

## FIRST DIVISION

[ G.R. NO. 149102, February 15, 2007 ]

### OFFICE OF THE OMBUDSMAN, PETITIONER, VS. JOHNNY ALANO, RESPONDENT.

### D E C I S I O N

#### SANDOVAL-GUTIERREZ, J.:

For our resolution is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated April 30, 2001 and Resolution<sup>[3]</sup> dated July 18, 2001 of the Court of Appeals in CA-G.R. SP No. 54967, entitled "Johnny Alano v. Fact-Finding and Intelligence Bureau (Office of the Ombudsman), represented by Director Agapito B. Rosales."

The facts, as found by the Court of Appeals, disclose that Johnny Alano, respondent herein, is a train engineer of the Philippine National Railways (PNR). On August 22, 1996, at past 6:00 o'clock in the morning, he was steering a PNR train along the South Superhighway PNR railway, Makati City. Upon reaching the Magallanes Interchange (underneath the overpass), the train rammed the rear portion of a school bus driven by Clemente Alfaro, then crossing the railroad tract. As a result of the incident, Aaron John L. Zarate, one of the students on board the school bus, died, while some of his co-passengers sustained injuries.

On October 29, 1996, Atty. Jeffrey-John L. Zarate, brother of the deceased student, wrote a letter-complaint to the Office of the Ombudsman, petitioner herein, charging the "officers and employees of the PNR responsible for the accident." Petitioner endorsed the letter to its Fact-Finding and Intelligence Bureau (FFIB) which conducted an investigation. Thereafter, the FFIB filed with the Administrative Adjudication Bureau (AAB), also under the office of petitioner, an administrative complaint against respondent and Jose Dado, PNR General Manager, and Bonaparte C. Roque, PNR Manager, Train and Station Department, docketed as OMB-ADM-0-97-0605. The three were charged with gross neglect of duty, inefficiency, and incompetence in the performance of official duties for having failed to take the necessary precautionary measures in preventing accidents of such nature.

Upon recommendation of the AAB, then Ombudsman Aniano A. Desierto, in a Resolution<sup>[4]</sup> dated August 14, 1998, **exonerated** all respondents and **dismissed** the administrative complaint against them. He found that the accident was not due to respondents' negligence; that the place of the accident was not intended for public use, particularly by motorists; and that complainant Atty. Jeffrey-John Zarate himself, in his statement given to SPO2 Mario Ocampo on August 22, 1996, blamed the school bus driver for being negligent as the latter should not have traversed the area where the accident took place. The Ombudsman then concluded that "complainant miserably failed to prove that the cause of the accident was attributable to the alleged negligence, incompetence and inefficiency of the respondents."

This prompted Atty. Zarate to file a motion for reconsideration. In his Order<sup>[5]</sup> dated March 17, 1999, then Ombudsman Aniano Desierto **modified** his August 14, 1998 Resolution in the sense that, **while maintaining his finding that the accident was caused by the negligence of the school bus driver**, respondent should nonetheless be held guilty of "misconduct" for "failing to stop the train immediately after the collision to render assistance to the victims." Thus, respondent was meted the penalty of suspension from the service for 6 months without pay.

Respondent filed a motion for reconsideration but it was denied in an Order dated August 12, 1999.

Aggrieved, respondent filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended, docketed as CA-G.R. SP No. 54967. In its Decision dated April 30, 2001, the appellate court granted the petition and nullified petitioner's Orders of March 17 and August 12, 1999 suspending respondent for 6 months for misconduct. It held that petitioner's Resolution dated August 14, 1998, **exonerating** respondent of the administrative charge, is **final** and **unappealable**, hence, can no longer be modified or reversed, pursuant to Section 7, Rule III of Administrative Order No. 07 issued by the Ombudsman.

Petitioner's motion for reconsideration was likewise denied by the Court of Appeals in its Resolution dated July 18, 2001.

Hence, the instant petition for review on *certiorari*.

Petitioner contends that the Court of Appeals erred in annulling then Ombudsman Desierto's Orders of March 17 and August 12, 1999 modifying his Resolution of August 14, 1998 exonerating respondent, considering that Section 7, Rule III of Administrative Order No. 07 allows the filing of a motion for reconsideration of the Ombudsman's decision or resolution dismissing an administrative case.

On the other hand, respondent, in his comment, prays that the petition be dismissed for being unmeritorious.

The petition lacks merit.

Section 13(8), Article XI of the 1987 Constitution empowers the Office of the Ombudsman to, among others, "promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law." Pursuant to such constitutional authority vested in the Office of the Ombudsman to promulgate its rules of procedure, Administrative Order No. 07 (otherwise known as the "Rules of Procedure of the Office of the Ombudsman") dated April 10, 1990 was issued. Section 7, Rule III thereof provides:

SEC. 7. *Finality of decision.* – Where the respondent is **absolved** of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision **shall be final and unappealable. In all other cases**, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent,