

SECOND DIVISION

[G.R. No. 139368, November 21, 2002]

ROBIN M. CANO, PETITIONER, VS. THE CHIEF, PHILIPPINE NATIONAL POLICE, EDGAR C. GALVANTE, AS POLICE DIRECTOR FOR PERSONNEL AND RECORDS MANAGEMENT, PNP, AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

RESOLUTION

QUISUMBING, J.:

This petition for review on certiorari assails (a) the order^[1] dated May 17, 1999 of the Regional Trial Court of Quezon City, Branch 224, in Civil Case No. Q-98-36370, dismissing the complaint filed on December 21, 1998 by petitioner against respondents for payment of back salaries and allowances amounting to ₱301,018; and (b) the order of said court denying on July 15, 1999, his motion for reconsideration.

The factual background of the instant petition, as culled from the records of the case, is as follows:

For the alleged bungled investigation of the Eileen Sarmenta and Allan Gomez rape-slay, a complaint for grave misconduct was filed with the National Police Commission under the Department of Interior and Local Government against petitioner, then Police Chief Inspector of the Calauan Police Station. The Chief of the Philippine National Police (PNP) found petitioner guilty and ordered his summary dismissal from the service, in a decision^[2] dated July 12, 1995. Petitioner appealed his dismissal to the National Appellate Board of the National Police Commission (NAPOLCOM). On May 15, 1997, the NAPOLCOM reversed the decision of the PNP Chief:

WHEREFORE, premises considered, we find respondent appellant, Chief Inspector ROBIN M. CANO administratively culpable for Simple Misconduct and hereby orders (sic) his suspension for a period of three (3) months. Considering, however, that said respondent had been under suspension since August 7, 1995, pursuant to Special Order No. 1690 dated August 8, 1995, the penalty imposed is considered deemed served. Respondent-Appellant is strongly warned to be more prudent and responsible in the exercise of his duties as a member of the PNP.^[3]

The NAPOLCOM decision having been allowed by both parties to become final and executory, petitioner was restored to full duty status effective May 15, 1997. He also received all benefits and emoluments pertaining to his post pursuant to PNP Special Order No. 1341. With the modification of his penalty to three (3) months suspension, petitioner filed a claim for payment of back salaries and other allowances corresponding to the period he was allegedly unjustly discharged from

service until he was restored to full duty status, or from August 7, 1995 to May 15, 1997. However, this claim, computed by the PNP Regional Police Comptrollership and Finance Division to be Three Hundred One Thousand Eighteen Pesos (P301,018.00), was denied by respondent Police Director Edgar C. Galvante of the PNP Directorate for Personnel and Records Management (DPRM) on the strength of a Memorandum/Opinion from the PNP Legal Service. Petitioner forthwith asked for a reconsideration of the denial but the same was rejected.

On account of said denial, petitioner filed on December 23, 1998 a complaint^[4] before the Regional Trial Court of Quezon City for the recovery of his back salaries and other allowances for the said period. The court *a quo* dismissed the complaint in an order dated May 17, 1999. Said the trial court:

The Court is prone to agree with the stand and position of the defendants that plaintiff's claim should not be granted because plaintiff has not shown any clear and legal right which would entitle him to back salaries, allowances and other benefits and besides, plaintiff has failed to exhaust administrative remedies no[t] discounting the fact that his claim against defendants is actually a suit against the state.

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This complaint is actually a suit against the government because the ultimate liability for payment of back salaries, etc. will fall on the government. This being so, this case should be dismissed because the government cannot be sued without its consent.

Accordingly, therefore, the Court has to dismiss this case without costs against the plaintiff.

IT IS SO ORDERED.^[5]

On May 31, 1999, petitioner moved for the reconsideration of the trial court's decision, but his motion was denied in an order dated July 15, 1999.

Accordingly, petitioner filed the instant appeal *via* petition for review on certiorari, raising only one issue:

Whether or not the petitioner is entitled to his claim for back salaries and allowances under the terms of the decision of the NAPOLCOM Appellate Board.^[6]

Mainly involved in this controversy is petitioner's entitlement to back salaries and other allowances upon the reduction of his penalty of dismissal to mere suspension for three months. But secondarily, it should be asked whether petitioner failed to exhaust the administrative remedies available to him so as to render the filing of the complaint with the trial court premature?

At the outset, we note that the principal issue raised before us is a mixed question of fact and law. There is a question of fact when doubt or difference arises as to the truth or falsehood of the alleged facts,^[7] and there is a question of law where the doubt or difference arises as to what the law is on a certain state of facts.^[8] Here, petitioner seeks to recover back salaries and allowances allegedly due him from August 7, 1995, when he was unjustly discharged from the service, to May 15,