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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

OCT 01 2018



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 211450

Present:

-versus-

VELASCO, *J. Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

LOVING F. FETALVERO, JR.,
Respondent.

Promulgated:

July 23, 2018

X-----*Wilfredo V. Lapitan*-----X

DECISION

LEONEN, *J.*:

Complainants in administrative proceedings carry the burden of proving their allegations with substantial evidence or such “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”¹

This resolves the Petition for Review² filed by the Office of the Ombudsman assailing the April 15, 2013 Decision³ and February 20, 2014 Resolution⁴ of the Court of Appeals in CA-G.R. SP No. 119495.

¹ *De Jesus v. Guerrero III*, 614 Phil 520, 528–529 (2009) [Per J. Quisumbing, Second Division].

² *Rollo*, pp. 11–29.

³ *Id.* at 31–39. The Decision was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales of the Seventeenth Division, Court of Appeals, Manila.

⁴ *Id.* at 41–44. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales of the Former Seventeenth Division,

The facts as borne by the records are as follows:

Lockheed Detective and Watchman Agency, Inc. (Lockheed) was the security services contractor for Philippine Ports Authority's Port District Office-Luzon. When the time came to bid for a new security provider, Lockheed applied for accreditation to bid for the security services contract.⁵

Officers from the Port Police Department reviewed Lockheed's performance and gave it a rating of 78.30 or "fair." Lockheed's fair rating effectively disqualified it from being accredited to bid for the new security services contract.⁶

Philippine Ports Authority Assistant General Manager for Operations Benjamin Cecilio (Cecilio) referred Lockheed's rating to Port District Office-Luzon for its review and comments. Port District Office-Luzon Security Staff Officer Captain Geronimo R. Grospe (Grospe), in turn, directed Lockheed to comment on its rating from the Port Police Department.⁷

Lockheed submitted its comment, and Grospe, finding merit in its arguments for reconsideration, recommended the reconsideration of its rating and the issuance of its Certificate of Accreditation to bid for the new security services contract.⁸

Port District Office-Luzon Port District Manager Hector Miole (Miole) also recommended the recomputation of Lockheed's rating and the issuance of its Certificate of Accreditation.⁹

Cecilio directed Port District Office-Luzon Superintendent Loving F. Fetalvero, Jr. (Fetalvero) to review Grospe's and Miole's recommendations against the guidelines and to draft a reply.¹⁰

Port Management Office-Puerto Princesa, Palawan Station Commander Aquilino Peregrino (Peregrino) submitted Lockheed's re-evaluation performance to Miole.¹¹

Court of Appeals, Manila.

⁵ Id. at 67.

⁶ Id. at 68.

⁷ Id.

⁸ Id.

⁹ Id. at 68-69.

¹⁰ Id. at 69.

¹¹ Id.

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Cecilio eventually adapted Grospe's and Miole's recommendations and issued Lockheed a Certificate of Final Rating, with a readjusted rating of 83.97, or satisfactory, from the original rating of 78.30, or fair, making Lockheed eligible for the accreditation to bid.¹²

Port Police Department Division Manager Maximo Aguirre (Aguirre) filed a complaint-affidavit against Cecilio, Fetalvero, Miole, Grospe, and Peregrino for Grave Misconduct and Dishonesty.¹³

Aguirre claimed that Cecilio issued Lockheed's Certificate of Final Rating without going through the prescribed procedure under the Philippine Ports Authority Memorandum Circular No. 18-2000.¹⁴

Aguirre also averred that the Port Police Officers who gave Lockheed its original rating did not participate in its reevaluation, contrary to the claims of Peregrino that they did. Furthermore, the Port Police Officers who rated Lockheed denied reevaluating Lockheed and changing its rating. Thus, Aguirre asserted that Cecilio committed deceit, misrepresentation, and deception because the reassessment was without basis and was done to favor Lockheed.¹⁵

On May 21, 2003, Graft Investigation and Prosecution Officer I Moreno F. Generoso (Officer Generoso) dismissed¹⁶ the complaint. However, in his November 25, 2004 Review Resolution,¹⁷ Assistant Special Prosecutor III Roberto T. Agagon recommended the reversal of the May 21, 2003 Decision and the dismissal from service of the charged officers.

