

SPECIAL ELEVENTH DIVISION

[CA-G.R. SP No. 129509, November 20, 2014]

ROMEO M. BERNAL, JR., PETITIONER, VS. INMATES POST EXCHANGE (IPX), BUREAU OF CORRECTIONS, NBP RESERVATION, REP. BY RODOLFO ESQUITA AND ALFREDO MEMIJE, AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.

DECISION

PAREDES, J.:[*]

THE CASE

BEFORE US is a Petition for Review^[1] under Rule 43 of the Rules of Court assailing the Order^[2] dated August 23, 2011 of the Office of the Ombudsman in OMB-P-A-07-0073-G, modifying its earlier Decision^[3] dated May 27, 2008 and changing the duration of the penalty of suspension imposed on petitioner Romeo M. Bernal, Jr. (petitioner), from one (1) month without pay, to one (1) year without pay. Also assailed is the Order^[4] dated March 20, 2012 denying petitioner's Motion for Reconsideration.

THE ANTECEDENTS

The Inmate Post Exchange (IPX), Bureau of Corrections (BuCor), represented by Rodolfo Esquita and Alfredo Memije lodged an administrative complaint for Grave Misconduct, Gross Neglect of Duty, Dishonesty and Violation of RA No. 6713 against petitioner, an IPX accountant, P/Supt. Juanito Leopando (Leopando), purchaser/canvasser Cynthia Ines (Ines), IPX bookkeeper Gil Llano (Llano), PG2 Arnold Chua (Chua), and IPX warehouseman, PG2 Jose Longalong (Longalong), before the Office of the Ombudsman.

The Office of the Ombudsman rendered a Decision^[5] dated May 27, 2008 disposing the case as follows:

WHEREFORE, there being substantial evidence, this Office finds respondent **CYNTHIA INES guilty** of Conduct Prejudicial to the Best Interest of the Service, with Abuse of Position as aggravating circumstance and hereby meted the penalty of **suspension in office without pay for a period of one (1) year**, pursuant to Section 52, Rule IV, in connection with Section 54 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936) in relation to the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 7, as amended by Administrative Order No. 17, dated 07 September 2003).

As regard respondents **ARNOLD CHUA, ROMEO BERNAL, and SUPT. JUANITO LEOPANDO**, this Office finds them **GUILTY** of Simple Neglect of Duty and are hereby meted the penalty of **suspension in office without pay for a period of one (1) month**.

Lastly, as to respondents JOSE LONGALONG and GIL LLANO, this Office finds no substantial evidence against them for any administrative offense.

Let a copy of this DECISION be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City, for IMPLEMENTATION.

SO ORDERED.

In the last week of May 2010, petitioner received Special Order No. 341, s. 2010^[6] dated May 25, 2010 from the BuCor Director enforcing the above decision. Thus, petitioner was suspended in June 2010^[7]. Of the respondents, only Ines filed a motion for reconsideration from the decision of the Ombudsman.

Acting on Ines' motion for reconsideration, the Ombudsman, on August 23, 2011, issued an Order^[8], the dispositive portion of which reads:

WHEREFORE, premises considered, it is respectfully recommended that the Motion for Reconsideration dated 30 September 2010, filed by respondent Cynthia B. Ines be DENIED.

It is further recommended that the Decision dated 27 May 2008 be **MODIFIED** so that respondents ARNOLD CHUA, ROMEO BERNAL a.k.a. ROMEO BERNAL, JR. and SUPT. JUANITO S. LEOPANDO be **SUSPENDED** from office for one (1) year without pay for Conduct Prejudicial to the Best Interest of the Service.

xxx xxx xxx

If the penalty of suspension cannot be imposed against respondents for any cause or reason, the alternative penalty of FINE equivalent to the period of suspension must be imposed upon said respondents.

Let a copy of this Order be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City for his information and appropriate action.

SO ORDERED.^[9]

Petitioner filed a motion for reconsideration^[10] but this was denied in the Order^[11] dated March 20, 2012; hence, this Petition, attributing grave abuse of discretion to the Ombudsman, that:

I.

WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN MODIFYING ITS PREVIOUS DECISION DATED MAY 27, 2008, DESPITE A CLEAR SHOWING THAT SAID DECISION WAS ALREADY FINAL, EXECUTORY AND UNAPPEALABLE.

II.

WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN MODIFYING ITS PREVIOUS DECISION DATED MAY 27, 2008, DESPITE A CLEAR SHOWING THAT IT HAD ALREADY LOST JURISDICTION OVER THE CASE AS THE SAID DECISION DATED MAY 27, 2008 WAS FINAL, EXECUTORY AND UNAPPEALABLE.

III.

WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT FAILED TO CONSIDER THE SETTLED RULE THAT A DECISION/ORDER THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE.^[12]

THE ISSUE

In fine, the sole issue is whether or not the Ombudsman committed grave abuse of discretion when, despite the absence of a motion for reconsideration from petitioner, it modified its Decision dated May 27, 2008, by increasing the penalty, but which penalty had, in the meantime, been served in full.

THE COURT'S RULING

The Petition is meritorious.

The Ombudsman is a creature of the Constitution. The framers of the 1987 Constitution intended the office to be strong and effective, with sufficient bite and muscle to enable it to carry out its mandate as protector of the people against the inept, abusive, and corrupt in the Government^[13]. Section 12 of Article XI of the Constitution, expresses the mandate of the Ombudsman, thus:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13, paragraph 1, Article XI of the Constitution confers on the Ombudsman

the power, function, and duty to investigate, on its own or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. Under paragraph 8, the Ombudsman has the power to promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Further, Section 15^[14] of RA 6770 reveals the manifest intent of the lawmakers to give the Ombudsman full **administrative** disciplinary authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty.^[15]

However, as with any power, it is not without limit. Nowhere in the Constitution or in the law is the Ombudsman vested with authority to review its decisions *motu proprio*. In the case at bar, We find that the Ombudsman acted without or in excess of jurisdiction, or with grave abuse of discretion, in modifying, on its own, *sans* motion from petitioner, the penalty it imposed in its May 27, 2008 Decision. The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."^[16]

That the assailed Order dated August 23, 2011 is wholly void so far as case of the petitioner is concerned, is beyond cavil.

Section 7, Rule III of the Rules of Procedure^[17] of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 7. *Finality and execution of decision.* – Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed** is public censure or reprimand, **suspension of not more than one month**, or a fine equivalent to one month salary, **the decision shall be final, executory and unappealable.** In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration. (Emphasis supplied)