

FIRST DIVISION

[G.R. No. 213500, March 15, 2017]

**OFFICE OF THE OMBUDSMAN AND THE FACT-FINDING
INVESTIGATION BUREAU (FFIB), OFFICE OF THE DEPUTY
OMBUDSMAN FOR THE MILITARY AND OTHER LAW
ENFORCEMENT OFFICES (MOLEO), PETITIONERS, VS. PS/SUPT.
RAINIER A. ESPINA, RESPONDENT.**

D E C I S I O N

PER CURIAM:

Before the Court is a petition for review on *certiorari*^[1] assailing the Decision^[2] dated February 27, 2014 and the Resolution^[3] dated July 15, 2014 of the Court of Appeals in CA-G.R. SP No. 131114, which modified the Joint Resolution^[4] dated December 19, 2012 and the Joint Order^[5] dated July 8, 2013 of petitioner the Office of the Ombudsman (Ombudsman) in the administrative aspect of the case, docketed as OMB-P-A-12-0532-G,^[6] and, thereby, found respondent PS/Supt. Rainier A. Espina (Espina) administratively liable for Simple Misconduct.

The Facts

On July 11 and 17, 2012, petitioner the Fact-Finding Investigation Bureau (FFIB) of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) filed before the Ombudsman an affidavit-complaint^[7] and a supplemental complaint,^[8] respectively, charging Espina and several other PNP officers and private individuals for: (a) violation of Republic Act No. (RA) 7080,^[9] RA 3019,^[10] RA 9184^[11] and its Implementing Rules and Regulations (IRR), and Malversation of Public Funds through Falsification of Public Documents under Article 217 in relation to Article 171 of the Revised Penal Code (RPC); and (b) Grave Misconduct and Serious Dishonesty; arising from alleged anomalies that attended the Philippine National Police's (PNP) procurement of 40 tires, and repair, refurbishment, repowering, and maintenance services of a total of 28 units of V-150 Light Armored Vehicles (LAVs), and the related transportation and delivery expenses of 18 units of LAVs between August and December 2007.^[12] It averred that the PNP did not comply with the bidding procedure prescribed under RA 9184 and its IRR, in that: (a) copies of the bid documents were not furnished to possible bidders; (b) no pre-procurement and pre-bid conferences were held; (c) the invitation to bid was not published in a newspaper of general circulation; (d) the procuring agency did not require the submission of eligibility requirements as well as the technical and financial documents from the bidders; and (e) no post qualification was conducted. Further, it claimed that there were "ghost deliveries," *i.e.*, the tires were never delivered to the PNP and no repair and refurbishment works were actually performed on the LAVs.^[13] The alleged anomalous transactions are as follows:

Transactions	Amount
1. Procurement of 40 tires for 10 LAVs	P 2,940,000.00
2. Repowering and refurbishing of 10 LAVs	142,000,000.00
3. Repair and maintenance of 18 LAVs	255,600,000.00
4. Transportation and delivery expenses ^[14]	<u>9,200,000.00</u>
Total	P409,740,000.00^[15]

Espina, as the Acting Chief of the Management Division of the PNP Directorate for Comptrollership at the time the procurements were made,^[16] was implicated in the aforesaid complaints for noting/signing the Inspection Report Forms (IRFs),^[17] which confirmed the PNP's receipt of the tires and other supplies, and the performance of repair and refurbishment works on the LAVs. According to the FFIB-MOLEO, by affixing his signature on the IRFs, Espina supposedly facilitated the fraudulent disbursement of funds amounting to P409,740,000.00 when no goods were actually delivered and no services were actually rendered.^[18]

In defense, Espina denied any participation in the bidding and/or procurement process and maintained that he belonged to the Management Division which is responsible for the inspection of deliveries made to the PNP after the bidding and procurement process.^[19] He also pointed out that pursuant to the Standing Operating Procedure (SOP) No. XX4^[20] dated November 17, 1993, his only duty, as the said division's Acting Chief, was to note the reports. According to him, it was not his responsibility to personally inspect and confirm deliveries and go beyond the contents of the IRFs submitted by his subordinates, absent any irregularity reported by the property inspectors who are tasked to check and examine deliveries.^[21]

The Ombudsman Ruling

In a Joint Resolution^[22] dated December 19, 2012, the Ombudsman found probable cause to indict Espina and several other PNP officers for violation of Section 3 (e) of RA 3019, Section 65 (b) (4) of RA 9184, and for Malversation of Public Funds through Falsification under Article 217 in relation to Article 171 of the RPC. The Ombudsman also found them guilty of Grave Misconduct and Serious Dishonesty and, accordingly, recommended their dismissal from government service.^[23]

Specifically, the Ombudsman held that Espina executed indispensable acts which led to the completion of the illegal transactions.^[24] The Ombudsman likewise found it incredulous that the repair and refurbishment works on the LAVs were completed in only seven (7) days, *i.e.*, from December 20, 2007 to December 27, 2007, considering the magnitude of the work involved, which included the delivery of the LAVs for repair, the inspection and acceptance of materials to be used, the actual conduct of repair and refurbishment works, and the delivery, inspection, and

acceptance of the repaired and refurbished LAVs.^[25] The Ombudsman even noted the admission of one of the experts engaged in the repair of the LAVs that the repair and refurbishment works thereon were still on-going as late as February 2008 until 2010 and, hence, could not have been completed in December 2007.^[26]

