

## SECOND DIVISION

[ G.R. No. 129124, March 15, 2002 ]

**RENATO A. TAPIADOR, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN AND ATTY. RONALDO P. LEDESMA, RESPONDENTS.**

### D E C I S I O N

**DE LEON, JR., J.:**

This is a petition for review on certiorari of the Resolution<sup>[1]</sup> dated January 22, 1997 of the Office of the Ombudsman in OMB-ADM-0-94-0983 dismissing the petitioner from the government service for grave misconduct and the Order<sup>[2]</sup> dated April 7, 1997 denying the petitioner's motion for reconsideration.

The incipience of the case could be traced to the complaint-affidavit<sup>[3]</sup> dated July 4, 1994 lodged with the Resident Ombudsman at the main office in Manila of the Bureau of Immigration and Deportation (BID for brevity) by Walter H. Beck, a U.S. citizen, against the petitioner, Renato A. Tapiador, BID Special Investigator and assigned as Technical Assistant in the office of the then Associate Commissioner Bayani M. Subido, Jr. The complaint alleged in substance that petitioner Tapiador demanded and received from Walter Beck the amount of Ten Thousand Pesos (P10,000.00) in exchange for the issuance of an alien certificate of registration (ACR for brevity) which was subsequently withheld deliberately by the petitioner despite repeated demands by Beck, unless the latter pay an additional amount of Seven Thousand Pesos (P7,000.00). Accompanying the complaint was the affidavit<sup>[4]</sup> executed by a certain Purisima C. Terencio which essentially seeks to corroborate the alleged payment of the amount of Ten Thousand Pesos (P10,000.00) by Walter Beck and his wife to the petitioner in consideration for the issuance of the subject ACR.

The petitioner categorically denied in his counter-affidavit<sup>[5]</sup> dated July 11, 1994 that he demanded nor received any amount of money from Walter Beck in consideration for the issuance of the latter's ACR. In addition, the petitioner alleged that Beck and his wife, Monica Beck, came to the BID office in Manila on June 29, 1994 to follow-up his visa application. On the said occasion, when the petitioner advised the couple to accomplish first all the requirements for a visa application, Beck and his wife shouted invectives at him and charged the petitioner with having demanded money from them. This incident prompted the petitioner to file a criminal complaint for oral defamation before the Office of the City Prosecutor in Manila. The petitioner's allegations were corroborated by Rosanna C. Vigo, a BID employee and officemate of the petitioner, in her affidavit dated July 15, 1994.<sup>[6]</sup>

After investigation, BID Resident Ombudsman Ronaldo P. Ledesma found the petitioner liable for violating existing civil service rules and regulations as well as penal laws and thus, recommended that criminal and administrative charges be filed

against the petitioner.

Upon review of the case, the criminal charge was dismissed by the Ombudsman for lack of evidence;<sup>[7]</sup> however, the Ombudsman found the petitioner liable for grave misconduct in the administrative aspect of the case and imposed the penalty of dismissal from the government service.<sup>[8]</sup> His subsequent motion for reconsideration having been denied on April 7, 1997, the petitioner filed the instant petition for review<sup>[9]</sup> which raises the following assignment of errors:

#### I

THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN FINDING THAT PETITIONER IS GUILTY OF GRAVE MISCONDUCT DESPITE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT IT.

#### II

THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN RENDERING THE QUESTIONED RESOLUTION ONLY AFTER ALMOST THREE YEARS, IN VIOLATION OF PETITIONER'S RIGHT TO SPEEDY TRIAL.

#### III

THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN RENDERING THE QUESTIONED RESOLUTION WITHOUT CONDUCTING A PRELIMINARY CONFERENCE AND ACTUAL HEARING IN VIOLATION OF ITS OWN RULES, THUS CONSTITUTING A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

#### IV

THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN CONTRADICTING ITS OWN FINDING RELATIVE TO THE CRIMINAL ASPECT OF THIS CASE DISMISSING THE COMPLAINT FOR LACK OF EVIDENCE.

#### V

THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DISMISSAL AGAINST PETITIONER, DESPITE THE FACT THAT IT WAS HIS FIRST OFFENSE IN HIS THIRTY YEARS IN THE GOVERNMENT SERVICE.

In the Resolution dated July 7, 1997, we required the public respondent to file his comment to the instant petition. After several extensions of time given by this Court, the Office of the Solicitor General filed a Manifestation and Motion In Lieu of Comment<sup>[10]</sup> on February 20, 1998 which essentially recommended that the petitioner be exonerated from the subject administrative charge on the ground that the assailed resolution of the Ombudsman was rendered in violation of procedural due process and that it was not supported by substantial evidence. Consequently, we directed the Office of the Ombudsman to file directly its own comment which it

did on May 12, 1998.<sup>[11]</sup> The petitioner filed a Reply<sup>[12]</sup> thereto on August 14, 1998. Thereafter, this case was submitted for decision after the petitioner, the Office of the Ombudsman and the Office of the Solicitor General had filed their respective memoranda.<sup>[13]</sup>

