

EN BANC

[G.R. No. 171812, December 24, 2008]

**REMIA F. BONCALON, PETITIONER, VS. OMBUDSMAN (VISAYAS)
AND COA-CITY AUDITOR'S OFFICE OF BAGO CITY, NEGROS
OCCIDENTAL, RESPONDENTS.**

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated February 27, 2004 and the Resolution^[2] dated February 14, 2006 of the Court of Appeals in CA-G.R. SP No. 71911, finding petitioner Remia F. Boncalon guilty of dishonesty and imposing on her the penalty of dismissal from service and perpetual disqualification to hold office under Section 23,^[3] Rule XIV of the Omnibus Rules of the Civil Service Commission (CSC).^[4]

The antecedent facts are as follows:

On November 25, 1997, Loida C. Arabelo,^[5] the State Auditor II of Bago City, Negros Occidental, conducted an audit on the cash accounts of Boncalon, a Cashier IV at Bago City Treasurer's Office. The audit revealed a cash shortage of P1,023,829.56.^[6] The state auditor also discovered, upon verification from the depository bank, that the entry in Boncalon's cashbook pertaining to the deposit of P1,019,535.21 on October 31, 1997 was false. Deposits totaling said amount were made only on November 25, 1997 and December 22, 1997, in the amounts of P200,000.00 and P819,535.21, respectively.

In view of the audit findings, Boncalon was administratively charged with dishonesty before the Office of the Ombudsman (Visayas). The case was docketed as OMB-VIS-ADM-99-0488.

Boncalon denied accountability for any cash shortage and averred that she was informed by the state auditor of the alleged shortage only on October 1, 1998, or after she had gone on a commuted leave of absence from April 13, 1998 to July 15, 1998, wherein she was cleared of money and property accountability and paid the corresponding money value of said leave.^[7] She also contended that had the state auditor examined her safe, she would have found the bundles of money worth P819,535.21, which she had overlooked.^[8]

Graft Investigation Officer (GIO) I Alvin Butch E. Cañares recommended the dismissal of the case since the questioned amounts were already accounted for. He also said that the erroneous entry of deposit in Boncalon's cashbook can only be considered as an administrative lapse, subject only to the admonition of the erring public officer.

Upon review, Director Virginia Palanca-Santiago, Office of the Ombudsman (Visayas), reversed the recommendation of GIO I Cañares. She ruled that the untimely deposit of the questioned amount only means that Boncalon was in possession of the money and had made use of it. Further, her act of falsifying an entry of deposit in her cashbook, which is an official document, signifies want of integrity on her part as she had the disposition to betray, cheat or defraud the government.^[9] Boncalon sought reconsideration, but to no avail. Thus, she appealed to the Court of Appeals.

In the Decision dated February 27, 2004, the Court of Appeals found Boncalon guilty of dishonesty under Section 23, Rule XIV of the Omnibus Rules on Civil Service. Citing the Cash Examination Manual, the Court of Appeals stressed that entries in the cashbook are the direct and personal responsibility of every cash accountable officer. And should they be duly permitted to be assisted by subordinates in case of heavy volume of work, the work of their subordinates still remains under their close and strict supervision. The Court of Appeals also emphasized that when Boncalon certified under oath that she "produced all her cash, treasury, warrants, checks, money orders, cash items, paid vouchers, unused accountable forms, etc. to the Auditor/Examiner on November 25, 1997," she cannot later claim that she simply failed to notice the bundles of money in her safe.^[10] The *fallo* of the decision reads,

WHEREFORE, the instant petition is hereby **DENIED**. Accordingly, the finding of the Office of the Ombudsman holding petitioner guilty of dishonesty and meting the penalty of dismissal from government service with forfeiture of all benefits and perpetual disqualification of holding public office is hereby **AFFIRMED**.

