

## THIRD DIVISION

[ G.R. NO. 154243, March 06, 2007 ]

**DEPUTY DIRECTOR GENERAL ROBERTO LASTIMOSO, ACTING CHIEF PHILIPPINE NATIONAL POLICE (PNP), DIRECTORATE FOR PERSONNEL AND RECORDS MANAGEMENT (DPRM), INSPECTOR GENERAL, P/CHIEF SUPT. RAMSEY OCAMPO AND P/SUPT. ELMER REJANO, PETITIONERS, VS. P/SENIOR INSPECTOR JOSE J. ASAYO, RESPONDENT.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

This resolves the Petition for Review on *Certiorari* assailing the Resolutions dated March 8, 2002<sup>[1]</sup> and July 4, 2002,<sup>[2]</sup> respectively, issued by the Court of Appeals (CA).

The antecedent facts, as gathered from the records, are as follows.

Sometime in 1997, a certain Delia Buño (Buño) filed with the Office of the Inspector General of the PNP an administrative complaint for abuse of authority/harassment against P/Senior Inspector Jose J. Asayo (respondent). The latter allegedly obstructed police officers from arresting his brother Lamberto Asayo, one of the suspects in the shooting of Buño's son.

The complaint was referred to the Inspector General for pre-charge investigation. When summoned, respondent did not appear but filed a motion to dismiss, arguing that it was the People's Law Enforcement Board (PLEB) which had jurisdiction over the case.

On September 23, 1998, the Inspector General submitted a report to the PNP Chief recommending the commencement of summary dismissal proceedings against respondent. Upon approval of said recommendation, the administrative complaint was referred to the PNP Legal Service for summary hearing. At the hearing before the designated summary hearing officer, respondent was furnished with copies of the pre-charge investigation report of the Inspector General and the affidavits of Buño and her witnesses. Thereafter, respondent submitted his counter-affidavit and a rejoinder. Respondent was asked by the hearing officer if he wanted to cross-examine Buño and her witnesses but he declined and instead agreed to submit the case for resolution based on the pleadings.

On December 28, 1998, the hearing officer recommended that respondent be dismissed from police service for grave misconduct. On January 22, 1999, the PNP Chief, then Deputy Director General Roberto Lastimoso, rendered a decision dismissing respondent from police service. Respondent filed a motion for reconsideration of the PNP Chief's Decision but withdrew the same and instead filed

a petition for certiorari and prohibition, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction with the Regional Trial Court of Manila (RTC).

On August 27, 1999, the RTC rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the subject petition of petitioner Asayo is GRANTED. The assailed decision of the public respondents dated 22 January 1999 (Exhibit J) is annulled and set aside for having been rendered with grave abuse of discretion amounting to lack and or excess of jurisdiction. Consequently, public respondents, their subordinates, agents, representatives and successors are permanently enjoined from enforcing or causing the execution in any manner of the aforesaid decision against herein petitioner Jose J. Asayo.

Pursuant to Section 9 of Rule 65, a certified true copy of this decision should be served by personal service on the public and private respondents, on the Office of the Solicitor General and on the counsel for the petitioner.<sup>[3]</sup>

Herein petitioners then appealed the case to the CA. On August 17, 2001, the CA promulgated its Decision<sup>[4]</sup> nullifying the RTC Decision and holding that (1) the PNP Chief had jurisdiction to try the civilian complaint filed against respondent; and, (2) respondent's failure to exhaust the administrative remedy of filing an appeal with the National Appellate Board was fatal to his cause. Respondent moved for reconsideration thereof.

On March 8, 2002, the CA issued the herein assailed Resolution reversing its Decision. The CA ruled that since the offense charged is punishable by dismissal, then it was the PLEB which had jurisdiction over the case. The CA further held that the principle of exhaustion of administrative remedies was not applicable to the case since the issue involved was purely legal in nature. The RTC Decision was then affirmed. The CA denied petitioners' motion for reconsideration per its Resolution dated July 4, 2002.

