

## SECOND DIVISION

[ G.R. NO. 146137, June 08, 2005 ]

**HAYDEE C. CASIMIRO, IN HER CAPACITY AS MUNICIPAL ASSESSOR OF SAN JOSE, ROMBLON, PROVINCE OF ROMBLON, PETITIONER, VS. FILIPINO T. TANDOG, IN HIS CAPACITY AS THE MUNICIPAL MAYOR OF SAN JOSE, ROMBLON, RESPONDENT.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> dated 31 May 2000 of the Court of Appeals and its Resolution dated 21 November 2000 in CA-G.R. SP No. 46952, which affirmed *in toto* Civil Service Commission (CSC) Resolution No. 973602 dated 12 August 1997. The said CSC Resolution affirmed the Decision of Municipal Mayor Filipino Tandog of San Jose, Romblon, finding petitioner Haydee Casimiro guilty of dishonesty and ordering her dismissal 3from the service.

The relevant antecedents of the instant petition are as follows:

Petitioner Haydee Casimiro began her service in the government as assessment clerk in the Office of the Treasurer of San Jose, Romblon. In August 1983, she was appointed Municipal Assessor.

On 04 September 1996, Administrative Officer II Nelson M. Andres, submitted a report<sup>[2]</sup> based on an investigation he conducted into alleged irregularities in the office of petitioner Casimero. The report spoke of an anomalous cancellation of Tax Declarations No. 0236 in the name of Teodulo Matillano and the issuance of a new one in the name of petitioner's brother Ulysses Cawaling and Tax Declarations No. 0380 and No. 0376 in the name of Antipas San Sebastian and the issuance of new ones in favor of petitioner's brother-in-law Marcelo Molina.

Immediately thereafter, respondent Mayor Tandog issued Memorandum Order No. 13<sup>[3]</sup> dated 06 September 1996, placing the petitioner under preventive suspension for thirty (30) days. Three (3) days later, Mayor Tandog issued Memorandum Order No. 15, directing petitioner to answer the charge of irregularities in her office. In her answer,<sup>[4]</sup> petitioner denied the alleged irregularities claiming, in essence, that the cancellation of the tax declaration in favor of her brother Ulysses Cawaling was done prior to her assumption to office as municipal assessor, and that she issued new tax declarations in favor of her brother-in-law Marcelo Molina by virtue of a deed of sale executed by Antipas San Sebastian in Molina's favor.

On 23 October 1996, thru Memorandum Order No. 17,<sup>[5]</sup> respondent Mayor extended petitioner's preventive suspension for another thirty (30) days effective 24 October 1996 to give him more time to verify and collate evidence relative to the

alleged irregularities.

On 28 October 1996, Memorandum Order No. 18<sup>[6]</sup> was issued by respondent Mayor directing petitioner to answer in writing the affidavit-complaint of Noraida San Sebastian Cesar and Teodulo Matillano. Noraida San Sebastian Cesar<sup>[7]</sup> alleged that Tax Declarations No. 0380 and No. 0376 covering parcels of land owned by her parents were transferred in the name of a certain Marcelo Molina, petitioner's brother-in-law, without the necessary documents. Noraida Cesar further claimed that Marcelo Molina had not yet paid the full purchase price of the land covered by the said Tax Declarations. For his part, Teodulo Matillano claimed<sup>[8]</sup> that he never executed a deed of absolute sale over the parcel of land covered by Tax Declaration No. 0236 in favor of Ulysses Cawaling, petitioner's brother.

In response to Memorandum Order No. 18, petitioner submitted a letter<sup>[9]</sup> dated 29 October 1996, stating that with respect to the complaint of Noraida San Sebastian Cesar, she had already explained her side in the letter dated 26 September 1996. As to the complaint of Teodulo Matillano, she alleged that it was a certain Lilia Barrientos who executed a deed of absolute sale over the parcel of land subject of the complaint in favor of her brother, Ulysses Cawaling.

Not satisfied, respondent Mayor created a fact-finding committee to investigate the matter. After a series of hearings, the committee, on 22 November 1996, submitted its report<sup>[10]</sup> recommending petitioner's separation from service, the dispositive portion of which reads:

Evaluating the facts above portrayed, it is clearly shown that Municipal Assessor Haydee Casimero is guilty of malperformance of duty and gross dishonesty to the prejudice of the taxpayers of San Jose, Romblon who are making possible the payments of her salary and other allowances. Consequently, we are unanimously recommending her separation from service.