The Office of the Ombudsman maintains that the petitioner was accorded due process of law inasmuch as he was duly informed and furnished a copy of the complaint against him as evidenced by his letters dated July 22 and 26, 1996 addressed to the investigating officer requesting for a copy of the case records to enable him to prepare for his defense. Likewise, there was no undue delay in the conduct of the administrative proceedings since the preliminary investigation was conducted immediately after the complaint was filed in 1994; and that after the criminal aspect of the case was resolved, the administrative proceeding was conducted shortly thereafter. That no preliminary conference had been conducted in the case was primarily due to the petitioner's manifestation to dispense thereof and submit the case for resolution inasmuch as he has already filed his memorandum of evidence. Moreover, the Ombudsman opined that the petitioner was absolved of criminal liability during the preliminary investigation of this case due to insufficiency of evidence constituting probable cause contrary to his claim that there was absolutely no evidence against him. However, the Ombudsman asserts that the sworn statements of Walter Beck a and his witness, Purisima Terencio, substantially established the administrative liability of the petitioner for grave misconduct by demanding from complainant Beck a sum of money in exchange for the issuance of the latter's ACR; and for that offense, petitioner should be imposed the corresponding penalty of dismissal from the government service.<sup>[14]</sup>

By way of reply, the petitioner adverted to the minutes<sup>[15]</sup> of the preliminary hearing on July 18, 1998 and contended that it was the hearing officer, Atty. Vitaliano M. Mendoza, who instructed him and his counsel to simply file a memorandum within fifteen (15) days after which the case shall be deemed submitted for resolution. The petitioner reiterated that the Office of the Ombudsman found no evidence against him in its investigation of the criminal aspect of the case and thus, he argued that the instant administrative charge should also have been dismissed.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.<sup>[16]</sup> Substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case; rather, it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>[17]</sup>

In dismissing the petitioner from the government service the Office of the Ombudsman reasoned out, as follows:

xxx [E]vidence for the complainant clearly established that respondent Tapiador unlawfully received the amount of P10,000.00 from spouses Walter and Monica Becker (sic), which act was personally witnessed by complainant's witness, Purisima C. Terencio, who in her affidavit dated July 01, 1994 positively identified the respondent as the person to whom spouses Becker (sic) gave the money. In quoting, witness Terencio states "That said spouses paid the full amount of P10,000.00 on February 23,

1992 to Mr. Tapiador as payment for the Alien Certificate of Registration with the promise for the immediate release of the same" (p. 13, Record). To us, the said declaration of witness Terencio appears to be credible and worthy of belief since there is no apparent reason for her to impute false statements against the respondent. It is also significant to observe that the said declaration of Terencio was aptly corroborated by complainant Walter Becker (sic), a foreigner, who in his desire to stay permanently in the Philippines became a victim of such irregularity. Moreover, there is no showing that respondent, in his capacity as Technical Assistant, is authorized to receive payment for the processing of ACR. Worse, Mrs. Becker (sic) also claimed that respondent demanded an additional amount of P7,000.00 from them for the release of the ACR.<sup>[18]</sup>

Notably, the instant administrative complaint was resolved by the Ombudsman merely on the basis of the evidence extant in the record of OMB-ADM-0-94-0983. The preliminary conference required under Republic Act No. 6770<sup>[19]</sup> was dispensed with after the nominal complainant, then BID Resident Ombudsman Ronaldo P. Ledesma, manifested on July 29, 1996 that he was submitting the case for resolution on the basis of the documents on record<sup>[20]</sup> while the petitioner agreed to simply file his memorandum.<sup>[21]</sup> Consequently, the only basis for the questioned resolution of the Ombudsman dismissing the petitioner from the government service was the unverified complaint-affidavit of Walter H. Beck and that of his alleged witness, Purisima Terencio.

A thorough review of the records, however, showed that the subject affidavits of Beck and Terencio were not even identified by the respective affiants during the fact-finding investigation conducted by the BID Resident Ombudsman at the BID office in Manila. Neither did they appear during the preliminary investigation to identify their respective sworn statements despite prior notice before the investigating officer who subsequently dismissed the criminal aspect of the case upon finding that the charge against the petitioner "was not supported by *any* evidence".<sup>[22]</sup> Hence, Beck's affidavit is hearsay and inadmissible in evidence. On this basis alone, the Administrative Adjudication Bureau of the Office of the Ombudsman should have dismissed the administrative complaint against the petitioner in the first instance.

Nonetheless, a perusal of the affidavit executed by Walter Beck does not categorically state that it was petitioner Tapiador who personally demanded from Beck the amount of Ten Thousand Pesos (P10,000.00) in consideration for the issuance of the latter's ACR. On the other hand, it appears that Walter Beck and his wife sought the assistance of Purisima Terencio sometime in the later part of 1992 in facilitating the issuance of his ACR and in the process, Terencio allegedly informed the couple that Beck could be granted the same and would be allowed to stay in the Philippines permanently with the help of the petitioner and a certain Mr. Angeles who was also with the BID, for a fee of Ten Thousand Pesos (P10,000.00). Hence, Beck and his wife did not appear to have any direct or personal knowledge of the alleged demand of the petitioner except through the information allegedly relayed to them by Terencio. Likewise, although Beck claimed to have subsequently paid Ten Thousand Pesos (P10,000.00), his affidavit is silent as to the identity of the person who actually received the said amount from him. The pertinent portion of his affidavit reads, thus: