

THIRD DIVISION

[G.R. No. 168039, June 05, 2009]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. FERNANDO J. BELTRAN, RESPONDENT.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision^[1] dated November 17, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 70421, reinstating private respondent into government service, and the Resolution^[2] dated May 10, 2005 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 26, 2001, Nilo V. Germedia (Germedia), Clerk III of the Tricycle Regulatory Office (TRO), City of Parañaque, filed a letter-complaint^[3] against Fernando J. Beltran (Beltran), Benjamin G. Barrameda (Barrameda), and Rolando Fererra (Fererra), all of the TRO, City of Parañaque, for alleged graft and corruption based on the following grounds:

- 1) Non-remittance of TRO Drivers ID collection to the Treasurer's Office of Parañaque City since October 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);
- 2) Non-remittance of Operator's Certification for LTO purposes to the Treasurer's Office of Parañaque City since December 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);
- 3) Non-remittance of penalty payments charged to apprehended tricycle drivers;
- 4) Using the TRO as extension of an insurance company;
- 5) Violation of Parañaque City Ordinance No. 135 by issuing Certification for LTO purposes instead of Franchise/MTOP (Motorized Tricycle Operator's Permit); and
- 6) Grave abuse of discretion/authority by threatening employees with termination.^[4]

Acting on the letter-complaint, the Office of the Ombudsman issued an Order^[5] dated March 23, 2001, dismissing, without prejudice, the criminal aspect of the case

for lack of sufficient cause of action and evidence. However, the administrative aspect of the complaint for grave misconduct proceeded for adjudication as Ombudsman Administrative Case No. OMB-ADM-0-01-0116.

On April 24, 2001, Beltran, Barrameda, and Fererra, submitted their Joint Counter-Affidavit wherein they vehemently denied Germedia's charges against them.

On August 9, 2001, a preliminary conference was held wherein the parties, with their respective counsels, appeared. In open proceedings, the parties agreed to the submission of the case for resolution after the filing of their respective memoranda.
[6]

After submitting their respective memoranda, petitioner rendered a Decision^[7] dated January 3, 2002, wherein it absolved Barrameda and Fererra of the charges against them, but found Beltran guilty of Grave Misconduct. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, this Office hereby renders judgment finding respondent **FERNANDO J. BELTRAN, Guilty of Grave Misconduct**, for which the penalty of **Dismissal from the Service with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Re-employment in the Government Service** is hereby imposed pursuant to Section 10, Rule III of Administrative Order No. 07, in relation to Section 25 of Republic Act 6770.

Respondents **BENJAMIN BARRAMEDA** and **ROLANDO FEREIRA** (sic) are hereby **ABSOLVED** of the charge of Grave Misconduct. The complaint as against respondents **BENJAMIN BARRAMEDA** and **ROLANDO FEREIRA** (sic) is hereby **DISMISSED**.

The Honorable, The Mayor, City of Parañaque, is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken thereon.

SO ORDERED.^[8]

On February 21, 2002, Beltran filed a Motion for Reconsideration^[9] wherein he alleged, among other things, that he discovered that Silverio Navarro (Navarro) never executed the affidavit on which the Ombudsman based its decision. Beltran also annexed an Affidavit of Denial^[10] allegedly executed by Navarro, who practically denied that he ever executed the first affidavit. On February 26, 2002, the Ombudsman issued an Order^[11] denying the motion.

Aggrieved, Beltran sought recourse before the CA arguing that:

(1) There is denial of due process for lack of legal as well as factual basis of the Decision and Order of the Office of the Ombudsman finding Petitioner liable for Grave Misconduct.

(2) The Office of the Ombudsman gravely erred in not considering Petitioner's newly discovered evidence.

(3) The penalty imposed on Petitioner is unreasonable and excessive.

(4) The Order of the Office of the Ombudsman dated February 26, 2002 is vague and misleading.^[12]

(5) The Office of the Ombudsman has no jurisdiction or authority to dismiss the petitioner from government service.^[13]

On November 17, 2004, the CA rendered a Decision,^[14] which reversed and set aside the decision of the Office of the Ombudsman. The decretal portion of the CA decision reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed Order dated 26 February 2002 issued by the Office of the Ombudsman in Administrative Case OMB-ADM-0-01-0178, denying petitioner's Motion for Reconsideration of its Decision dated 03 January 2002 dismissing him from the government service, is **REVERSED** and **SET ASIDE**. The petitioner is hereby ordered **REINSTATED** immediately to his position in the government service more particularly in the Tricycle Regulatory Office of Parañaque City, without loss nor diminution in his salaries and benefits.

