

THIRD DIVISION

[G.R. No. 119847, October 24, 2003]

JENNY ZACARIAS, PETITIONER, VS. NATIONAL POLICE COMMISSION, REPRESENTED BY ACTING VICE CHAIRMAN & EXECUTIVE OFFICER GUILLERMO P. ENRIQUEZ, NATIONAL APPELLATE BOARD (SECOND DIVISION), REPRESENTED BY COMMISSIONER EDGAR DULA TORRES AND THE CHIEF, PHILIPPINE NATIONAL POLICE, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari* assailing the Decision^[1] and Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 31407, "*Jenny Zacarias, petitioner, vs. National Police Commission, et al., respondents.*"

The facts of this case as culled from the records are as follows:

Sometime in June 1987, Jenny Zacarias, petitioner, then a member of the Western Police District Command, Manila, was detailed at the Anti-Kidnapping Task Force, Criminal Investigation Service Command (CISC), Philippine National Police (PNP), Camp Crame, Quezon City.^[3]

On November 5, 1991, Chief Inspector Ruben Zacarias, then Chief, Intelligence and Operations of the Anti-Kidnapping Task Force, issued an order assigning petitioner to be on duty at the Office of the Special Team, also of the Anti-Kidnapping Task Force. Detained there were Alfredo "Joey" de Leon, suspected commander of the notorious "Red Scorpion Group" charged with kidnapping with ransom cases,^[4] and Nicanor Attractivo who was charged with robbery and homicide.

At around 9:00 o'clock in the morning of November 8, 1991, the two detainees escaped while in the custody of petitioner, then the outgoing guard on duty.^[5]

Immediately, the Police Inspector General conducted an investigation. Petitioner's version of the incident is that at about 9:00 o'clock in the morning of November 8, 1991, before he went to the comfort room, he saw detainee Alfredo de Leon lying inside the room adjacent to the Office of the Special Team. When he returned to his office after two to three minutes, the two detainees were no longer around. Petitioner immediately searched the premises but to no avail. He informed SPO2 Matammu, the incoming duty guard, about it. They then reported the matter to Senior Inspector Gil Menesses who immediately formed a team to locate the two detainees. But still, they could not be found.^[6]

SPO2 Romeo Matammu gave his sworn statement, confirming that when he arrived

at the Office of the Special Team at about 9:00 o'clock in the morning of November 8, 1991, as the incoming duty guard, petitioner informed him that the two detainees escaped. He immediately drove his jeep around the camp and searched for them, but they could not be found.^[7]

The Police Inspector General found that "the escape was an outcome of the laxity and non-performance of official duty of outgoing duty guard SPO3 Jenny Zacarias when the latter did not padlock the room where the detainees were temporarily detained before going to the comfort room. x x x."^[8] Accordingly, the Police Inspector General recommended that petitioner be summarily dismissed from the service pursuant to Section 42 of Republic Act No. 6975.^[9]

Consequently, petitioner was administratively charged with neglect of duty, inefficiency and incompetence in the performance of his duties.

On December 4, 1991, the Chief of the PNP, acting upon the Inspector General's recommendation, rendered a decision dismissing summarily from the service petitioner effective on the same day.^[10]

On appeal, docketed as NAB SD Case No. 2-92-007, the National Appellate Board (NAB) of the NAPOLCOM affirmed the PNP Chief's decision. The NAB held that on the basis of the evidence on hand, petitioner is guilty as charged.

Petitioner filed a motion for reconsideration but was denied by the NAB.

Petitioner then filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 31407. In its Decision^[11] dated April 28, 1994, the Appellate Court dismissed the petition which, in effect, upheld petitioner's summary dismissal from the service. It ruled that "the laxity and inefficiency of petitioner as the police guard on duty, resulting in the escape from his custody of Alfredo de Leon, the notorious leader of the Red Scorpion Group, constitutes `conduct unbecoming an officer and a gentleman' which, under paragraph (c) of Section 42 of the PNP Law, is a ground for summary dismissal."^[12]

Petitioner filed a motion for reconsideration but it was denied.

Petitioner now comes to us *via* the instant petition for review on *certiorari*. Essentially, he ascribes to the Court of Appeals the following errors:

I

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT ADMINISTRATIVE OFFENSES OF NEGLECT OF DUTY OR INEFFICIENCY OR INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES CONSTITUTE CONDUCT UNBECOMING OF A POLICE OFFICER WHICH MAY BE THE PROPER GROUND FOR SUMMARY DISMISSAL FROM THE SERVICE UNDER SECTION 42, R.A. 6975; AND

II

RESPONDENT COURT OF APPEALS ERRED IN NOT CONCLUDING THAT

PETITIONER WAS DENIED DUE PROCESS.^[13]

The Solicitor General, in his comment,^[14] disputes petitioner's claims and prays that the petition be dismissed for lack of merit.

The summary dismissal of petitioner by the PNP Chief and the NAB was anchored on Section 42 of R.A. 6975 which provides:

"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.**" (Underscoring supplied)

The Court of Appeals, in its assailed Decision, cited Section 3 of NAPOLCOM Memorandum Circular No. 92-006 promulgated on August 6, 1992 defining the causes for summary dismissal of erring PNP members, thus:

"Section 3 - *Causes for Summary Dismissal.* Any of the following can be a cause/reason for summary dismissal of any PNP member:

- A. When the charge is serious and the evidence of guilt is strong.

x x x

- 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.

x x x

- C. When the respondent is guilty of conduct unbecoming of a police officer.

`Conduct unbecoming of a police officer' refers to **any behavior or action** of a PNP member, irrespective of rank, **done in his official capacity**, which, **in dishonoring or otherwise disgracing himself as a PNP member, seriously compromises his character and standing as a gentleman in such a manner** as to indicate his vitiated or corrupt state of moral character; it may also refer to acts or behavior with any PNP member in an unofficial or private capacity which is dishonoring or disgracing himself personally as a gentleman, seriously compromises his position as a PNP