SO ORDERED.^[11]

Aggrieved, Boncalon filed this petition contending that:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING PETITIONER'S DISMISSAL FROM THE SERVICE WITH FORFEITURE OF ALL BENEFITS AND PERPETUAL DISQUALIFICATION TO HOLD PUBLIC OFFICE ALTHOUGH THE OMBUDSMAN HAS NO POWER TO DISMISS PUBLIC OFFICIALS AND EMPLOYEES;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING PETITIONER'S DISMISSAL FROM THE SERVICE, DESPITE THE FACT THAT SHE HAS NOT INCURRED ANY SHORTAGE; THAT SHE HAS BEEN CLEARED OF MONEY AND PROPERTY ACCOUNTABILITY; THAT SHE HAS ACCOUNTED THE FUNDS IN HER CUSTODY AND NO DAMAGE HAS BEEN CAUSED TO THE CITY OF BAGO; and

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING

PETITIONER'S DISMISSAL FROM THE SERVICE DESPITE THE ABSENCE OF PROOF BUT RELIANCE MERELY ON PRESUMPTIONS, CONJECTURES AND INFERENCES THAT ARE MISTAKEN.^[12]

Essentially, the issues for resolution are: (1) Did the Court of Appeals err in upholding Boncalon's dismissal from service on the ground of dishonesty? and (2) Is the Ombudsman empowered to dismiss public officials and employees in administrative cases?

Petitioner contends that the alleged shortage was already accounted for in the November 25, 1997 and December 22, 1997 bank deposits. She explains that the late deposits of the said amounts were due to her failure to notice the same in her safe, as they were in bundles. She also argues that the posting of entries in her cashbook was already delegated to her subordinates due to her multifarious duties and functions as Cashier IV. As such, the entry of deposit dated October 31, 1997 may only have been an unintended mistake of her subordinates, considering that it was the last day of the month and holiday season followed.

She further avers that for liability to attach, notice and demand must be made upon her to afford her due process, but to the contrary, the state auditor informed her only on October 1, 1998 or more than ten months after the audit, and after she had gone on an approved leave of absence wherein she was cleared of money and property accountability and paid the money value of said leave. Invoking *Madarang v. Sandiganbayan*,^[13] she finally contends that mere absence of funds is not sufficient proof of conversion, nor is her mere failure to turn over the funds at any given time sufficient to make a *prima facie* case, for conversion must be affirmatively proved, either by direct evidence or by the production of facts from which conversion necessarily follows.

The Office of the Solicitor General (OSG), for respondent Office of the Ombudsman (Visayas), maintains that the Court of Appeals did not err in upholding Boncalon's dismissal because the cash shortage and false entry of deposit remained undisputed. Even assuming that it was her subordinates who posted the said entry in her cashbook, still, she should have taken the necessary precautions to verify the truthfulness of each entry therein. But she did not. Thus, her explanation, that she overlooked the P819,535.21 inside her safe as they were in bundles, was purely an alibi, too flimsy to accept.

After a judicious evaluation of the submissions and pieces of evidence of both parties, we are in agreement that petitioner is, indeed, guilty of dishonesty.

First, this Court finds no basis for Boncalon's protestations that she was deprived of due process of law merely because the state auditor belatedly notified her of the alleged cash shortage. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.^[14] Here, we take note that Boncalon was given every opportunity to explain her side in her letters to the state auditor dated October 5, 1998,^[15] October 19, 1998^[16] and December 10, 1998.^[17] She was further heard in person during investigation by the graft investigating officer, as well as by the Director of the Office of the Ombudsman (Visayas), and she was able to participate in all the stages of the

administrative proceedings. Despite all these, she could not justify the averred cash shortage as of November 25, 1997.

The Court acknowledges that indeed, as claimed by petitioner, when auditor Arabelo made her demand on October 2, 1998 upon the petitioner to reconstitute P1,023,829.56^[18] the same had already been settled and as of the said date the discrepancies found in connection with the November 25, 1997 audit had already been ironed out. Considering that the demand was made at the time when the amounts had already been produced, then the *prima facie* evidence that missing funds were put to personal use, which presumption Article 217 of the Revised Penal Code supplies *in connection with the felony of malversation*, did not arise. *But* the absence of the said *prima facie* evidence does not necessarily equate to an absence of administrative liability on the part of petitioner.

It is undisputed that: 1) Petitioner had the duty to deposit in the bank the amount of P1,019,535.21 by October 31, 1997; 2) Such amount was not deposited on October 31, 1997; 3) The entry in petitioner's cashbook of a deposit on October 31, 1997 in the amount of P1,019,535.21 is false; 4) The amount was deposited in two tranches - P200,000 on November 25, 1997 and P819,535.21 on December 22, 1997. These circumstances starkly speak of an irregularity that calls for an explanation on the part of the responsible officer.

