

EIGHTH DIVISION

[CA-G.R. SP NO. 88832, September 26, 2006]

JANE LO-GUTIERREZ, IN HER CAPACITY AS LOCAL REVENUE OFFICER, TREASURER'S OFFICE, QUEZON CITY, PETITIONER, VS. HON. SIMEON MARCELO (IN HIS CAPACITY AS OMBUDSMAN), HON. MARGARITO P. GERVACIO, JR. (IN HER CAPACITY AS OVERALL DEPUTY OMBUDSMAN), HON. PELAGIO S. APOSTOL (IN HER CAPACITY AS ASST. OMBUDSMAN, PAMO, VICTOR B. ENDRIGA (IN HIS CAPACITY AS QUEZON CITY TREASURER), RESPONDENTS.

D E C I S I O N

CARANDANG, J.

This Petition for Review pursuant to Rule 43 of the 1997 Rules of Civil Procedure was instituted by Jane Lo-Gutierrez, in an attempt to reverse and set aside the Order dated January 28, 2005 of the Office of the Overall Deputy Ombudsman in OMB-C-A-02-0560-K (OMB-C-02-0781-K), finding petitioner guilty of and administratively liable for the offenses of Dishonesty and Grave Misconduct, and thereby imposing upon her the ultimate sanction of dismissal from public service with all the accessory penalties, the decretal portion of which reads as follows:

WHEREFORE, foregoing premises being considered, respondent JANE LO-GUTIERREZ is found GUILTY of DISHONESTY and GRAVE MISCONDUCT and as such is hereby imposed the penalty of DISMISSAL from the service together with the accessory penalties of forfeiture of benefits and perpetual disqualification from re-employment in the government service pursuant to Section 52-A (1 & 3), Rule IV of the Uniform Rules of Administrative Cases in the Civil Service.

Accordingly, the draft Decision prepared by GIPO Richard P. Palpal-latoc is DISAPPROVED.

SO ORDERED. (Rollo pp. 17-27)

Likewise impugned in this Petition is the Order dated February 17, 2005 denying petitioner's subsequent Motion for Reconsideration (Rollo pp. 28-33).

The relevant facts of the case are these:

Herein petitioner Jane Lo-Gutierrez (Gutierrez) is a public employee occupying the position of Local Revenue Collection Officer I at the Quezon City Treasurer's Office. On July 1, 2002, Gutierrez received in her official capacity a UCPB Manager's Check representing the amount of Php82,470.51 from taxpayer Jo-Nas International Philippines, Incorporated (Jo-Nas), as payment for the corporation's real estate taxes (Rollo p. 81). In a performance audit conducted to check the July 1, 2002

transactions at the Quezon City Treasurer's Office, the Commission on Audit found out from the Schedule of Real Property Tax Collection that Gutierrez did not report the UCPB Manager's Check as payment for Jo-Nas' real estate taxes. Instead, Gutierrez rendered a false report that Jo-Nas has supposedly made a tax payment in the sum of only Php6,033.04, which Gutierrez even made to appear as having been paid by Jo-Nas in cash. Too, and in violation of the prevailing policy to achieve orderliness in the collection and receipts of revenue payments, Gutierrez did not issue a single receipt to cover the worth of Jo-Nas' supposed "cash" payment, but credited Jo-Nas with Php6,033.04 payment under Official Receipts Nos. 2365, 2366, 2367, 2368, 2369, 2370, 2371, and 2372 (Nos. 2365-2372). Consequently, the misdeclaration of payment resulted to an understatement of account as to Gutierrez's revenue collections amounting to Php76,437.47, for what she actually received was Php82,470.51 in manager's check, but what was officially declared as payment from Jo-Nas was only Php6,033.04 in cash. Further probe on the matter likewise revealed that Gutierrez wrote the words/phrase "G.P. Noel" at the back of Jo-Nas' UCPB Manager's Check, which is a transgression of the Quezon City Treasurer's Office Order No. 2001-12, issued on October 4, 2001, which requires all revenue collection personnel receiving tax payments for the City by way of bank checks to make a notation of certain essential information at the dorsal portion of the check, such as; check number, date, name of the bank and its branch, drawer, payee, amount, official receipt number, property index number and name of taxpayer.

