

THIRD DIVISION

[G.R. Nos. 154668, December 16, 2004]

**WILFRED A. NICOLAS, PETITIONER, VS. ANIANO A. DESIERTO,
RESPONDENT.**

DECISION

PANGANIBAN, J.:

True, the Supreme Court is not a trier of facts. Equally true, errors of facts are not cognizable in a petition for review under Rule 45. However, when the records clearly show a misapprehension of the facts by the lower court, the Supreme Court -- in the interest of speedy justice -- may resolve the factual issue. In the present case, the Office of the Ombudsman had no basis to hold petitioner administratively liable. As a public official, he cannot be expected to "personally examine every single detail, painstakingly trace every step from inception, and investigate the motive of every person involved in a transaction before affixing his signature as the final approving authority." Petitioner acted in good faith in relying on the records before him and on the recommendation of his subaltern.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the April 12, 2002 Decision^[2] and the July 25, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 64878. The challenged Decision disposed as follows:

"WHEREFORE, PREMISES CONSIDERED, the instant petition is hereby **DISMISSED.** The assailed decision dated July 4, 2000 and the April 3, 2001 Order of the respondent are **AFFIRMED IN TOTO.** Costs against the petitioner."^[4]

The assailed resolution denied petitioner's Motion for Reconsideration.

On the other hand, the affirmed Order of the Office of the Ombudsman (OMB) disposed as follows:

"WHEREFORE, PREMISES CONSIDERED, respondents **WILFRED NICOLAS** and **J. FRANCISCO ARRIOLA** are hereby found Guilty of **GROSS NEGLECT OF DUTY,** for which the penalty of **DISMISSAL FROM THE SERVICE, CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS** and **LEAVE CREDITS** and **DISQUALIFICATION FOR RE-INSTATEMENT OR RE-EMPLOYMENT IN THE GOVERNMENT SERVICE** is hereby imposed, pursuant to Section 10, Rule III of Administrative Order No. 7, in relation to Section 25 of Republic Act No. 6670.

"Respondents **EDWARD DELA CUESTA** and **ROGELIO HURTADO** are

hereby found **Guilty of Simple Neglect of Duty**, for which the penalty of **Suspension for Six (6) Months Without Pay** is hereby imposed, pursuant to Section 10, Rule III of Administrative Order No. 7, in relation to Section 25 of Republic Act No. 6770.

"Respondent **ALLAN PAGKALINAWAN** is hereby **ABSOLVED** of any administrative liability and the complaint against him is hereby **DISMISSED**.

"The Honorable x x x Secretary, Department of Finance, Manila and the Commissioner, Bureau of Customs, Manila, are hereby furnished a copy of this Decision, for their implementation, in accordance with law.

"SO RESOLVED."^[5]

The Facts

The facts are narrated by the CA as follows:

"On April 7, 1999, a 40-footer van declared to contain '*parts for rock crusher*' arrived at the Manila International Container Port (MICP) from Singapore on board vessel APL Lotus 0001. The subject cargo, which was supposed to be transshipped to Cagayan de Oro City was consigned to Macro Equipment Corporation with Catalysts Customs Brokerage as broker. It was issued a Boatnote No. 51723253 directing/authorizing the transfer of the said cargo from Manila International Container Port to north Harbor, Manila.

"Allan Pagkalinawan was assigned '*to remain on duty until the cargo is received by the Collector of Customs.*'

"Rogelio Hurtado of the office of the Port Collector, North Harbor, Manila, received the container van at the North Harbor Customs House, which was under the control of Edward dela Cuesta, Collector of Customs subport of North Harbor, Manila. Instead of being transshipped to Cagayan de Oro City, the van and its cargo was allowed to exit North harbor, Manila.

"On April 16, 1999, elements of Economic Intelligence and Investigation Bureau (EIIB) apprehended the shipment – [based on reliable information that duties and taxes of cargo contained therein were not properly paid^[6]] along Quirino Avenue, Paranaque City. On April 19, 1999, the [EIIB] turned over the container van and its cargo to the AFP Logistics Command at Camp Aguinaldo, Quezon City for safe keeping, and on the same date, respondent Wilfredo A. Nicolas [the Commissioner of the EIIB^[7]] issued Mission Order No. 04-10599 directing the inventory of the container van. It was only then when it was discovered that the cargo consisted of various electronics and communications equipment, appliances, parts, and accessories.

"On May 6, 1999, upon the recommendation of J. Francisco Arriola, then Chief of the EIIB's Special Operations group, petitioner Nicolas issued a

Notice of Withdrawal for the release of the subject shipment in favor of Trinity Brokerage, after payment of the necessary customs duties and other fees. However, it was discovered later that the documents presented in support of the release of the cargo were spurious.

"As a result thereof Ruben Frogoso filed a complaint against Wilfredo A. Nicolas, J. Francisco Arriola, Edward dela Cuesta, Rogelio Hurtado, and Allan Pagkalinawan before the office of the Ombudsman. Ruben Frogoso contend[ed] that the act[s] of x x x petitioner Nicolas and Arriola in releasing the cargo was irregular in view of the following reasons: (1) they failed to inform the Bureau of Customs of the apprehension of the cargo; (2) they failed to request the pertinent papers and documents relating to the shipment; and (3) they did not verify the authenticity of the documents relating to the payment of the customs duties.

