

## **EN BANC**

**[ G.R. NO. 158672, August 07, 2007 ]**

**COMMISSION ON AUDIT, REGIONAL OFFICE NO. 13, BUTUAN CITY, PETITIONER, VS. AGAPITO A. HINAMPAS AND EMMANUEL J. CABANOS, RESPONDENTS;**

**OFFICE OF THE OMBUDSMAN, PETITIONER-INTERVENOR.**

**[G.R. NO. 160410]**

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ROGELIO P. MONTEALTO, RESPONDENT.**

**[G.R. NO. 160605]**

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. VIRGILIO DANA, RESPONDENT.**

**[G.R. NO. 160627]**

**ROSELLER ROJAS, PETITIONER, VS. VIRGILIO DANA, RESPONDENT.**

**[G.R. NO. 161099]**

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. SONIA GONZALES-DELA CERNA AND MILAGROS UMALI-VENTURA, RESPONDENTS.**

## **D E C I S I O N**

**GARCIA, J.:**

Cast against different factual backdrops but raising a common issue relative to the nature of the administrative disciplinary power of the Office of the Ombudsman (OOMB) are these five (5) consolidated petitions for review assailing the decisions of the Court of Appeals (CA) which overturned the Ombudsman's actions on the premise that the Ombudsman's administrative disciplinary power is merely recommendatory.

More particularly, the consolidated petitions assail and seek to set aside the following issuances of the CA in the different proceedings brought before it and whence the corresponding consolidated petitions herein sprung, to wit:

1. **IN G.R. NO. 158672:**

Decision<sup>[1]</sup> dated May 29, 2003 in *CA-G.R. SP No. 70137*, which reversed and set aside an earlier decision dated August 27, 2001 of the Ombudsman finding herein respondents Agapito A. Hinampas and Emmanuel J. Cabanos, among others, guilty of gross neglect of duty, grave misconduct and conduct prejudicial to the best interest of the service and meting on them the penalty of one year suspension from office without pay;

2. **IN G.R. NO. 160410:**

Decision<sup>[2]</sup> dated October 14, 2003 in *CA-G.R. SP No. 73991* reversing and setting aside the August 16, 2002 Memorandum Order of the OOMB which found respondent Rogelio P. Montealto, along with Nellie R. Apolonio, guilty of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service, and meted on them the penalty of dismissal from the service.

3. **IN G.R. NOS. 160605 & 160627:**

Decision<sup>[3]</sup> dated April 28, 2003 in *CA-G.R. SP No. 72790* reversing and setting aside the September 19, 2001 decision of the Ombudsman which found respondent Virgilio M. Danao guilty of dishonesty and imposed upon him the penalty of dismissal from the service; and

4. **IN G.R. NO. 161099:**

Decision<sup>[4]</sup> dated December 3, 2003 in *CA-G.R. SP No. 74222* reversing and setting aside the Ombudsman's modified decision of April 17, 2001 which found respondents Sonia Gonzales-Dela Cerna and Milagros Umali-Ventura guilty of simple neglect of duty and meted upon them the penalty of one month suspension

As culled from the records, the respective facts of each of the consolidated petitions are as follows:

**Re: G.R. No. 158672 -**

On September 21, 1998, a certain Teodoro A. Gapuzan filed a letter-complaint with the OOMB alleging anomalies in the conduct of public biddings by the Office of the District Engineer, First Engineering District of Agusan del Sur, and the collusion of licensed private contractor Engr. Rafael A. Candol, representing JTC Development, Construction and Supply and NBS Construction under a joint venture agreement. The letter-complaint alleged that, despite these firms being holders of ***small*** licenses entitled only to projects costing not more than three million pesos (P3,000,000.00) on a single undertaking, Engr. Candol was awarded seven (7) projects of more than P3,000,000.00 each, to wit:

