

## EN BANC

[ G.R. No. 204757, March 17, 2015 ]

**ATTY. JANET D. NACION, PETITIONER, VS. COMMISSION ON  
AUDIT, MA. GRACIA PULIDO-TAN, JUANITO ESPINO AND HEIDI  
MENDOZA, RESPONDENTS.**

### RESOLUTION

**REYES, J.:**

This resolves the Petition for *Certiorari*<sup>[1]</sup> filed by petitioner Atty. Janet D. Nacion (Nacion) to assail the Decision<sup>[2]</sup> dated June 14, 2012 and Resolution<sup>[3]</sup> dated November 5, 2012 of respondent Commission on Audit (COA), finding her guilty of grave misconduct and violation of reasonable office rules and regulations.

From October 16, 2001 to September 15, 2003, Nacion was assigned by the COA to the Metropolitan Waterworks Sewerage System (MWSS) as State Auditor V.<sup>[4]</sup> On June 27, 2011, when Nacion was already holding the position of Director IV of COA, National Government Sector, a formal charge<sup>[5]</sup> against her was issued by COA Chairperson Ma. Gracia M. Pulido Tan (Chairperson Tan) for acts found to be committed when she was still with the MWSS. The pertinent portions of the charge read:

The Administrative Case Evaluation Report dated June 21, 2011 of the Fraud Audit and Investigation Office (FAIO), Legal Services Sector (LSS) as well as the Investigation Report submitted by the Team from the FAIO disclosed the following reprehensible actions:

1. Receiving benefits and/or bonuses from MWSS in the total amount of P73,542.00 from 1999-2003[;]
2. Availing of the MWSS Housing Project;
3. Availing of the Multi-Purpose Loan Program – Car Loan.

Based thereon and upon the recommendation of the Director, FAIO-LSS, this Office finds sufficient basis to administratively charge you with Grave Misconduct and Violation of Reasonable Office Rules and Regulations which are grounds for administrative action under the Civil Service Law, Rules and Regulations.

WHEREFORE, you are hereby formally charged with the aforementioned offenses and required to submit to the Office of the General Counsel, LSS your answer in writing and under oath, within five (5) days from receipt hereof, x x x.<sup>[6]</sup>

Attached to the formal charge, which was docketed as Administrative Case No. 2011-002, were investigation reports based on MWSS journal vouchers, disbursement vouchers and claims control index. COA's investigation of its personnel assigned to MWSS was prompted by its receipt of a letter from then MWSS Administrator Diosdado Jose M. Allado, who complained of unrecorded checks and irregularly issued disbursement vouchers that were traced to refer to bonuses and other benefits of the COA MWSS personnel.<sup>[7]</sup>

In her Affidavit/Answer to Formal Charge,<sup>[8]</sup> Nacion admitted that she availed of the MWSS Housing Project and thus, was awarded a 300-square-meter lot at the MWSS Employees Corporate Office Housing Project in Novaliches, Quezon City. This was covered by an Individual Notice of Award<sup>[9]</sup> dated April 8, 2003 issued by the MWSS Corporate Office Multi-Purpose Cooperative Housing Project. The cost of the lot was P500.00 per sq m or a total of P150,000.00, exclusive of development cost and miscellaneous expenses. Nacion invoked an honest belief that she could avail of the benefit given the absence of any prohibition thereon upon COA personnel. COA Resolution No. 2004-005, which prohibited COA employees from availing of all forms of loan, monetary benefits or any form of credit assistance from agencies under their audit jurisdiction, was issued only on July 27, 2004.<sup>[10]</sup>

Nacion admitted that she also availed of the MWSS Multi-Purpose Loan Program – Car Loan, upon an honest belief that she was not prohibited from doing so. She emphasized that her car purchase was not subsidized. She was obligated to pay in full the principal amount of the loan, plus interest and incidental expenses like registration fees and insurance premiums.<sup>[11]</sup>