Based on the above recommendation, respondent Mayor issued Administrative Order No. 1<sup>[11]</sup> dated 25 November 1996 dismissing petitioner, thus:

Upon unanimous recommendations of the fact finding committee Chairmained (sic) by Municipal Administrator Nelson M. Andres, finding you (Haydee C. Casimero) guilty of Dishonesty and Malperformance of duty as Municipal Assessor of San Jose, Romblon, copy of which is hereto attached as Annex "A" and made as integral part hereof, you are hereby ordered separated from service as Municipal Assessor of San Jose, Romblon, effective upon request hereof.

Undeterred by that setback, petitioner appealed to the CSC, which affirmed<sup>[12]</sup> respondent Mayor's order of dismissal. A motion for reconsideration<sup>[13]</sup> was filed, but the same was denied.<sup>[14]</sup>

Dissatisfied, petitioner elevated her case to the Court of Appeals, which subsequently affirmed the CSC decision.<sup>[15]</sup> Her motion for reconsideration was likewise denied.

Petitioner now comes to us raising the lone issue<sup>[16]</sup> of whether or not petitioner was afforded procedural and substantive due process when she was terminated from her employment as Municipal Assessor of San Jose, Romblon. An underpinning query is: Was petitioner afforded an impartial and fair treatment? She specifically points to bias and partiality on the members of the fact-finding committee. She avers that Lorna Tandog Vilasenor, a member of the fact-finding committee, is the sister of respondent Mayor. She further alludes that while the committee chairman, Nelson M. Andres, was appointed by the respondent Mayor to the position of Administrative Officer II only on 01 August 1996, no sooner was he given the chairmanship of the Committee. Further the affiants-complainants were not presented for cross examination.

We find the present petition bereft of merit.

The first clause of Section 1 of Article III of the Bill of Rights states that:

*SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, . . . .*

In order to fall within the aegis of this provision, two conditions must concur, namely, that there is deprivation of life, liberty and property and such deprivation is done without proper observance of due process. When one speaks of due process, however, a distinction must be made between matters of procedure and matters of substance.

In essence, procedural due process "refers to the method or manner by which the law is enforced."<sup>[17]</sup>

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.<sup>[18]</sup> 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.<sup>[19]</sup> "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>[20]</sup>

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.<sup>[21]</sup>

In the case at bar, what appears in the record is that a hearing was conducted on 01 October 1996, which petitioner attended and where she answered questions propounded by the members of the fact-finding committee. Records further show

that the petitioner was accorded every opportunity to present her side. She filed her answer to the formal charge against her. After a careful evaluation of evidence adduced, the committee rendered a decision, which was affirmed by the CSC and the Court of Appeals, upon a move to review the same by the petitioner. Indeed, she has even brought the matter to this Court for final adjudication.

Kinship alone does not establish bias and partiality.<sup>[22]</sup> Bias and partiality cannot be presumed. In administrative proceedings, no less than substantial proof is required.<sup>[23]</sup> Mere allegation is not equivalent to proof.<sup>[24]</sup> Mere suspicion of partiality is not enough. There should be hard evidence to prove it, as well as manifest showing of bias and partiality stemming from an extrajudicial source or some other basis.<sup>[25]</sup> Thus, in the case at bar, there must be convincing proof to show that the members of the fact-finding committee unjustifiably leaned in favor of one party over the other. In addition to palpable error that may be inferred from the decision itself, extrinsic evidence is required to establish bias.<sup>[26]</sup> The petitioner miserably failed to substantiate her allegations. In effect, the presumption of regularity in the performance of duty prevails.<sup>[27]</sup>

Neither are we persuaded by petitioner's argument that the affidavit is hearsay because the complainants were never presented for cross examination. In administrative proceedings, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense.<sup>[28]</sup>

Nothing on record shows that she asked for cross examination. In our view, petitioner cannot argue that she has been deprived of due process merely because no cross examination took place. Again, it is well to note that due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or given opportunity to move for a reconsideration of the action or ruling complained of. In the present case, the record clearly shows that petitioner not only filed her letter-answer, she also filed a motion for reconsideration of the recommendation of the committee dated 22 November 1996. The essence of due process in the administrative proceedings is an opportunity to explain one side or an opportunity to seek reconsideration of the action or ruling complained of.<sup>[29]</sup>

The Court finds far little basis to petitioner's protestations that she was deprived of due process of law and that the investigation conducted was far from impartial and fair.

As to the substantive due process, it is obvious to us that what petitioner means is that the assailed decision was not supported by competent and credible evidence.<sup>[30]</sup>

The law requires that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.<sup>[31]</sup>

Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action upon an employee. The standard of substantial evidence is