On August 14, 2002, Manolito Siguenza, an Administrative Support Assistant assigned at the Quezon City Treasurer's Office, conducted an assessment of Jo-Nas' real property tax payments for the 2nd and 3rd quarters of CY 2002. Siguenza discovered that Jo-Nas' "stay-in" employee Evangeline Tan-Guanizo has in her possession nine (9) falsified official receipts covering supposed payment of real estate taxes. After due verification, the fake receipts were identified as Official Receipts Nos. 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, and 2382 (Nos. 2374-2382), and the same have been issued to Jo-Nas as part of a series of other official receipts that supposedly covered its entire payment of Php82,470.51. The sum pertaining to the nine falsified receipts added up to Php76,437.47. Evidently, the amount covered by receipt Nos. 2365-2372 (authentic), when added to the sum under receipt Nos. 2374-2382 (falsified), will yield the total sum of Php82,470.51, which is the exact amount represented by the UCPB Manager's Check. Upon further investigation, it was discovered that the genuine Official Receipts bearing numbers 2374 to 2382 were already issued to taxpayers other than Jo-Nas, to wit: Nos. 2374 to 2375 for Yu Anwie; Nos. 2376 for Cueto Ruben; and Nos. 2377 to 2382 for Marcris Realty.

In view of the patent anomalies that attended Gutierrez's official transactions with Jo-Nas, Quezon City Treasurer Baltazar Endriga filed an Affidavit-Complaint before the PNP, Central Police District (Rollo pp. 90-92). Gutierrez then lodged a Counter-Affidavit, and by way of defense asserted that the charges against her are politically motivated considering that she is an appointee of the previous administration. Gutierrez likewise contended that neither Jo-Nas, nor the City Government, suffered damage and prejudice since the UCPB Manager's Check was actually deposited in the latter's name and account. Regarding her act of writing the word "G.P. Noel" at the back of the bank check, Gutierrez explained that the lapse was the result of mere inadvertence and oversight due to the heavy volume of work assigned to her (Rollo pp. 93-94). The PNP Central Police District requested the NBI to conduct an

investigation to determine whether or not the nine falsified real property tax receipts were typed and printed from the TRICOM validating machine assigned to Gutierrez (Rollo p. 77). On March 31, 2004, the NBI submitted Questioned Document Report No. 546-802, with the conclusion that the fake receipts were not prepared and validated from Gutierrez's validating machine (Rollo pp. 78-80). Collation of evidence by the PNP having been completed, the Central Police District forthwith endorsed the complaint to the Central Office of the Ombudsman.

On December 10, 2004, Graft Investigation and Prosecution Officer Richard P. Palpal-Latoc rendered a draft Decision finding Gutierrez guilty of simple Violation of Office Rules and Regulations, and thereby sanctioning her by mere reprimand. Dismissing the complaint against Gutierrez, GIPO Palpal-Latoc rationalized that since the falsified receipts were not typed from her validating machine per the report of the NBI, then it is clear that Gutierrez was not the source, nor that she had any participation, in the issuance of the fake receipts (Rollo pp. 34-41).

Upon review, the draft Decision of GIPO Palpal-Latoc was disapproved by Assistant Ombudsman Pelagio S. Apostol. In lieu of the draft Decision, Overall Deputy Ombudsman Margarito P. Gervacio, Jr., issued the herein impugned Order on January 28, 2005 finding Gutierrez administratively liable for Dishonesty and Grave Misconduct, for which the penalty of dismissal from public service, including all the accessory penalties, was imposed upon Gutierrez.

Gutierrez thereafter lodged a Motion for Reconsideration on February 14, 2005 (Rollo pp. 42-50), but the same was denied via the Order dated February 17, 2005.

In disagreement, Gutierrez instituted the present Petition for Review to reverse and set aside the rulings of the Overall Deputy Ombudsman, and for this purpose assigns as errors that –

I. The Office of the Ombudsman clearly committed grave errors of facts prejudicial to the interest of the movant.

II. The Office of the Ombudsman gravely erred in finding that petitioner is guilty of dishonesty and grave misconduct despite lack of substantial evidence to support it and denied her right to due process.

III. The Office of the Ombudsman has no direct authority dismiss the petitioner from the government service, more particularly in her position as Local Revenue Collection Officer I.

IV. The Order of the Office of the Ombudsman imposing the penalty of dismissal from the service is not immediately executory pending appeal.

The Petition for Review is devoid of merit.

By way of legal definition, the administrative offense of dishonesty connotes a disposition on the part of the public employee to lie, cheat, deceive, betray, conceal, or defraud. The term is likewise taken to mean untrustworthiness, lack of integrity, want of honesty or probity in principle, or want of straightforwardness and fairness (Office of the Court Administrator vs. Ibay, 393 SCRA 212). On the other hand, misconduct is a transgression of some established and definite rule of action, a