

THIRTEENTH DIVISION

[CA-G.R. SP NO. 128249, June 30, 2014]

PO3 GASPAR TALAUE, PO2 GILBERT PERALTA, PO2 GLENN OBRERO, PETITIONERS, VS. FORTUNATO BICAS, JR.,^[1] RESPONDENT.

D E C I S I O N

DIMAAMPAO, J.:

Petitioners fulminate against the *Order* dated 26 April 2012 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) which affirmed its earlier *Decision*^[2] dated 17 June 2011 suspending them from service, in OMP-P-A-09-0317-D. The *fallo* thereof reads:

“WHEREFORE, there being substantial evidence, PO3 Gaspar Talaue, PO2 Glenn Obrero and PO2 Gilbert Peralta are hereby found GUILTY of SIMPLE MISCONDUCT and are meted the penalty of SUSPENSION FROM THE SERVICE FOR SIX (6) MONTHS WITHOUT PAY. If the penalty of suspension cannot be served by reason of resignation or retirement, the penalty of FINE equivalent to the respondents' individual salaries for Six (6) Months shall be imposed.

Let the Secretary of the Department of Interior and Local Government (DILG) and the Director General, Philippine National Police, be furnished a copy of this Decision for its proper implementation.

SO ORDERED.”^[3]

At the onset, We discern that petitioners mistakenly filed the instant *Petition for Review*^[4] under Rule 42 of the 1997 Rules of Civil Procedure.^[5] Appropriately, the *Petition* should have been filed under Rule 43. Still and all, in the interest of substantial justice, We take cognizance of the *Petition*.

The record evinces the following prevenient facts:

On 19 March 2009, respondent Fortunato Bicas, Jr. (respondent) filed an *Affidavit-Complaint*^[6] before the OMB-MOLEO accusing herein petitioners PO3 Gaspar Talaue (Talaue), PO2 Gilbert Peralta (Peralta) and PO2 Glenn Obrero (Obrero) of Gross Misconduct and Serious Physical Injuries. Collectively, We shall refer to the latter as petitioners.

Respondent averred that at around 12:30 o'clock in the afternoon of 22 February 2009, he was at the Accibal Compound in Batasan Hills, Quezon City to engage in cockfighting. Sometime later, petitioners arrived carrying M-16 rifles. They were clad in white T-shirt and short pants.

Upon arriving thereat, petitioners started firing their M-16 rifles up in the air. Since respondent was near the gate of the compound, he saw petitioners demanding at gun point from *Kagawad* Edgar "Macky" Macario the amount of P7,000.00 collected as entrance fee. In a trice, petitioners focused their attention on respondent. PO2 Peralta then hit the latter's left foot with the rifle, causing him to fall on the ground. Thereafter, PO3 Talaue and PO2 Obrero took turns kicking his left foot.

Subsequently, the *Barangay* Public Safety Officer (BPSO), Roger Ferrer (Ferrer), assisted respondent and brought him to the Philippine Orthopedic Center.^[7] Ferrer executed a *Sinumpaang Salaysay*^[8] corroborating respondent's avowals.

On 17 June 2011, OMB-MOLEO rendered the *Decision* finding them guilty of Simple Misconduct.

Inveighing against the *Decision*, petitioners filed a *Motion to: Recall/Reconsider Decision; Recall Suspension and Immediately Reinstate*^[9] maintaining that they never received any of the *Orders* dated 17 December 2010 and 15 June 2010, requiring them to file a *Verified Position Paper* and *Counter-Affidavits*, respectively. As such, the said *Decision* was null and void and should therefore be set aside. Furthermore, petitioners asseverated that they should be reinstated to their respective assignments.

As it happened, petitioners were directed to file their *Counter-Affidavits* and *Position Papers*.^[10]

In the challenged *Order*,^[11] the OMB-MOLEO denied petitioners' *Motion* and affirmed the 17 June 2011 *Decision*, ratiocinating in this wise:

"On April 18, 2012, (petitioners) filed only their counter-affidavits. They admitted going to the place of incident for the purpose of checking if the cockfight was with a permit. (Petitioners) denied the unlawful acts imputed against them by (respondent).

Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over the defense of denial.

(Petitioners') defense which constitutes mainly of denial is not supported by any evidence. As such, it remained self-serving and does not deserve merit.

A thorough perusal of the records, however, shows that only the allegations of serious physical injuries and (petitioners') act of firing their rifles in the air were duly proven by (respondent). Such fact finds support in (respondent's) medical certificate and the sworn statement of witness Roger Ferrer. Moreover, We do not find ill-motive or bad faith on the part of (respondent) and Ferrer. The claim of robbery is not supported by any evidence and therefore, cannot be taken against (petitioners). Unfortunately, We do not find this as a ground to mitigate (petitioners') liability. Their wanton disregard of the rights of others and their flagrant display of unethical behavior can never be sanctioned. Clearly, (petitioners) failed to measure up to the ethical standards set for public officers."^[12]

Unflustered, petitioners filed the instant *Petition* asserting that the assailed *Order* should be reversed and set aside— *one*, their right to due process was violated; and, *two*, they have newly discovered evidence.^[13] They averred that the entire proceedings before the OMB-MOLEO was done in violation of their constitutional right to due process such that from the very beginning it was null and void. The quasi-judicial body was not able to appreciate the effects and consequences of the *Affidavit of Withdrawal* executed by respondent.^[14]

Petitioners' thesis carries no weight and conviction. A fortiori, the Petition lacks merit.

Petitioners postulate that the proceedings against them were flawed since the 17 June 2011 *Decision* was reached without due notice to them. This being so, the *Decision* was void and could not become final and executory.

The record belies petitioners' postulation.

It is not disputed that after the *Decision* dated 17 June 2011 was rendered, petitioners moved for a reconsideration thereof. Consequently, the OMB-MOLEO, in its 29 February 2012 *Order*, directed petitioners to file their *Counter-Affidavit* and *Position Paper*. Pursuant to such *Order*, petitioners filed their *Counter-Affidavit*. In due course, the OMB-MOLEO issued the impugned *Order* affirming its earlier *Decision*.

Given the foregoing facts, We find no denial of due process that would warrant the invalidation of the proceedings.

As heretofore adumbrated, petitioners were afforded a fair and reasonable opportunity to explain their side. If at all, any alleged procedural defects in the proceedings were cured by the filing of their *Motion for Reconsideration*. This finds underpinning in the doctrinal precedent enunciated in **Vivo v. PAGCOR**^[15] to the effect that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was given the opportunity to be heard.^[16] On this score, the High Court edifyingly pronounced—

“The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged