

SECOND DIVISION

[G.R. No. 208976, February 22, 2016]

**THE HONORABLE OFFICE OF THE OMBUDSMAN, PETITIONER, VS.
LEOVIGILDO DELOS REYES, JR., RESPONDENT.**

RESOLUTION

LEONEN, J.:

This resolves the following motions and manifestation filed before this court: 1) Motion for Reconsideration^[1] dated December 22, 2014 filed by counsel for respondent Leovigildo Delos Reyes, Jr. (Delos Reyes) assailing this court's Resolution^[2] dated October 13, 2014; and 2) Manifestation and Motion for Clarification^[3] dated February 26, 2015 filed by counsel for the Philippine Charity Sweepstakes Office (PCSO).

In the Resolution dated October 13, 2014, we granted the Petition for Review on Certiorari^[4] assailing the Court of Appeals Decision^[5] dated March 1, 2013 and Resolution^[6] dated August 29, 2013, and consequently dismissed Delos Reyes from service.^[7] The dispositive portion of our Resolution reads:

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' decision dated March 1, 2013 and resolution dated August 29, 2013 are **REVERSED and SET ASIDE**. The Office of the Ombudsman's decision dated June 10, 2006 and order dated November 15, 2007 are **REINSTATED**. Respondent Leovigildo Delos Reyes, Jr. is **DISMISSED** from service, which includes the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.^[8]

The facts of this case, as summarized in our October 13, 2014 Resolution, are:

To generate more funds in line with its mandate, the Philippine Charity Sweepstakes Office (PCSO) maintains On-line Lottery Terminals in its main office and in provincial district offices. The Marketing and Online Division of PCSO's Central Operations Department (COD) manages the terminals in the main office under Agency Number 14-5005-1. Respondent Leovigildo Delos Reyes, Jr. (Delos Reyes) served as the COD Division Chief.

On June 13, 2001, PCSO auditors submitted a consolidated report based on a surprise audit conducted on June 5, 2001. The auditors found that the cash and cash items under Delos Reyes' control were in order. However, the auditors recommended that the lotto proceeds be deposited

in a bank the next working day instead of Delos Reyes keeping the lotto sales and proceeds in a safe inside his office.

On June 5, 2002, COD Manager Josefina Lao instructed OIC-Division Chief of the Liaison and Accounts Management Division Teresa Nucup (Nucup) to conduct an account validation and verification to reconcile accounts due to substantial outstanding balances as of May 31, 2002. On August 16, 2002, Nucup reported that Agency No. 14-5005-1 had unremitted collections in the amount of P428,349.00 from May 21, 2001 to June 3, 2001. The amount was subsequently reduced to P387,879.00 excluding penalties.

Nucup also found that "there was a deliberate delay in the submission of the periodic sales report; that the partial remittance of total sales were made to cover previous collections; and that the unremitted collections were attributed to Cesar Lara, Cynthia Roldan, Catalino Alexandre Galang, Jr., who were all employed by [PCSO] as Lottery Operations Assistants II, and Elizabeth Driz, the Assistant Division Chief."

After conducting its own investigation, the PCSO Legal Department recommended filing formal charges against Delos Reyes and Elizabeth Driz (Driz) for dishonesty and gross neglect of duty. The PCSO Legal Department found that the Lottery Operations Assistants turned over the lotto proceeds and lotto ticket sales reports to Delos Reyes as the Division Chief. In case of his absence, the proceeds and reports were turned over to Driz. Driz would then deposit the proceeds in the bank. If both Delos Reyes and Driz were absent, the proceeds would be placed in the vault under Delos Reyes' control and deposited the next banking day.

On May 14, 2003, formal charges were filed against Delos Reyes and Driz, with the cases docketed as Administrative Case Nos. 03-01 and 03-02, respectively. Delos Reyes and Driz were preventively suspended for 90 days.

On June 8, 2004, PCSO filed an affidavit-complaint with the Office of the Ombudsman. Delos Reyes and Driz were criminally charged with malversation of public funds or property under Article 217 of the Revised Penal Code, and administratively charged with dishonesty and gross neglect of duty under Section 46(b)(I) and (3) of Book V of Executive Order No. 292.