The Review Resolution held that while it was acceptable to move for the reconsideration of the issued rating, readjusting it from 78.30 to 83.97 was another matter altogether and constituted Grave Misconduct and Dishonesty.¹⁸

It likewise noted that Lockheed's reevaluation was irregularly made because the Port Police Officers who conducted the first evaluation denied being part of the reevaluation. Furthermore, Peregrino and Grospe had no personal knowledge of Lockheed's performance; hence, they had no basis for their reevaluation of the original rating. It also emphasized that the

¹² Id. at 70.

¹³ Id. at 66-67.

¹⁴ Id. at 67.

¹⁵ Id. at 69-70.

¹⁶ Id. at 66.

¹⁷ Id. at 66-72.

¹⁸ Id. at 70.

readjustment was done whimsically and capriciously since there were no documents or computations submitted to support the readjustment.¹⁹

The *fallo* of the Review Resolution read:

WHEREFORE, it is recommended that respondents Benjamin Cecilio, Loving Fetalvero, Jr., Hector Miole, Geronimo Gorospe (sic) and Aquilino Peregrino be held guilty of Grave Misconduct and Dishonesty and are meted the penalty of Dismissal from the service.²⁰

The recommendation was approved by Orlando C. Casimiro, the Deputy Ombudsman for the Military and Other Law Enforcement Offices.²¹

On June 7, 2006, Graft Investigation and Prosecution Officer II Joselito Fangon (Officer Fangon) granted the motions for reconsideration filed by Fetalvero, Cecilio, Miole, Grospe, and Peregrino, and reversed the November 25, 2004 Review Resolution.²²

However, on October 20, 2006,²³ Graft Investigation and Prosecution Officer I Russel C. Labor recommended the reversal of the June 7, 2006 Order and the affirmation of the November 25, 2004 Review Resolution.

The October 20, 2006 Review Order pointed out that personal knowledge of Lockheed's performance was needed to readjust or reevaluate its rating. Thus, the readjustment by persons without personal knowledge of the behavior and performance of Lockheed's guards was improper and highly irregular.²⁴

The Review Order also brought up that Cecilio's and the other officers' acts showed a "common intent . . . to cover up [Lockheed's] below satisfactory rating" so that it could qualify for the bidding of Philippine Port Authority's security services.²⁵

The recommendation of the Review Order read:

The undersigned respectfully recommends for the affirmation of the Review Resolution of Special Prosecutor III Agagon holding respondents, **BENJAMIN B. CECILIO, LOVING F. FETALVERO, JR., HECTOR E. MIOLE, GERONIMO GROSPE, and AQUILINO**

¹⁹ Id. at 71–72.

²⁰ Id. at 72.

²¹ Id.

²² Id. at 45.

²³ Id. at 45–65.

²⁴ Id. at 62–63.

²⁵ Id. at 63.

PEREGRINO, liable for **GRAVE MISCONDUCT** and **DISHONESTY**.²⁶ (Emphasis in the original)

The recommendation was approved by Deputy Ombudsman for Luzon Mark E. Jalandoni.²⁷

Fetalvero appealed the Office of the Ombudsman's November 25, 2004 Review Resolution and October 20, 2006 Review Order to the Court of Appeals.²⁸

Fetalvero claimed that his acts of collating and computing Lockheed's reevaluated ratings from Grospe and Miole were "ministerial . . . done in the regular performance of his duty."²⁹

On April 15, 2013,³⁰ the Court of Appeals granted Fetalvero's petition.

The Court of Appeals sustained the May 21, 2003 Decision of Officer Generoso and upheld his findings that Fetalvero's acts did not constitute dishonesty and grave misconduct.³¹

It likewise noted that in the June 7, 2006 Order granting the motion for reconsideration and reversing the November 25, 2004 Review Resolution, Officer Fangon found no abuse of discretion in the readjustment of Lockheed's rating.³²

Finally, it emphasized that the related criminal complaint of the administrative case against Fetalvero and the other officers was withdrawn by the Ombudsman from the Sandiganbayan.³³

The *fallo* of the Court of Appeals April 15, 2013 Decision read:

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The Review Resolution dated November 25, 2004 and Review Order dated October 20, 2006 of the Office of the Ombudsman in OMB-C-A-02-0023-A are hereby **REVERSED and SET ASIDE**. Administrative Case No. OMB-C-A-02-0023-A against petitioner Loving Fetalvero, Jr. is hereby **DISMISSED**.

²⁶ Id. at 64.

²⁷ Id.

²⁸ Id. at 31.

²⁹ Id. at 36.