SO ORDERED.^[15]

In granting the petition, the CA opined that the Ombudsman had no authority to directly dismiss Beltran from government service, as the Ombudsman could only "recommend" the removal of the public official or employee who was found to be at fault. It held that *Tapiador v. Office of the Ombudsman*^[16] was on all fours with that of Beltran. It added that the evidence presented to prove Beltran's liability was insufficient to establish the allegations in the complaint. It found the Ombudsman's conclusions sweeping and bereft of satisfactory basis. The CA stressed that it did not conform to the Ombudsman's reliance on the affidavit of Navarro, considering that the same was uncorroborated and unauthenticated. Moreover, the CA stated that the Ombudsman should have given credence to the second affidavit of Navarro categorically denying that he executed the first affidavit. The Ombudsman's Graft Investigation Officer should have summoned the affiant and inquired about the circumstances surrounding the first and second affidavits.^[17]

Petitioner filed a Motion for Reconsideration,^[18] but it was denied in the Resolution^[19] dated May 10, 2005.

Hence, this petition.

In support of the petition, petitioner alleges as follows:

I

THE 3 JANUARY 2002 DECISION OF THE OMBUDSMAN IS SUPPORTED BY SUBSTANTIAL EVIDENCE. THE REVERSAL OF THE SAME BY THE HONORABLE COURT OF APPEALS CONTRADICTS ESTABLISHED PRINCIPLES UNDERLYING PROCEEDINGS BEFORE ADMINISTRATIVE AND QUASI-JUDICIAL BODIES, PARTICULARLY THE OFFICE OF THE OMBUDSMAN.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT TREATED AN OBITER DICTUM AS A PRECEDENT AND, ON THE BASIS THEREOF, DECLARED THAT THE OMBUDSMAN HAS NO AUTHORITY TO DIRECTLY DISMISS RESPONDENT BELTRAN FROM THE GOVERNMENT SERVICE CONSIDERING THAT:

- A. THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;
- B. CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, and in the exercise of its plenary legislative powers, enacted rep. act no. 6770 providing THEREin the ombudsman's full and complete administrative disciplinary power and duty;
- C. There is nothing in said statutory grant of administrative disciplinary power which can be remotely considered inconsistent with the 1987 constitution;
- D. Vesting the ombudsman with full disciplinary authority is absolutely In consonance with the sovereign intent, as expressed by the letter of, and in the deliberations on, the 1987 constitution, *i.e.*, the intent to create an effective, rather than effete, protector of the people insulated from political influence;
- E. The disciplinary authority granted to the Ombudsman includes the authority to determine the penalty and to cause the same to be implemented by the head of the agency concerned, considering that:
 - i. republic act no. 6770 contains express provisions granting the Ombudsman the authority to determine and cause the implementation of administrative penalties;

- ii. a disciplinary power bereft of the necessary component of determining the penalty and causing the implementation thereof is otiose;
- iii. even assuming that the implementation of penalties assessed by the Ombudsman is subject to section 13 (3), art. XI of the constitution, and the independent first part of section 15 (3) of rep. act no. 6770, the latter provisions still empower the Ombudsman to "ensure compliance" with [its] "recommendation";
- iv. a contrary rule can only result in further legal and practical absurdities.

F. the *obiter dictum* in *tapiador vs. office of the Ombudsman, supra*, dispossessing the Ombudsman of the authority, is just a passing statement and must be interpreted to mean that the ombudsman cannot "directly" implement its administrative decisions. Such statement is and has remained an *obiter dictum* which does not have the status of a legal doctrine.^[20]

Simply stated, the issues for resolution are whether Beltran was correctly exonerated from the administrative charges filed against him and whether the Ombudsman has the power to discipline government employees.

While We sustain the conclusion of the appellate court that no sufficient evidence was presented to warrant the dismissal of Beltran from the service, We find it proper to correct the court's discussion on the power of the Office of the Ombudsman.

In declaring that the Ombudsman had no authority to directly dismiss Beltran from government service, but only had the power to recommend the removal of the public official or employee found to be at fault, the appellate court relied on the following statement in *Tapiador*, to wit:

x x x Besides, assuming *arguendo*, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.^[21]

There was reversible error on the part of the appellate court in relying on the above-cited statement. As correctly pointed out by the petitioner, the statement is a mere *obiter dictum*. In *Ledesma v. Court of Appeals*,^[22] this Court emphatically pronounced that the statement in *Tapiador* on the Ombudsman's power "is, at best, merely an *obiter dictum*" and, thus, "cannot be cited as a doctrinal declaration of the