Petitioner wants to pass off the matter as an innocent error on her part. Her explanation however fails to convince us that the subject entry was an honest mistake or innocuous error. Her claim that the cash of P819,535.21 was in the safe when the audit was conducted on November 25, 1997, is contradicted by her certification that she produced all her cash items, which amounted to only P47,106.14 in total, before the state auditor on the said date. Also, her claim of having overlooked the bundles of money that were just sitting in her safe is far too incredible to believe. Evidence, to be worthy of credit, must not only proceed from the mouth of a credible witness but must be credible in itself. Stated otherwise, it must be natural, reasonable and probable as to make it easy to believe.^[19] There is no test of the truth of human testimony except its conformity to human knowledge, observation, and experience, and that whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.^[20] In the instant case, the subject "overlooked" sum would comprise, at the very least, eight bundles of P1,000 peso bills plus other notes and coins. This stash is simply too bulky and noticeable to be overlooked, especially in the face of an ongoing audit and cash examination. It is more reasonable to believe the certification which states that the cash items at the time of the audit amounted to only P47,106.14.

Petitioner, by making or allowing the making of the subject false entry of deposit, made it appear that the money was already out of her possession and that it was already in the bank, when the truth was that the money was not yet in the bank and was actually unaccounted for. The fact that *undated* deposit slip/s were used to support the entry of deposit as of October 31, 1997 in the cashbook is already irregular. The undisputed and totally unexplained odd fact that the total amount was *split into two* deposits that were separately made *weeks after* the entire sum was supposed to have been deposited on a single day — October 31, 1997 — underscores the irregularity. Such acts when connected together paint a clear picture of deliberateness, not innocent error. The same manifests bad faith or, at

the very least, each of the said acts constitutes gross negligence amounting to bad faith. The circumstance that the entry of deposit on October 31, 1997 was never corrected to reflect the fact of non-deposit of the amount on that date and the fact of the corresponding deposits of P200,000 on November 25, 1997 and P819,535.21 on December 22, 1997 further underscores the conclusion that the matter was not an innocuous error.

Dishonesty is defined as "the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty."^[21] The unsatisfactorily explained **false entry** of deposit in the amount of P1,019,535.21 on October 31, 1997 clearly constitutes dishonesty.

Second, her justification that she did not prepare or post the said entry of deposit deserves scant consideration because it appears to be a mere feeble attempt to shift the blame to her subordinates. As explicitly provided in the Cash Examination Manual, entries in her cashbook are her personal and direct responsibility even in instances when she can delegate the task to a subordinate due to a heavy volume of work. Moreover, it is highly unacceptable for a public officer like petitioner to attribute the lack of diligence in work to the day of the month it was performed, *i.e.*, last day of the month and the fact that holiday season followed. Due diligence at work should be observed at all times.

Third, her liability cannot be mitigated, much less can she be exonerated, because no pecuniary damage was allegedly incurred by the government on account of the late deposits of the public money in the depository bank. As a cash-accountable officer, her duty is to immediately deposit the various funds she received with the authorized government depositories. This duty is clearly set out in Commission on Audit Circular No. 91-368^[22] which states:

Sec. 465. Deposit of Collections. - The treasurer/cashier shall deposit intact all his collections as well as all collections turned over to him by the collectors/tellers with the authorized depository bank daily or not later than the next banking day. He shall summarize the collections and deposits accomplishing the Cashier/Treasurer's Report of Daily Collections and Deposits (CTRD CD), Prov. Form No. 213(a) in three copies. The original and duplicate, together with the original and duplicate copies of the DSCAF's and the deposit slips and the duplicates of official receipts, shall be submitted daily to the accountant. The third copies of the CTRD CD and the DSCAFs shall be retained by the treasurer/cashier.

In the case of municipalities where travel time to the depository bank is more than one day, deposit of collections shall be made at least once a week, or as soon as the collections reach P10,000.

Clearly, petitioner is not supposed to keep funds in her custody for longer than a week. A failure to make a timely turnover of the cash received by her constitutes, not just gross negligence in the performance of her duty, but gross dishonesty, if not malversation.^[23]

Lastly, *Madarang* cannot be considered as precedent in the case at bar because the former is a criminal case for malversation while the instant case is an administrative