Hence, herein petition to set aside the aforementioned CA Resolutions on the following grounds:

## I

RESPONDENT FAILED TO EXHAUST ALL THE AVAILABLE ADMINISTRATIVE REMEDIES PRIOR TO THE FILING OF HIS PETITION BEFORE THE COURT A QUO.

## II

THE CHIEF OF THE PHILIPPINE NATIONAL POLICE HAS THE AUTHORITY OR JURISDICTION UNDER REPUBLIC ACT NO. 6975 TO HEAR AND TRY THE CITIZEN'S COMPLAINT AGAINST RESPONDENT.<sup>[5]</sup>

With regard to the first issue, the respondent rightfully invoked the jurisdiction of the courts without first going through all the administrative remedies because the principle of exhaustion of administrative remedies admits of exceptions, such as when the issue involved is a purely legal question.<sup>[6]</sup> The only issue presented by respondent in his petition for *certiorari* and prohibition before the RTC was whether or not the PNP Chief had jurisdiction to take cognizance of the complaint filed by a private citizen against him. Said issue being a purely legal one, the principle of exhaustion of administrative remedies did not apply to the case.

However, as to the question of whether the PNP Chief had jurisdiction to act on a private citizen's complaint against respondent, the Court finds merit in petitioners' position.

The Court has previously ruled on this issue in *Quiambao v. Court of Appeals*,<sup>[7]</sup> to wit:

Republic Act (R.A.) No. 6975 or the Department of the Interior and Local Government Act of 1990, which took effect on 1 January 1991, x x x delineates the procedural framework in pursuing administrative complaints against erring members of the police organization. Section 41 of the law enumerates the authorities to which a complaint against an erring member of the PNP may be filed, thus;

Section 41. (a) *Citizen's Complaints*. - Any complaint by an individual person against any member of the PNP shall be brought before the following:

(1) Chiefs of police, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period not exceeding fifteen (15) days;

(2) Mayors of cities or municipalities, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period of not less than sixteen (16) days but not exceeding thirty (30) days;

(3) **People's Law Enforcement Board**, as created under Section 43 hereof, where the offense is punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding thirty (30) days; or **by dismissal**. . . . (Emphasis added)

It is readily apparent that a complaint against a PNP member which would warrant dismissal from service is within the jurisdiction of the PLEB. However, Section 41 should be read in conjunction with Section 42 of the same statute which reads, thus:

Sec. 42. *Summary Dismissal Powers of the PNP Chief and Regional Directors.* - The **Chief of the PNP and regional directors**, after due notice and summary hearings, may immediately remove or dismiss **any** respondent PNP member in any of the following cases:

- (a) When the charge is serious and the evidence of guilt is strong;
- (b) When the respondent is a recidivist or has been repeatedly charged and there are reasonable grounds to believe that he is guilty of the charges; and
- (c ) When the respondent is guilty of conduct unbecoming of a police officer. (Emphasis ours)

Evidently, the PNP Chief and regional directors are vested with the power to summarily dismiss erring PNP members if any of the causes for summary dismissal enumerated in Section 42 is attendant. Thus, the power to dismiss PNP members is not only the prerogative of PLEB but concurrently exercised by the PNP Chief and regional directors. This shared power is likewise evident in Section 45.

SEC. 45. *Finality of Disciplinary Action.* - The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, **That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service** may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, **That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof:** *Provided, furthermore,* That the regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: *Provided, finally,* That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary. (Emphasis ours)

Once a complaint is filed with any of the disciplining authorities under R.A. No. 6975, the latter shall acquire exclusive original jurisdiction over the case although other disciplining authority has concurrent jurisdiction over the case. Paragraph (c) of Section 41 explicitly declares this point.

(c) *Exclusive Jurisdiction* - **A complaint or a charge filed against a PNP member shall be heard and decided exclusively by the disciplining authority who has acquired original jurisdiction over the case and notwithstanding the existence of concurrent jurisdiction**