³⁰ Id. at 31-39.

³¹ Id. at 36-37.

³² Id. at 37-38.

³³ Id. at 38.

SO ORDERED.³⁴ (Emphasis in the original)

On February 20, 2014, the Court of Appeals denied³⁵ the motions for reconsideration filed by the Office of the Ombudsman and Aguirre.

On April 24, 2014, the Office of the Ombudsman filed its petition before this Court.³⁶

In its Petition, petitioner emphasizes that the readjusted Certificate of Final Rating awarded to Lockheed was loosely based on respondent Fetalvero's Reply.³⁷

Petitioner also points out that two (2) Certificates of Final Rating were prepared, with one pre-dated for April 25, 2001 and the other one submitted on May 3, 2001. Furthermore, the officers who conducted the reevaluation were not the same officers who conducted the original evaluations. The officers who conducted the reevaluation, including respondent Fetalvero, had no personal knowledge of the performance of Lockheed's security guards to serve as basis for their reevaluation.³⁸

Petitioner asserts that respondent's acts of adjusting Lockheed's ratings and giving it undue preference call for a finding of administrative liability for grave misconduct and dishonesty.³⁹

Citing *Miro v. Dosono*,⁴⁰ petitioner insists that when it comes to administrative proceedings, the lowest standard of substantial evidence will suffice for administrative liability to attach.⁴¹ Nonetheless, petitioner claims that even if respondent indeed only acted in a ministerial capacity, this will not absolve him of administrative liability.⁴²

Petitioner likewise stresses that the principle of conclusiveness of judgment does not apply in the case at bar because the Information against respondent and the other officers was withdrawn. Hence, the issues in the administrative case were not judicially passed upon and determined by a court of competent jurisdiction.⁴³

³⁴ Id. at 38–39.

³⁵ Id. at 41–44.

³⁶ Id. at 11–29.

³⁷ Id. at 18.

³⁸ Id.

³⁹ Id. at 18–19.

⁴⁰ 634 Phil. 54 (2010) [Per J. Carpio, Second Division].

⁴¹ *Rollo*, pp. 19–20.

⁴² Id. at 20.

⁴³ Id. at 20–22.

Finally, petitioner states that an administrative case may continue despite dismissal of the criminal charges as administrative cases proceed independently of criminal cases.⁴⁴

In his Comment,⁴⁵ respondent continues to deny that he gave undue advantage to Lockheed with the reevaluated final rating since his act of collating the performance ratings transmitted to him by Miole was merely ministerial in character.⁴⁶

Respondent points out that the Court of Appeals in *Miole v. Aguirre*, docketed as CA-G.R. SP No. 119526, upheld the dismissal of the administrative case against Miole, Geronimo, and Peregrino on the ground of *res judicata* in light of the Office of the Ombudsman's withdrawal of the criminal case against them.⁴⁷

In its Reply,⁴⁸ petitioner reiterates that an administrative case may proceed independently of criminal proceedings and that the principle of conclusiveness of judgment does not apply in the case at bar.⁴⁹

The sole issue for this Court's resolution is whether or not there is substantial evidence to hold respondent Loving F. Fetalvero, Jr. administratively liable for the charges of dishonesty and misconduct against him.

The Petition must fail.

In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."⁵⁰

Petitioner accuses respondent of conniving with Cecilio, Miole, and Grospe to give Lockheed an unfair preference by readjusting its rating so that it could participate in the bidding for a security services contract with the Philippine Ports Authority.⁵¹

Petitioner faults Cecilio for ordering a reassessment of the Port Police

⁴⁴ Id. at 22.

⁴⁵ Id. at 86-89.

⁴⁶ Id. at 86-87.

⁴⁷ Id. at 87.

⁴⁸ Id. at 103-112.

⁴⁹ Id. at 104.

⁵⁰ *De Jesus v. Guerrero III*, 614 Phil 520, 528-529 (2009) [Per J. Quisumbing, Second Division].

⁵¹ *Rollo*, pp. 18-19.

Department's rating of Lockheed's performance as the then incumbent security provider. It claims that the reassessment and eventual readjustment of Lockheed's rating to 83.97 from the original 78.30 were without basis and were clearly meant to favor Lockheed.⁵²

Petitioner fails to convince.

