of the CA

Catacutan refuted the uniform finding and conclusion of the OSG and the CSC before the CA which, on July 31, 2015, rendered the assailed Decision finding him to have committed only simple neglect of duty as the omission was characterized by mere inadvertence. Accordingly, it ordered that Catacutan be suspended from service for four months without pay until reinstatement to his former position, but without backwages pending appeal. The disposition reads:

**WHEREFORE**, the petition for review of Edgar B. Catacutan is **PARTLY GRANTED**. The assailed Decision dated April 12, 2013 of the Civil Service Commission is **MODIFIED** insofar as Edgar B. Catacutan is hereby found guilty of Simple Neglect of Duty and penalized with suspension for four (4) months without pay. After Catacutan served his suspension, the Office of the Solicitor General and the Civil Service Commission are ordered to **REINSTATE** Catacutan to his former position before he was dismissed from service. Catacutan is, however, not entitled to [backwages] pending his appeal.

**SO ORDERED.**<sup>[14]</sup>

The CA appeared to have attributed to Catacutan the duty to ascertain the level of urgency attached to the subject trial court order, as well as the duty to inform both Gutierrez and A/S Covarrubias of the arrival thereof – both of which he did fail to perform albeit unintentionally. It found no evidence that Catacutan, after bar coding the document, willfully and intentionally showed lack of care for it, and that inasmuch as the subject document did not have the "Rush" marking on its face, he had the right to treat it as an ordinary document which he still managed to process four days from receipt. Moreover, it dropped the charge of conduct prejudicial to the best interest of the service on the ground that records do not show how the omission of Catacutan has tarnished the image and integrity of the agency.

Both parties sought reconsideration, but the CA denied their motions.<sup>[15]</sup> Hence, these petitions.

## The Issues

In G.R. No. 224651, petitioners CSC and OSG assign the following error:

THE HONORABLE [CA] ERRED ON A QUESTION OF LAW IN MODIFYING THE DECISION OF THE CIVIL SERVICE COMMISSION DATED [APRIL 12, 2013] AND IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION, BY DECLARING THAT RESPONDENT IS ONLY GUILTY OF SIMPLE NEGLECT OF DUTY WITH A PENALTY OF SUSPENSION, INSTEAD OF GROSS NEGLECT OF DUTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST

OF THE SERVICE, WHICH IS PUNISHABLE BY DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES.<sup>[16]</sup>

In G.R. No. 224656, petitioner Catacutan assigns the following errors:

I.

THE HONORABLE COURT A *QUO* COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT PETITIONER IS GUILTY OF SIMPLE NEGLECT OF DUTY DESPITE THE FACT THAT THE HONORABLE COURT A *QUO* ITSELF APTLY FOUND OUT THAT PETITIONER PERFORMED HIS DUTY AS BARCODER OF THE DMS SECTION OF THE OSG UP TO ITS VERY LETTERS.

II.

THE HONORABLE COURT A *QUO* COMMITTED REVERSIBLE ERROR OF LAW IN RULING THAT IT IS THE DUTY OF PETITIONER TO ASCERTAIN THE URGENCY OF EACH AND EVERY DOCUMENT THAT PETITIONER RECEIVES FROM THE MAIL SORTER/CLASSIFIER DESPITE THE FACT THAT ASCERTAINING THE URGENCY OF THE DOCUMENT IS THE SOLE DUTY OF THE MAIL SORTER AND NOT THAT OF PETITIONER, AS CLEARLY STATED IN PETITIONER'S JOB DESCRIPTION MANUAL.<sup>[17]</sup>

### **The Court's Ruling**

The Court finds no merit in both petitions.

In administrative proceedings for the enforcement of disciplinary sanctions on erring public servants, the quantum of evidence necessary to justify an affirmative finding is mere substantial evidence.<sup>[18]</sup> Yet when the Court is invited to pass judgment on issues in a petition for review, it is not bound to try the facts anew and, instead, will only pore over the pertinent records to determine whether the findings below have substantial basis in evidence. However, we are impelled to address a crucial matter ahead of the main issues propounded by herein petitioners in G.R. No. 224651.

It is notable that the CSC and the OSG are now, for the first time, putting forth an argument that has not been principally addressed in the proceedings below. In their Petition in G.R. No. 224651, as well as in their Comment in G.R. No. 224656, they allege Catacutan to have deliberately and intentionally concealed the subject document for reasons supposedly known only to him which, thus, negates the finding that his omission and failure to inform Gutierrez and A/S Covarrubias of the arrival of the trial court order was a mere oversight.<sup>[19]</sup> They add that the deliberate concealment of the document is not only the gist of gross neglect of duty, but is also the basis to hold Catacutan liable for conduct prejudicial to the best interest of the service.<sup>[20]</sup> They insist that Catacutan may not evade liability for either offense by

theoretically assuming the job of a mere bar coder and, in effect, put to naught his promotion to his current post when the ranks within the OSG was recently professionalized by law.<sup>[21]</sup>

We decline to give due course to this issue because, *first*, the allegation pertains to an infraction different from the violations for which Catacutan has been cited and to which he has been able to offer counter-evidence earlier in the proceedings. *Second*, the Court is bound by the fundamental rule that precludes higher courts from entertaining matters neither alleged in the pleadings nor raised in the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. Indeed, when a party deliberately adopts a certain theory and the case is decided upon that theory in the tribunal below, he or she will not be permitted to change the same on appeal lest it cause unfairness to the adverse party.<sup>[22]</sup>

In other words, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular, but also extrajudicial and invalid. This is based on the fundamental tenets of fair play.<sup>[23]</sup> An exception to this rule is viable only when the change in theory will not require the presentation of additional evidence on both sides.<sup>[24]</sup> In which case, the Court will not hesitate to declare Catacutan guilty of another offense if and when the records disclose a substantial justification therefor.

However, we find no substantial proof to support the hypothesis that Catacutan did conceal the copy of the subject trial court order deliberately and intentionally as belatedly alleged by the OSG and the CSC. It is a conclusion or inference made by the OSG and the CSC based only on the contents of Gutierrez's affidavit filed before the OSG Administrative Disciplinary Committee at the inception of these proceedings.

The said affidavit materially states that Catacutan received the trial court order on July 9, 2010, attached a bar code to it and immediately placed it in a box "intended for the purpose"; that Catacutan failed to inform Gutierrez of its existence as required by regular office procedures; that when Gutierrez came across the document on August 5, 2010, he immediately scanned the same as part of his job, but noticed that the 15-day period to file an appeal had already lapsed; and that the following day, he called Catacutan's attention to it, but the latter claimed that he did not notice the urgent nature of the document on account of the volume of documents he needed to bar code on the day it arrived.<sup>[25]</sup>

A fleeting look at this piece of evidence reveals no express and categorical imputation of deliberateness and intentionality of concealment on the part of Catacutan. Neither has this allegation been raised in the formal complaint nor put forth in the proceedings below. Yet to our mind, what can be inferred from Gutierrez's statement, as well as from the circumstances surrounding the incident, is that Catacutan has been negligent in the performance of his duties.

The gravity of negligence or the character of neglect in the performance of duty is certainly a matter of evidence and will direct the proper sanction to be imposed. On one hand, gross neglect of duty is understood as the failure to give proper attention to a required task or to discharge a duty, characterized by want of even the slightest care, or by conscious Indifference to the consequences insofar as other persons may