On reconsideration, the Ombudsman, through a Joint Order^[27] dated July 8 2013, dropped the charges against Espina and several other PNP Officers, for violation of Section 65 (b) (4) of RA 9184, but sustained the other findings, including their dismissal from service in view of their administrative liability. In denying Espina's motion for reconsideration in the administrative case, the Ombudsman pointed out that while it was not Espina's duty to make his own inspections of the alleged deliveries and work as the same devolved upon the property inspectors, "it was incumbent upon [Espina] to affix his signature only after checking the completeness and propriety of the documents."^[28] Such disregard of duty paved the way for the consummation of four (4) highly illegal and irregular transactions, *i.e.*, the disbursement of government funds despite apparent non-delivery of the items and non-performance of works procured.^[29]

Aggrieved, Espina filed a petition for review^[30] before the CA, impleading both the Ombudsman and the FFIB-MOLEO (collectively, petitioners), docketed as CA-G.R. SP No. 131114.

The CA Ruling

In a Decision^[31] dated February 27, 2014, the CA ruled in favor of Espina and held that his act of affixing his signature on the IRFs could not be considered as Grave Misconduct because he did not: (a) unlawfully use his official position for the purpose of benefiting himself;^[32] and (b) exhibit corrupt or depraved motives, clear intent to violate the law, or flagrant disregard of established rules. It observed that Espina had no participation in the bidding and procurement process as he belonged to the PNP's Management Division whose function is to inspect and note the deliveries to the PNP after the required bidding and procurement process had taken place. As such, no liability could attach to him absent a nexus between his functions as Acting Chief of the Management Division and the alleged anomalous procurement process.^[33]

The CA found Espina guilty, instead, of Simple Misconduct, a less grave offense punishable with suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. It rejected Espina's defense of reliance in good faith on the acts of his subordinates, holding that he had the obligation to supervise them and ensure that the IRFs and Work Orders they prepared, as well as every procurement-related document released by his division, were regular, lawful, valid, and accurate, considering the significance of the transaction related to the disbursement of public funds over which great responsibility attached.^[34]

However, the CA absolved Espina from the charge of Serious Dishonesty, considering that he did not personally prepare the IRFs but merely affixed his signatures thereon. At best, he imprudently failed to check and counter-check the contents of the IRFs and the Work Orders he signed, which, however, does not equate to

Serious Dishonesty.^[35]

There being no aggravating or mitigating circumstance, the CA imposed on Espina a three-month suspension reckoned from the time he was actually dismissed from service.^[36]

Dissatisfied, petitioners moved for reconsideration^[37] which was, however, denied by the CA in a Resolution^[38] dated July 15, 2014; hence, the present petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Espina should be held administratively liable for the charges imputed against him.

The Court's Ruling

The petition is partly meritorious.

At the outset, the Court emphasizes that as a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.^[39] In this case, except as to the legal conclusion on what administrative offense was committed by Espina, the Ombudsman and the CA both found that Espina signed the IRFs even if there were actually no tires delivered to the PNP and no repair and refurbishment works performed on the LAVs. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into, and this Court shall confine itself to the determination of the proper administrative offense chargeable against Espina and the appropriate penalty therefor.

In the case at bar, Espina was charged with grave misconduct and serious dishonesty before the Ombudsman which found him guilty as charged, and imposed on him the supreme penalty of dismissal from government service with all its accessory penalties, while the CA adjudged him guilty only of simple misconduct and punished him with a three-month suspensiOn.

Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.^[40] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.^[41] It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.^[42]

There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.^[43] Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.^[44]

On the other hand, dishonesty, which is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity,"^[45] is classified in three (3) gradations, namely: serious, less serious, and simple.^[46] Serious dishonesty comprises dishonest acts: (a) causing serious damage and grave prejudice to the government; (b) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (c) exhibiting moral depravity on the part of the respondent; (d) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (e) committed several times or in various occasions; (f) committed with grave abuse of authority; (g) committed with fraud and/or falsification of official documents relating to respondent's employment; and (h) other analogous circumstances.^[47] A dishonest act without the attendance of any of these circumstances can only be characterized as simple dishonesty.^[48] In between the aforesaid two forms of dishonesty is less serious dishonesty which obtains when: (a) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify as serious dishonesty; (b) the respondent did not take advantage of his/her position in committing the dishonest act; and (c) other analogous circumstances.^[49]

Both grave misconduct and serious dishonesty, of which Espina was charged, are classified as grave offenses for which the penalty of dismissal is meted even for first time offenders.^[50]

Here, the CA correctly observed that while Espina may have failed to personally confirm the delivery of the procured items, the same does not constitute dishonesty of any form inasmuch as he did not personally prepare the IRFs but merely affixed his signature thereon after his subordinates supplied the details therein.

Neither can Espina's acts be considered misconduct, grave or simple. The records are bereft of any proof that Espina was motivated by a premeditated, obstinate or deliberate intent of violating the law, or disregarding any established rule, or that he wrongfully used his position to procure some benefit for himself or for another person, contrary to duty and the rights of others.

However, after a circumspect review of the records, the Court finds Espina administratively liable, instead, for Gross Neglect of Duty, warranting his dismissal from government service.^[51] At the outset, it should be pointed out that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt,^[52] as in this case. Notably, the FFIB-MOLEO's supplemental complaint accused Espina with failure to exercise due diligence in signing the IRFs, which is sufficient to hold him liable for Gross Neglect of Duty.^[53]

Gross neglect of duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own