"After finding that petitioner Nicolas Arriola and the other person[s] cited in the complaint appeared to be criminally and administratively liable, the Fact Finding and Intelligence Bureau (FFIB) Investigation Panel of the Office of the Ombudsman directed them to file their respective counter-affidavits to controvert the charge against them.

"Petitioner Nicolas contended in his counter-affidavit that he had no knowledge that the allege documents for the payment of cargo duties were spurious. He claimed good faith in releasing the subject cargo and that the documents did not show that the cargo in the container vans were parts for rock crusher. Petitioner Nicolas further claimed that he cannot be held liable for Gross Neglect of Duty and Dishonesty since the said offenses are incompatible with one another.

"A preliminary conference of the case was held on June 1, 2000 wherein dela Cuesta manifested in open proceedings to submit the case for resolution based on the evidence on record. On the other hand, Arriola, through his counsel, and Pagkalinawan and Hurtado requested for the [resetting] of the preliminary conference to June 16, 2000. However, petitioner Nicolas failed to appear at the preliminary conference.

"[Graft Investigation Officer II Joselito P. Fangon rendered a Decision dated July 4, 2000, which was duly approved by the ombudsman on February 9, 2001,] finding the petitioner guilty of Gross Neglect of duty. The petitioner moved for a reconsideration of the said decision but the same was denied by the respondent in its order dated April 3, 2001.

"Hence, [petitioner filed a Petition for review with the CA] alleging-

- I. that there was no valid notice to the petitioner, hence, he was denied x x x his constitutional right to due process; and
- II. that the continuation of the proceedings despite the abolition of Economic Intelligence and Investigation Bureau (EIIB) before the writing of the July 4, 2000 Decision and the approval thereof by the Ombudsman on February 9, 2001 [was] an aberration, if not a total absurdity."^[8]

Ruling of the Court of Appeals

The CA held that due process merely required an opportunity to be heard. This opportunity was accorded to petitioner upon his filing of his Motion for Reconsideration.^[9] Citing *Zarate v. Romanillos*,^[10] the appellate court further held that the jurisdiction of respondent over the person of petitioner was not lost by the mere fact that the latter's public office had subsequently been abolished.^[11]

Hence, this Petition.^[12]

The Issues

Petitioner raises the following issues for our consideration:

"I. The court of Appeals erred in affirming respondent Ombudsman's Decision notwithstanding lack of *substantial evidence* to support the finding of gross neglect of duty.

"II. The Court of Appeals erred in affirming the Decision of the ombudsman rendered against petitioner without the benefit of a preliminary conference required under the rules of procedure of the Office of the Ombudsman thus constituting a violation of petitioner's right to due process.

"III. The Court of Appeals erred in affirming the direct imposition of penalties on petitioner despite the ombudsman's lack of jurisdiction to do so.^[13]

For clarity, the second issue will be discussed first.

The Court's Ruling

The Petition is meritorious.

First Issue:

Notice of Preliminary Conference

The cardinal requirements of due process in administrative proceedings were highlighted in *Ang Tibay v. Court of Industrial Relations* thus:^[14] (1) there must be a right to a hearing, which includes the right to present one's case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) the evidence must be substantial; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body or any of its judges must act on its own independent consideration of the law and the facts of the controversy, and not simply accept the views of a subordinate; (7) the board or body should, in all controversial questions, render its decision in such a manner as would allow the parties to know the various issues involved and the reason for the decision rendered.

In the present case, Nicolas was not accorded the first requirement -- the right to present his case and submit evidence in support thereof. Petitioner was not notified of the preliminary conference, which would have afforded him the opportunity to appear and defend his rights, including the right to request a formal investigation. Pertinently, the Rules of Procedure of the Office of the Ombudsman^[15] provides:

"Section 5. Administrative adjudication; how conducted. –

"a) If the complaint is not dismissed for any of the causes enumerated in Section 20 of Republic Act No. 6770, the respondent shall be furnished with a copy of the affidavits and other evidences submitted by the complainant, and shall be ordered to file his counter-affidavits and other evidences in support of his defense, within ten (10) days from receipt thereof together with proof of service of the same on the complainant who may file reply affidavits within ten (10) days from receipt of the counter-affidavits of the respondent.

"b) If, on the basis of the affidavits and other evidences submitted by the parties, the investigating officer finds no sufficient cause to warrant further proceedings, the complaint may be dismissed. Otherwise, he shall summon the parties to preliminary conference to consider the following matters:

"1) Whether the parties desire a formal investigation or are willing to submit the case for resolution on the basis of the evidence on record and such other evidences they will present at such conference;

"2) Should the parties desire a formal investigation to determine the nature of the charge, stipulation of facts, a definition of the issues, identification and marking of exhibits, limitation of witnesses, and such other matters as would expedite the proceedings.

"c) After the preliminary conference, the investigating officer shall issue an order reciting the matters taken up during the conference, including the facts stipulated, the evidences marked and the issues involved. The contents of this order may not be deviated from unless amended to prevent manifest injustice.

"d) Should a hearing be conducted, the parties shall be notified at least five (5) days before the date thereof. Failure of any or both of the parties to appear at the hearing is not necessarily a cause for the dismissal of the complaint. A party who appears may be allowed to present his evidence in the absence of the adverse party who was duly notified of the hearing.

"e) Only witnesses who have submitted affidavits served on the adverse party at least five (5) days before the date of his being presented as a witness may be allowed to testify at the hearing. The affidavit of any witness shall constitute his direct testimony; subject to cross-examination, re-direct examination and re-cross-examination.