Nacion, however, denied having received bonuses and benefits from MWSS. She argued that the MWSS claims control index and journal vouchers upon which the charge was based were not conclusive proof of her receipt of the benefits, absent payrolls showing her signature. In any case, as a sign of good faith, Nacion offered to, *first*, restitute the full amount of P73,542.00 to save government time and expenses in hearing the case and put to rest the issues that arose from it, and *second*, give up her right over the MWSS lot provided she would get back her investment on the property.<sup>[12]</sup>

### **Ruling of the COA**

On June 14, 2012, the COA rendered its Decision<sup>[13]</sup> finding Nacion guilty of grave misconduct and violation of reasonable rules and regulations. It cited Section 18 of Republic Act (R.A.) No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, which specifically prohibits COA personnel from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, government-owned and -controlled corporations and government financial institutions, except those compensation paid directly by the COA out of its appropriations and contributions. The COA emphasized that even the availment of all forms of loan was already prohibited prior to the issuance of COA Resolution No. 2004-005, being already proscribed by Executive Order No. 292<sup>[14]</sup> and the Code of Ethics for Government Auditors.<sup>[15]</sup>

Although grave misconduct is a grave offense that is punishable by the extreme

penalty of dismissal from service, Nacion was only meted out a penalty of one year suspension without pay, after the COA considered as mitigating the following circumstances:

Director Nacion did not request for a formal investigation, hence, has saved this Commission from the inconvenience and cost of such proceeding. She also admitted availing both the Housing Project and MPLP Car Loan. Her long years in service [are] also worth considering as she has spent her productive years in the public service. x x x.<sup>[16]</sup>

In addition to the suspension, Nacion was ordered to refund the amount of P73,542.00<sup>[17]</sup> and return the lot which she acquired under the MWSS housing program. The dispositive portion of the COA decision then reads:

**WHEREFORE**, premises considered, this Commission finds Director Janet D. Nacion **GUILTY** of Grave Misconduct and Violation of Reasonable Office Rules and Regulations proceeding from the same act of receiving unauthorized allowances and other fringe benefits. Accordingly, she is meted the penalty of one (1) year suspension without pay effective upon receipt of this Decision, immediate refund of the amount of P73,542.00, and return of the lot she obtained under the MWSS Employees Housing Project, with a stern warning that repetition of the same or similar infraction shall be dealt with more severely.

Let a copy of this Decision form part of the respondent's personal (201) File in this Commission. The Chief Executive Staff, Office of the Chairperson and the Assistant Commissioner, Administration Sector, shall enforce this Decision and report compliance thereof to the Commission Proper.<sup>[18]</sup>

Unyielding, Nacion moved to reconsider, but her plea was denied by the COA in a Resolution dated November 5, 2012.<sup>[19]</sup> Hence, this petition.

### **The Present Petition**

The core issue for the Court's resolution is: whether or not the COA committed grave abuse of discretion in finding Nacion guilty of grave misconduct and violation of reasonable office rules and regulations.

To support her petition against the COA, Nacion invokes due process as she argues that the records during her tenure with the MWSS should not have been included by the audit team in its investigations, as no office order covering it was issued by the COA Chairman. Furthermore, the documentary evidence considered by the Fraud Audit and Investigation Office (FAIO) did not constitute substantial evidence to prove the commission of the offenses with which she was charged.

### **Ruling of the Court**

The petition is bereft of merit. At the outset, the Court reiterates:

The concept is well-entrenched: grave abuse of discretion exists when there is an evasion of a positive duty or a virtual refusal to perform a

duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism. Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.<sup>[20]</sup> (Citations omitted)

Thus, the Court emphasized in *Dycoco v. Court of Appeals*<sup>[21]</sup> that "[a]n act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.'"<sup>[22]</sup>

Upon review, the Court holds that no such grave abuse of discretion may be attributed to the COA for the procedure it observed, its factual findings and conclusions in Nacion's case.