As the Assistant General Manager for Operations, Cecilio exercised control and supervision over the Port Police Department. His authority over it is evident in Philippine Ports Authority Memorandum Circular No. 18-2000, or the Revised Port Security Services Procurement and Contract Administration,⁵³ which provides:

23.4.1 The security agency/guards shall be rated on their performance and compliance to the Security Services Contract by Port Management Office (PMO) Port Police Division monthly and/or *by the Office of the [Assistant General Manager for Operations] through the Port Police Department – Head Office*, at least once every six months during the effectivity of the contract to ensure that the desired quality of service is rendered.

.....

23.4.4. The Office of the [Assistant General Manager for Operations] shall issue a Certificate of Final Rating, based on the average rating of the Agency/Security Guards. Monthly Performance Ratings in the [Port Management Offices] within a certain [Port District Office] from the effectivity of the contract, and *the average of the [Assistant General Manager for Operations], through the Port Police Department – Head Office* rating on inspections conducted, pursuant to 23.4 hereof (with the last rating conducted at least one month before expiration of the contract) divided by two (for incumbent contractor).⁵⁴ (Emphasis supplied)

The power of supervision involves oversight of a subordinate to ensure that the rules are followed. On the other hand, the power of control is broader as it involves laying down the actual rules to be followed. If the rules are not followed, the power of control allows the controlling officer to order that the act be done or undone, or even to supplant the subordinate's act with his or her own act.⁵⁵

*Mondano v. Silvosa*⁵⁶ expounded on the difference between supervision and control:

⁵² Id. at 15 and 18.

⁵³ Id. at 53.

⁵⁴ Id. at 67.

⁵⁵ *Pimentel, Jr. v. Aguirre*, 391 Phil 84, 99–100 (2000) [Per J. Panganiban, En Banc] citing *Drilon v. Lim*, 305 Phil 146 (1994) [Per J. Cruz, En Banc].

⁵⁶ 97 Phil 143 (1955) [Per J. Padilla, First Division].

In administrative law[,] supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them[,] the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.⁵⁷

Petitioner faults Cecilio for readjusting Lockheed's original rating from the Port Police Department, thereby leading to Lockheed's eligibility to participate in the bidding for a security service contract. However, as the controlling officer over the Port Police Department, Cecilio precisely had the authority to supplant its rating with a new one as long as the new rating was backed by the necessary evidence and he did not gravely abuse his authority to do so.

In petitioner's June 7, 2006 Order, Officer Fangon found sufficient basis for the readjustment of Lockheed's rating:

Needless to state, the ensuing review of the recommended ratings resulted in the re-adjustment of the ratings of [Lockheed] from Fair to Satisfactory (or from 78.3[0] to 83.97). The records of the case will reveal that *the re-adjusted ratings were based on documents culled by the officials who conducted the review of the ratings consisting of Summary Reports and Monthly Performance Ratings*. From these documents, it appears that there was sufficient basis to recommend the increase of the ratings of [Lockheed].

It becomes clear from the foregoing, that *the re-adjustment of the ratings was based on reliable proof which was contained in the records of the [Philippine Ports Authority]*, and which can not be said of the initial ratings given to [Lockheed].⁵⁸ (Emphasis supplied)

Even petitioner admitted that the readjustment was not altogether devoid of evidentiary basis:

Moreover, if there be any re-adjustments made, it must have the accompanying documents/computations, not just re-adjusted whimsically and capriciously. *The submissions of only the portion of the computation or comment in the logbook is not sufficient.*⁵⁹ (Emphasis supplied)

As for respondent, petitioner claims that he was guilty of dishonesty and misconduct because of the undue preference that he purportedly extended to Lockheed.

⁵⁷ Id. at 147-148.

⁵⁸ Id. at 37.

⁵⁹ Id. at 71.



Petitioner again fails to convince.

In its Statement of Facts, petitioner puts forth that it was Grospe and Miole who recommended to Cecilio the reconsideration and readjustment of Lockheed's rating, while respondent, upon Cecilio's instructions, reviewed their recommendations vis-à-vis the guidelines.⁶⁰

Nowhere was it alleged that respondent likewise recommended the reconsideration or readjustment of Lockheed's original rating. This supports respondent's assertion that he performed the ministerial task of creating a report by collating and computing the ratings transmitted to him by Miole.⁶¹

In the May 21, 2003 Decision, Officer Generoso likewise found that respondent was not guilty of dishonesty and grave misconduct since his participation was limited to the mechanical act of computing the raw data provided to him:

Similarly, the allegations against respondent Fetalvero deserves scant consideration considering that the Memorandum dated May 2, 2001 which he submitted together with the draft Certificate of Final Rating pre-dated April 25, 2001 and the computation of ratings of [Lockheed] was regular.