- |   |                |
|---|----------------|
| 1. Construction of Bunawan Bridge,<br>Phase IV, Bunawan | P13,000,000.00 |
| 2. Construction of Bunawan Bridge,                      | P13,000,000.00 |

Phase V, Bunawan

3. Construction of Concrete Pavement and Approach, Bunawan Bridge	P7,000,000.00
4. Improvement of Agusan-Davao Road (Tabon-Tabok-Wawa Section)	P8,617, 890.60
5. Improvement of Agusan-Davao Road (Bahbah-Patinay Section)	P8,618,054.77
6. Improvement of Agusan-Davao Road (Sianib-Awa Section)	P9,072,998.54
7. Improvement of Agusan-Davao Road (Noli-Panaytay Section)	P9,097,999.47

The Ombudsman endorsed the aforesaid letter-complaint to the Commission on Audit (COA), Region XII, Caraga Administrative Region, Butuan City, for an audit investigation. The resultant special audit report recommended the filing of criminal charges against Engr. Candol and the members of the Agusan del Sur 1<sup>st</sup> Engineering District Pre-Qualification, Bids and Awards Committee (PBAC), as well as the institution of administrative charges against the same PBAC members, for negligence and failure to properly validate the veracity/authenticity of the documents submitted in the pre-qualification process of JTC and NBS, resulting in the award of seven (7) projects to unqualified contractors.

A verification with the Philippine Contractors Accreditation Board (PCAB) of the licenses submitted by JTC and NBS revealed that the PCAB file did not reconcile with those submitted to the PBAC, particularly on the category/GP size range. The actual category/GP size range of JTC/NBS is C/Small B while the copy submitted to the PBAC included Medium A in addition to the C/Small B category. Under Presidential Decree (PD) No. 1594, contractors with category/GP size range of C/Small B are allowed to undertake projects costing not more than P3,000,000.00.

In a Resolution dated November 25, 1999, the Ombudsman found sufficient evidence to warrant the filing of criminal cases against Engr. Candol, PBAC members Agapito Hinampas, Lilia P. Baskinas, Emmanuel Cabanos, Roberto Salise, and the Chairman of the PBAC Technical Staff, Gloria Razo. It is the technical staff's duty to assist the PBAC in reviewing and evaluating pre-qualification requirements of contractors and in checking and evaluating bid proposals.

In the same resolution, the Ombudsman likewise directed the filing of an administrative case against the PBAC members and Gloria Razo for grave misconduct, gross neglect of duty and conduct prejudicial to the best interest of the service for awarding public work contracts without actually verifying and validating the special contractors' licenses resulting in the contracts being awarded to an unqualified contractor. The case was docketed as OMB-MIN-ADM-00-032. After the submission of counter-affidavits and the requisite preliminary conference, the parties presented their evidence in formal hearings. The case was then submitted for decision.

In a decision of August 27, 2000, the Ombudsman disposed as follows:

WHEREFORE, premises considered, this Office finds respondents Agapito A. Hinampas, Lilia P. Baskinas, Emmanuel J. Cabanos, Roberto C. Salise, and Gloria T. Razo, GUILTY of gross neglect of duty, grave misconduct

and conduct prejudicial to the best interest of the service and are hereby meted the penalty of SUSPENSION from office for one (1) year without pay, effective upon the finality hereof.

Their motions for reconsideration having been denied by the Ombudsman, respondents filed their appeal with the CA whereat their appellate recourse was docketed as *CA-G.R. SP No. 70137*. In its decision of May 29, 2003, the 8<sup>th</sup> Division of the CA reversed that of the Ombudsman on the following grounds:

1. The Ombudsman cannot implement its decisions in administrative disciplinary cases pursuant to the obiter dictum in *Tapiador v. Office of the Ombudsman, et al.*;[5]
2. Since the allegedly same case had already been earlier resolved and disposed of by the DPWH, *res judicata* bars the OOMB from exercising its administrative disciplinary authority thereon; and
3. The reliance in good faith on the documents submitted to the respondents by the contractors, coupled with lack of undue injury to the government, cannot give rise to administrative liability.

