Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ESTRELLA K. VENADAS,
Petitioner,

- versus -

BUREAU OF IMMIGRATION,
Respondent.

G.R. No. 222471

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

JUL 07 2020

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DECISION

REYES, J. JR., *J.*:

This is a Petition filed under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) November 3, 2015 Decision[1] and January 20, 2016 Resolution[2] in CA-G.R. SP No. 135988, which reversed the Civil Service Commission (CSC) May 6, 2014 Decision[3] and reinstated the February 12, 2013 Resolution[4] of the Department of Justice (DOJ). The DOJ affirmed the dismissal from service of petitioner Estrella K. Venadas (Venadas), an Administrative Aide II of respondent Bureau of Immigration

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1 Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 126-131.

2 Id. at 133-134.

3 Id. at 36-143.

4 Penned by former DOJ Secretary Leila M. De Lima; id. at 477-485.

(BI), for grave misconduct and conduct prejudicial to the best interest of the service.

The facts follow.

On February 11, 2007, Venadas enticed a new acquaintance, Emyly Lim-Ines (Ines), to invest in a money lending enterprise allegedly operated by Venadas within the BI. Venadas supposedly extended loans to co-employees at amounts based on their overtime pay at 10% interest, and collected the cash advance from the BI's cashier upon release. In return for the investment, Ines was promised 5% or half of the interest collected.[5]

To bolster the representations, Venadas showed Ines some Landbank checks payable to "BI Employees" and/or "BI Employees – Estrella Venadas" and copies of payslips of employees. The scheme was allegedly carried out with the help of Disbursing Officer Percida Binalay and Finance Officer Atty. Marcela Malaluan at the Cash Section of the BI. For credibility, Venadas claimed to have close ties with Landbank personnel, as well as former DOJ Secretary Raul Gonzales and Congressman Mikey Arroyo. Thus, persuaded, Ines gave Venadas money in exchange for post-dated checks. For a time, Venadas was able to timely remit Ines' supposed share of the interest earned.[6]

In November of 2008, Ines decided to withdraw the investment and demanded its return. Venadas, however, failed to return the money and gave excuses, claiming that the BI became strict in releasing employees' salaries. The checks issued by Venadas, payable to Ines, were also dishonored by the bank. To reassure Ines that the money was forthcoming, Venadas gave Ines copies of Landbank checks with serial numbers 0000830301 to 301-EE.[7] Ines decided to verify the checks after Venadas' continued failure to return the money invested. Landbank – PEZA branch informed Ines that Landbank check numbers 0000830301 to 301-EE were not genuine.[8]

Upon learning that the checks bore the forged signature of the disbursing officer and that there was no such money-lending scheme within the BI, Ines lodged a Complaint[9] with the bureau against Venadas on April 3, 2009. In the administrative complaint, Ines accused Venadas of enriching herself by abusing or taking advantage of her position in the BI through false pretenses and other deceitful acts, including possible forgery and/or falsification of documents.

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5 Id. at 126-127.
6 Id. at 832.
7 Id.
8 Id. at 127.
9 Id. at 238-244.

An investigation ensued and concerned parties were directed to answer the allegations. In an Answer[10] dated April 24, 2009, Venadas denied the accusations and countered that it was Ines who offered to invest in Venadas' beauty salon, lotto outlet, and pharmacy. Venadas also denied showing or issuing any checks to Ines, or showing Ines any payroll documents of the BI.

Upon recommendation of Senior State Prosecutor Peter Lim Ong (Senior State Prosecutor Ong), then Officer-in-charge (OIC) Atty. Ronaldo P. Ledesma (Atty. Ledesma) issued a Formal Charge[11] on July 30, 2010 against Venadas for grave misconduct and conduct prejudicial to the best interest of the service. Consequently, Venadas was also preventively suspended for ninety days. Venadas moved for reconsideration of the charges, but the motion was denied.[12]

On March 23, 2011, BI Commissioner Ricardo A. David, Jr. (Commissioner David) found Venadas guilty of grave misconduct and conduct prejudicial to the best interest of the service, imposing the penalty of dismissal from the service with all accessory penalties.[13] Venadas sought reconsideration of Commissioner David's decision, but the motion did not prosper.[14]

Aggrieved, Venadas appealed the BI decision to the DOJ Secretary. Venadas posited that an OIC is not authorized by law to exercise the power of discipline, for which reason the Formal Charge was defective for having been issued by an OIC. The appeal was denied by the DOJ Secretary through a February 12, 2013 Resolution.[15]

The DOJ ruled that: the alleged defect of the Formal Charge was deemed waived for not having been raised at the earliest opportunity despite Venadas' active participation in the proceedings; photocopies of documents may be admissible in evidence in administrative cases; and, technical rules of procedure are not strictly applied in administrative cases for as long as the person charged is given fair opportunity to be heard and present evidence. Finally, the DOJ sustained the conclusion that Venadas indeed took advantage of being employed with the BI to gain access to guarded files.