We likewise, do not find any irregularity on the Re-evaluated Performance of [Lockheed] *since he (Fetalvero) only conducted the numerical computation pursuant to [Philippine Ports Authority Memorandum Circular No.] 18-2000.*⁶² (Emphasis supplied)

Petitioner attempts to pin liability on respondent by insisting that the Certificate of Final Rating issued by Cecilio was "loosely based"⁶³ on the reply that petitioner drafted. However, as respondent's reply is a compilation of Lockheed's ratings, it is inevitable that it will be referred to for the issuance of Certificate of Final Rating in Lockheed's favor. This cannot be interpreted as respondent's positive act to recompute or adjust Lockheed's rating to give it undue preference.

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."⁶⁴ It involves intentionally making a false statement to deceive or commit a fraud.⁶⁵

⁶⁰ Id. at 14.

⁶¹ Id. at 86.

⁶² Id. at 37.

⁶³ Id. at 18.

⁶⁴ *Office of the Ombudsman v. Torres*, 567 Phil. 46, 58 (2008) [Per J. Nachura, Third Division], citing Black's Law Dictionary, 6th Ed. (1990).

⁶⁵ *Aquino v. General Manager of the GSIS*, 130 Phil 488, 492 (1968) (Per J. Reyes, J.B.L., En Banc).

On the other hand, misconduct is more than just mere error of judgment as it involves a wrongful intention from the public officer involved.⁶⁶ It is also defined as “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.”⁶⁷

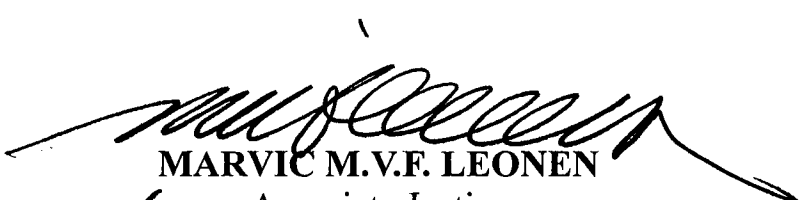
As the complainant, petitioner has the burden of proving that respondent deliberately committed falsehood or transgressed established rules to give Lockheed undue preference during the bidding process of the contract for services.

Petitioner fails to discharge its burden.

What petitioner only managed to prove was that respondent, upon orders of his superior, collated the ratings and recommendations submitted by the other officers and then summarized them into a report. By no stretch of mind can respondent’s submission of a report, an act which was done within the confines of his function as the Superintendent of the Port District Office-Luzon, be seen as an unlawful act.


WHEREFORE, this Court resolves to **DENY** the Petition and **AFFIRM** the Court of Appeals April 15, 2013 Decision and February 20, 2014 Resolution in CA-G.R. SP No. 119495.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

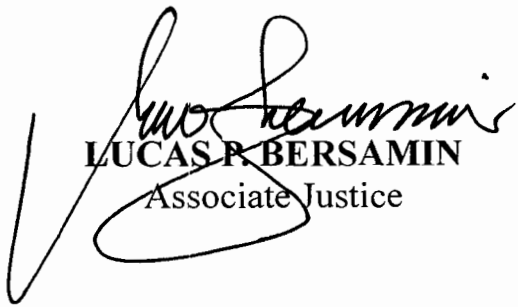
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

⁶⁶ *In re: Impeachment of Horrilleno*, 43 Phil 212, 214 (1922) [Per J. Malcolm, First Division].

⁶⁷ *Id.*



LUCAS R. BERSAMIN
Associate Justice



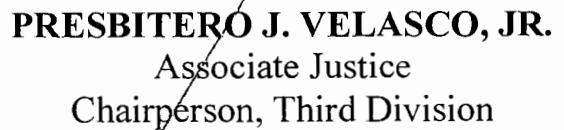
SAMUEL R. MARTIRES
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



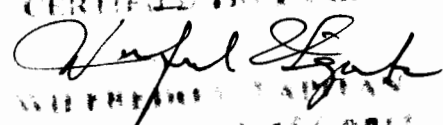
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

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 VERFEL LOPEZ
 DIVISION CLERK OF COURT
 Third Division

OCT 31 2017