### ***Due Process in Administrative Proceedings***

In administrative proceedings, the essence of due process is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense. The demands of due process are sufficiently met when the parties are given the opportunity to be heard before judgment is rendered.<sup>[23]</sup> Given this and the circumstances under which the rulings of the COA were issued, the Court finds no violation of Nacion's right to due process. As the Office of the Solicitor General correctly argued, the constitution of a separate fact-finding team specifically for Nacion's case was not necessary for the satisfaction of such right.

It bears stressing that Nacion was formally charged by Chairperson Tan, following evidence that pointed to irregularities committed while she was with the MWSS. Being the COA Chairperson who, under the law, could initiate administrative proceedings *motu proprio*, no written complaint against Nacion from another person was necessary. Section 2 of the COA Memorandum No. 76-48,<sup>[24]</sup> which Nacion herself invokes, provides:

Sec. 2. How commenced. –

(1) Administrative proceedings may be commenced against a subordinate official or employee of the Commission **by the Chairman motu proprio**, or upon sworn, written complaint of any other person. (Sec. 38 [a], PD 807).

x x x x (Emphasis ours)

The power of the COA to discipline its officials then could not be limited by the procedure being insisted upon by Nacion. Neither is the authority of the Chairperson to commence the action through the issuance of the formal charge restricted by the requirement of a prior written complaint. As may be gleaned from the cited provision, a written complaint under oath is demanded only when the administrative case is commenced by a person other than the COA Chairperson.

Contrary to Nacion's claim, the COA also did not act beyond its jurisdiction when her case was considered by the FAIO investigating team, notwithstanding the fact that the office order which commanded an inquiry upon MWSS personnel merely referred to alleged unauthorized receipt of bonuses and benefits from the agency by Atty. Norberto Cabibihan (Atty. Cabibihan) and his staff. Since Nacion's stint in MWSS was before Atty. Cabibihan's, she argued that the team should not have looked into the records and circumstances during her term. In including benefits received during her term, Nacion claimed that the investigating team acted beyond its jurisdiction and deprived her of the right to due process.

The contention fails to persuade; a separate office order was not necessary for the audit team's investigation of Nacion's case. It should be emphasized that prior to the issuance of the formal charge, the investigations conducted by the team were merely fact-finding. The crucial point was the COA's observance of the demands of due process prior to its finding or decision that Nacion was administratively liable. The formation of a separate fact-finding team that should look specifically into Nacion's acts was not necessary to satisfy the requirement. The formal charge was as yet to be issued by the COA Chairperson, and Nacion's formal investigation commenced only after she had filed her answer to the charge. It was undisputed that Nacion, despite a chance, did not request for such formal investigation, a circumstance which the COA later considered as mitigating. In any case, she was still accorded before the COA a reasonable opportunity to present her defenses, through her answer to the formal charge and eventually, motion for reconsideration of the COA's decision.

### ***Substantial Evidence in Administrative Case***

The Court also finds no grave abuse of discretion on the part of the COA in holding Nacion administratively liable for the offenses with which she was charged.

In administrative cases, the quantum of evidence that is necessary to declare a person administratively liable is mere substantial evidence.<sup>[25]</sup> This is defined under Section 5, Rule 133 of the Rules of Court, to wit:

*Sec. 5. Substantial evidence.* – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by **substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.** (Emphasis ours)

It is settled that the factual findings of administrative bodies are controlling when supported by such substantial evidence.<sup>[26]</sup> In resolving the present petition, the Court finds no compelling reason to deviate from this general rule. Three separate acts were found to have been committed by Nacion, all sufficient to support the COA's finding of grave misconduct and violation of reasonable office rules and regulations.

Nacion's receipt of the prohibited benefits and allowances were duly proved by documentary evidence. The presentation of documents bearing Nacion's signature to prove her receipt of the money was not indispensable. Recipients of unauthorized sums would, after all, ordinarily evade traces of their receipt of such amounts.