After the submission of the parties' pleadings, the Office of the Ombudsman rendered the decision dated June 10, 2006 in OMB-C-A-04-0309-G finding Delos Reyes and Driz guilty of grave misconduct and gross neglect of duty, and ordering their dismissal from service. The dispositive portion of the decision reads:

WHEREFORE, premises considered, respondents, Leovigildo T. Delos Reyes, Jr. and Elizabeth G. Driz, are found guilty for Grave Misconduct and Gross Neglect of Duty, and are thus imposed the penalty of DISMISSAL from the service, including

all the accessory penalties of, cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for reemployment in the government service.

The complaint for Dishonesty filed against the respondent is however Dismissed for insufficiency of evidence.

The Honorable Rosario Uriarte, Chairman and General Manager of the Philippine Charity Sweepstakes Office, is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.

SO ORDERED.

Delos Reyes' partial motion for reconsideration was denied on November 15, 2007. He then filed before the Court of Appeals a petition for certiorari docketed as CA-G.R. SP No. 117683 under Rule 65 of the Rules of Court.

On March 1, 2013, the Court of Appeals granted the petition and reversed and set aside the Office of the Ombudsman's decision and resolution, thus:

WHEREFORE, the petition is **GRANTED** and the assailed June 10, 2006 *Decision* and November 15, 2007 *Order*, finding petitioner Leovigildo T. Delos Reyes, Jr. guilty of grave misconduct and gross neglect of duty, are **REVERSED** and **SET ASIDE**. The Philippine Charity Sweepstakes Office (PCSO) is ordered to **REINSTATE** petitioner as Chief of the Marketing and On-Line Division, Central Operations Department (COD) of the PCSO, with full backwages, retirement benefits and emoluments, and without diminution as to his seniority rights from the time of his dismissal from office until his reinstatement.

SO ORDERED.

. . . .

The Office of the Ombudsman and PCSO filed their respective motions for reconsideration. These were denied by the Court of Appeals in its resolution dated August 29, 2013.^[9]

On October 13, 2014, this court rendered its Resolution.

Delos Reyes filed his Motion for Reconsideration^[10] assailing this court's findings in the October 13, 2014 Resolution. Meanwhile, PCSO filed a Manifestation and Motion for Clarification^[11] dated February 26, 2015.

On April 22, 2015, this court required the parties to comment on PCSO's Manifestation and Motion.^[12] We also required the Office of the Ombudsman to file a comment on Delos Reyes' Motion for Reconsideration within 10 days from notice.

[13] We noted the parties' separate Comments in our Resolutions dated July 15, 2015^[14] and August 24, 2015.^[15]

In his Motion for Reconsideration, Delos Reyes prays that the court reconsider its ruling based on the following grounds: first, there is no substantial evidence to warrant the finding that he is guilty of grave misconduct and gross neglect of duty;^[16] and second, the Court of Appeals was correct "in allowing the petition for certiorari in the interest of substantial justice."^[17]

As to the first ground, Delos Reyes argues that the Office of the Ombudsman committed gross misapprehension of facts as it was Elizabeth Driz (Driz), the Assistant Division Chief, who misappropriated the lotto sales proceeds through lapping of funds.^[18] It was Driz who had the control and custody of the proceeds.^[19] Delos Reyes argues that "while it is true that [his] 'duty was to monitor, check, and reconcile reports and daily remittances of lotto sales submitted by the tellers assigned at the Main Office (where the subject unremitted collections originated) and San Marcelino Outlets,' it is likewise true that after [he] had monitored, checked, and reconciled reports and daily remittances of lotto sales submitted by the tellers, the sales proceeds were turned over to [Driz] for subsequent deposit to the bank[.]"^[20] The lapping of funds occurred "after [he] had already reconciled the cash reportsf."^[21]

