

THIRTEENTH DIVISION

[CA-G.R. SP NO. 127075, June 30, 2014]

**AVELTO T. ORANTE, PETITIONER, VS. SALVADOR B. BANARIA,
JR. AND HON. CIVIL SERVICE COMMISSION, RESPONDENTS.**

DECISION

DIMAAMPAO, J.:

Challenged in this *Petition for Review*^[1] under Rule 43 of the Revised Rules of Court is the *Decision*^[2] dated 17 April 2012 and the *Resolution*^[3] dated 22 August 2012 of the Civil Service Commission (CSC) finding petitioner guilty of being Absent Without Official Leave (AWOL), and denying the *Motion for Reconsideration* thereof, respectively, in Case No. 120226.

The factual milieu of the case unfurls as follows:

Petitioner PO2 Avelto Orante (PO2 Orante) is a police officer detailed at the Balatan Municipal Police Station, Balatan, Camarines Sur (Balatan Station). Sometime in October 2005, private respondent PI Salvador Banaria, Jr. (PI Banaria) took his oath of office as Officer-in-Charge (OIC) thereat. As standard procedure, he conducted an inventory of his personnel. For this purpose, a roll-call was convened during which PO2 Orante was absent. Forthwith, PI Banaria ordered that PO2 Orante be searched out at his given address. However, efforts exerted to locate PO2 Orante proved futile.^[4] Thence, PI Banaria filed a *Complaint*^[5] against PO2 Orante before the National Police Commission (NAPOLCOM), Philippine National Police (PNP) for serious neglect of duty for continuously being AWOL from 7 October 2005. The case was docketed as Administrative Case No. 2007-03.

In his *Counter-Affidavit*,^[6] PO2 Orante vehemently denied the imputation against him and professed that he was confined at the PNP General Hospital (PNP-GH) and underwent an operation. Thereafter, he was in the continuous care of a PNP-GH doctor.

On 25 July 2008, the PNP Regional Office 5 rendered a *Decision*^[7] dismissing PO2 Orante from police service for having accumulated 637 days of unauthorized absences. His *Motion for Reconsideration* thereof was subsequently denied.^[8] On *Appeal* before the NAPOLCOM Regional Appellate Board 5, PO2 Orante maintained that his absences were justified as he suffered from rectum bleeding and was thrice confined at the PNP-GH for this medical condition. In light of his numerous awards from the PNP, he claimed that the dismissal meted on him was too harsh a penalty. Lamentably, his bid for reversal was turned down in a *Decision*^[9] dated 13 August 2009.

Fulminating against the foregoing *Decision*, PO2 Orante ensuingly sought relief before the Office of the Secretary of the Department of Interior and Local

Government (DILG). In its *Decision*^[10] dated 28 January 2011, the DILG denied his *Appeal*.^[11] When he sought for reconsideration,^[12] his plea was denied.^[13]

Unperturbed, PO2 Orante commenced another *Appeal* before the CSC impugning the *Decision* and *Resolution* of the DILG. In the assailed *Decision*, PO2 Orante's *Appeal* was dismissed for being filed out of time. Moreover, the CSC ruled that PO2 Orante was shown to have been on AWOL as established by substantial evidence. The challenged *Resolution* denied his *Motion for Reconsideration*^[14] thereof.

Unable to accept his defeat, PO2 Orante (now, petitioner) seeks refuge before Us through the instant *Petition* anchored on the following postulations:

I

THE HONORABLE CIVIL SERVICE COMMISSION COMMITTED SERIOUS AND REVERSIBLE ERROR IN EMBRACING RIGID TECHNICALITY AND DISMISSING HEREIN PETITIONER'S APPEAL FOR HAVING BEEN FILED LATE, THEREBY DEFEATING SUBSTANTIAL JUSTICE AND APPLICABLE JURISPRUDENCE.

II

THE HONORABLE CIVIL SERVICE COMMISSION COM-MITTED SERIOUS REVERSIBLE ERROR IN AFFIRMING THE DISMISSAL OF PETITIONER FROM POLICE SERVICE UPON AN ERRONEOUS APPRECIATION OF FACTS AND APPLICATION OF LAW.

The Petition is meritless.

Perceivably, the *lis mota* of this *Petition* delves into the propriety of the dismissal of petitioner's *Appeal*.

Petitioner avows that the CSC committed reversible error when it rigidly applied procedural rules and dismissed his *Appeal*, not taking into account that he was merely two days late in filing his *Appeal*, and that his failure to comply strictly with procedural rules was occasioned by the lack of financial resources to retain the services of a counsel.

Petitioner's avowal of a liberal interpretation of the period to appeal has no leg to stand on. The non-observance of the periods to appeal on the basis of financial constraints is hardly persuasive. It is an age-old axiom that the right to appeal is not a constitutional, natural or inherent right — it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. It may be exercised only in the manner prescribed by the provisions of the law.^[15] The need to abide by the Rules of Court and the procedural requirements it imposes has been constantly underscored by the Supreme Court.^[16] Petitioner having failed to appeal within the period provided by the rules, the CSC correctly dismissed his *Appeal*.

Nonetheless, even if We brush aside this procedural *faux pas*, petitioner's thesis still falls through.

Scouring the records, there is sufficient basis to support the finding of the CSC that petitioner incurred absences without official leave. Accordingly, he must be meted

the penalty of dismissal. This conclusion finds a codal hook in **Section 63,**^[17] **Rule XVI** of the **Omnibus Rules on Leave** which mandates that an employee's absence without official leave for at least 30 working days warrants his separation from the service.^[18]

It is not disputed that petitioner was absent from work for more than 400 days from April 2005 until March 2007 without filing the necessary application for leave. Despite the fact that he was hospitalized only three times, he still failed to account for his absences every time he was released from hospital confinement. Ineluctably, his non-compliance with the rules on filing of leave, as mandated by the PNP and the Civil Service Rules, merits his dismissal from service.

Petitioner asserts that mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable for gross neglect of duty. He avers that although he was not confined for the entire duration of his absence, he was suffering from concomitant pain, discomfort and enervation caused by on and off episodes of rectal bleeding justifying his absences. In actual fact, he was just prevented from filing his application for leave when he reported back to work as the case for gross neglect of duty was already filed against him.

Petitioner's stance does not hold sway.

Gross negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In the case of public officials, there is gross negligence when a breach of duty is flagrant and palpable.^[19]

Section 4(b) of Republic Act No. 6713^[20] specifically provides that every public official and employee must at all times perform and discharge his duties with the highest degree of excellence, professionalism, intelligence and skill with utmost devotion and dedication to his duties.^[21] As a member of the PNP, moreso as a government employee, petitioner should have observed such standards. By going on AWOL, he cavalierly disregarded and neglected the duties of his office. He failed to adhere to the high standards of public accountability imposed on all those in government service.^[22] This, to Our mind, is gross negligence. Invariably, if an erring private employee can be dismissed for being absent without leave, with more reason that an erring public employee must be dismissed from service.

Needless to state, petitioner's belated effort to file an application for leave two years after he first incurred his absences will not save the day for him. The timeliness of petitioner's intention to file the application for leave raises suspicion. If petitioner truly intended to file the appropriate applications for sick leave, he should have seasonably filed the same without awaiting this administrative charge to be lodged against him.

Therewithal, We cannot lend credence to petitioner's assertion that he reported his whereabouts to station officers through radio communication^[23] and that he participated in the programs of the station to justify his absences.

Petitioner's notification of his actual condition through radio communication did not pass muster. As correctly opined by the PNP Regional Office 5 and affirmed by the