Respondent Gloria Razo had appealed earlier than the other respondents from the same Ombudsman decision. This was docketed as *CA-G.R. SP No. 70137*. Later, the 5<sup>th</sup> Division of the CA took a stand contrary to that of the 8<sup>th</sup> Division and denied her appeal, in effect sustaining the decision dated August 27, 2000 of the Ombudsman.

Meanwhile, the COA had brought the CA's 8<sup>th</sup> Division decision for review to this Court in **G.R. No. 158672**.

**Re: G.R. No. 160410 -**

On August 24, 2001, Nicasio I. Marte filed with the OOMB a complaint charging Dr. Nellie R. Apolonio and Rogelio P. Montealto, both officers of the National Book Development Board (NBDB), with Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interests of the Service.

In his complaint, Marte alleged that Montealto wrote a letter to Apolonio requesting that a cash advance in the amount of P88,000.00 be issued in Apolonio's name to "cover the cost of supplies and materials, food and other miscellaneous expenses" for an upcoming Team Building Workshop for NBDB employees. As requested, Apolonio secured a cash advance in her name, and, in due course, Check No. 19595 for P88,000.00 was issued. Apolonio encashed the check and used P80,200.00 to purchase gift checks from SM North Edsa. The gift checks were then distributed to the members of the NBDB Secretariat who attended the seminar workshop.

An administrative inquiry was conducted. In defending her actions, Apolonio stated that:

[B]ecause of the clamor of the participants of the said workshop seminar who are all NBDB employees not to consume all by themselves the

budget, they requested that they be allowed instead to share them with their respective families during the Christmas season.

Montealto, on the other hand, argued that his only participation was to make a request authorizing the granting of a cash advance in the name of Apolonio, without malice nor intent to defraud the government. He denied having participated in the processing, release and use of the funds.

In a Memorandum Order dated August 16, 2002, which modified its decision dated April 3, 2003, the OOMB found Apolonio and Montealto to have "misapplied the amount of P88,000 for their own benefit and of others who participated in the said seminar workshop," and stated the observation that "it has become apparent that their respective fiscal responsibilities were not observed." It then adjudged Apolonio and Montealto guilty of dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service, and meted on them the penalty of dismissal from service.

On appeal to the CA in *CA-G.R. SP No. 73991*, that court, as in previous cases, found the OOMB to be without authority to directly dismiss government employees from public service, relying, as basis therefor, on the so-called *Tapiador* doctrine, to wit:

x x x Besides, assuming *arguendo*, that petitioners were administratively liable, the Ombudsman has no authority to directly dismiss the petitioners from the government service, more particularly from thier 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.<sup>[6]</sup>

**Re: G.R. Nos. 160605 and 160627 -**

Roseller A. Rojas, a Special Agent I of the Bureau of Customs-Enforcement and Security Service (BOC-ESS), filed a complaint with the OOMB against his superior, herein respondent Virgilio M. Danao (Director III) for Dishonesty. The complaint alleged that respondent Danao had falsely made it appear in his personal data sheets (PDS) that he is a 1972 graduate of the Manila Central University (MCU) with a course in Bachelor of Science in Business Administration (BSBA).

By way of proof, complainant Rojas submitted a Certification issued by MCU stating that per its records, there is no graduate of BSBA for the year 1972 by the name of Virgilio M. Danao. Rojas also presented copies of the PDS prepared and submitted to the Bureau of Customs (BOC) whereon it is stated that Danao had graduated with a degree in BSBA from MCU in 1972.

After due proceedings, the Ombudsman found Danao guilty of dishonesty and meted on him the penalty of dismissal from service.

The implementation of the aforesaid decision was then sought through the BOC per the Ombudsman's Implementing Order of October 1, 2001. The desired implementation, however, was temporarily stayed upon Danao's filing of his motion for reconsideration, which the OOMB eventually denied.