Moreover, the duty of detecting the discrepancies as to the lotto sales proceeds fell beyond the responsibilities of Delos Reyes as PCSO's Chief of the Marketing and On-line Division of the Central Operations Department.^[22] The duty of checking the deposit of the lotto proceeds belonged to the Liaison and Accounts Management Division of the PCSO, particularly when "there were no clear-cut rules or internal control measures implemented by PCSO ... for remittance for outlets maintained by PCSO [in the] Head Office"^[23] at that time. "[I]f there is no duty then there can be no neglect of duty, much less gross neglect of duty."^[24]

Similarly, Delos Reyes did not intentionally nor deliberately violate any rule or law since he did not have any duty to verify the deposits made by Driz.^[25] Delos Reyes merely observed the ordinary parameters of his position.^[26] Therefore, no grave misconduct can be attributed to Delos Reyes.^[27] On the contrary, substantial evidence available on record points to his innocence.^[28]

In any case, assuming *arguendo* that Delos Reyes could be faulted for the acts of Driz, the penalty of dismissal from service is too harsh.^[29] Delos Reyes' failure to verify the deposits should, at most, constitute simple neglect of duty.^[30]

As to the second ground, Delos Reyes argues that the Court of Appeals was correct in giving due course to the Petition for Certiorari assailing the Decision and Order of the Office of the Ombudsman.^[31] Technical rules are mere tools to facilitate the administration of the justice system, and the relaxation of rules is necessary when its strict and rigid application would only serve to hinder achieving substantial justice.^[32] The case deserves a liberal interpretation of the rules since PCSO, "the very institution that initiated this case, sought to exculpate [Delos Reyes] from the

administrative charges filed against him[.]”^[33]

On petitioner's part, the Office of the Solicitor General argues that Delos Reyes' arguments are mere "reiteration of the arguments in his Comment dated March 10, 2014[.]”^[34] The Office of the Solicitor General adds that Delos Reyes' Motion is a pro-forma motion that should be dismissed outright considering that the issues it raised have already been considered by this court in resolving the case.^[35]

Moreover, the Office of the Solicitor General argues that there was no grave abuse of discretion in this case.^[36] There was substantial evidence to support the Office of the Ombudsman's finding of gross misconduct and gross neglect of duty on Delos Reyes' part.^[37] The "[findings of fact [of] the Office of the Ombudsman[,] when supported by substantial evidence[,] are conclusive.”^[38]

Lastly, the Office of the Solicitor General argues that the Court of Appeals should not have entertained Delos Reyes' Petition for Certiorari as there was an adequate remedy available to him under Rule 43 of the Rules of Court.^[39]

We deny the Motion for Reconsideration with finality. The issues raised in the Motion were already passed upon in our Resolution dated October 13, 2014.

Respondent Leovigildo Delos Reyes, Jr. relies heavily on PCSO's Comment^[40] before the Court of Appeals and on PCSO's statements that support his innocence of the administrative charges.^[41] However, he forgets the settled rule that "[findings of fact by the Office of the Ombudsman[,] when supported by substantial evidence] are conclusive.”^[42] As we found in our October 13, 2014 Resolution, respondent failed to show arbitrariness on the part of the Office of the Ombudsman to warrant judicial intervention.^[43] Hence, our ruling in the earlier Resolution affirming the Office of the Ombudsman's findings, which states:

It is undisputed that as Chief of the Marketing and On-Line Division of the COD, respondent was accountable for the vault and the lotto proceeds placed inside it. As the Division Chief, respondent had the duty to monitor, check, and reconcile the reports of the daily lotto proceeds. It is true that it was not his job to personally deposit the lotto proceeds with the bank, as this fell under Driz's responsibility. However, it was incumbent upon respondent to ensure that the lotto proceeds deposited in the bank correspond to the reports submitted to him and that the proceeds are deposited promptly.

Despite such duty, respondent willfully ignored the auditor's recommendations for prompt deposit of the lotto sales proceeds. He disregarded his duty of overseeing the deposit of the proceeds and wholly relied on Driz's representations. Respondent's act constitutes gross neglect of duty.

Similarly, records show that petitioner adduced substantial evidence to show how respondent flagrantly disregarded the rules and acted with a willful intent to violate the law, thus, amounting to grave misconduct. The Office of the Ombudsman's