On June 6, 2013, Commissioner David issued an Order implementing the DOJ resolution that affirmed Venadas' dismissal from the service.[16]

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[10] Id. at 380-382.
[11] Id. at 393.
[12] Id. at 394-403.
[13] Id. at 414-415.
[14] Id.
[15] Supra note 4.
[16] *Rollo*, p. 834.

Undeterred, Venadas appealed anew before the CSC, which set aside the resolution of the DOJ Secretary in a May 6, 2014 Decision.[17] Without touching on the merits of the administrative complaint, the CSC ruled that an OIC, such as Atty. Ledesma, enjoys limited powers in the discharge of its functions. Considering that an OIC is not authorized to issue appointments which only the head of office or disciplining authority can exercise, it reasoned that an OIC is not authorized to issue a Formal Charge and an order of preventive suspension. The CSC viewed this to be a deprivation of Venadas' right to due process.

The BI questioned the CSC's reversal of the DOJ resolution *via* a Rule 43 petition before the CA, which the latter found meritorious. The CA agreed with the BI that Venadas is estopped from raising questions as to the alleged defect of the Formal Charge after actively participating in the proceedings before the bureau. Thus, in the decision subject of this review, the CA set aside the CSC's decision and upheld the DOJ's resolution.[18]

On November 23, 2015, Venadas filed a Motion for Reconsideration[19] of the CA decision, as well as a Motion for Inhibition[20] against CA Associate Justice Danton Q. Bueser and other members of its then Special 14th Division. The CA denied Venadas' Motion for Reconsideration for lack of merit through the presently assailed January 20, 2016 Resolution.[21]

Undaunted, Venadas now invokes this Court's extraordinary review power over the CA's decision and resolution, insisting that the alleged defect in the Formal Charge renders it a nullity that is not susceptible to waiver or estoppel.[22] Venadas denies assailing belatedly the OIC's authority for the first time on appeal or having actively participated in a formal investigation.[23] The petition also assails the decision of the BI commissioner and resolution of the DOJ, contending that the finding of guilt lacked adequate evidence and was based on unauthenticated photocopies.[24] It further imputes grave abuse of discretion on the CA in allegedly ignoring the motion for inhibition filed by Venadas and accuses the *ponente* of the decision of undue interest in the case.[25]

On August 11, 2016, the BI, through the Office of the Solicitor General (OSG), filed its Comment[26] on the current petition. The OSG highlighted that only legal issues may be raised in a petition for review on

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17 Supra note 3.
18 Supra note 1.
19 *Rollo*, pp. 15-39.
20 Id.
21 Supra note 2.
22 *Rollo*, p. 95.
23 Id. at 96.
24 Id. at 96-97.
25 Id. at 97.
26 Id. at 830-852.

certiorari, but Venadas also raises issues requiring an examination of the evidence presented before the BI.[27] As argued by the OSG, not only was Venadas' guilt substantially established, but that Venadas was properly charged and accorded due process during the administrative proceedings.[28] Furthermore, resolution of the motion for inhibition is discretionary on the part of the CA, and Venadas' accusation of horse trading in the CA is reckless and without basis.[29]

The issue for our resolution, through the lens of a Rule 45 mode of review, is whether or not the CA erred in ruling that Venadas was already estopped from making an issue of the fact that the Formal Charge was issued by an OIC.

We deny the petition for failing to present any serious error warranting a reversal of the CA's disposition.

The CSC anchored its decision, not on whether or not Venadas had full and proper notice of the charges and given sufficient opportunity to answer, but on whom the Revised Rules on Administrative Cases in the Civil Service cites as the proper person to issue a Formal Charge, *i.e.*, the disciplining authority.

> Section 20. Issuance of Formal Charge; Contents. – After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge/s, a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge/s, and a notice that he/she may opt to be assisted by a counsel of his/her choice.

Relative to the power of discipline, "the OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC."[30] Given that "[a]bsent any contrary statutory provision, the power to appoint carries with it the power to remove or to discipline,"[31] the CSC interpreted it as beyond the authority of Atty. Ledesma, as a mere OIC, to issue the Formal Charge against Venadas. We, nonetheless, find that under the present circumstances, it does not

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[27] Id. at 840.
[28] Id. at 842-849.
[29] Id. at 850-852.
[30] *Dr. Posadas v. Sandiganbayan*, G.R. Nos. 168951 & 169000, November 27, 2013, citing CSC Res. 1692, Oct. 20, 1978.
[31] *Atty. Aguirre v. De Castro*, G.R. No. 127631, December 17, 1999.

render the Formal Charge an absolute nullity. It is a defect that is susceptible to waiver and estoppel.

The CSC failed to consider that Atty. Ledesma issued the Formal Charge only upon recommendation of Senior State Prosecutor Ong, after the latter conducted the preliminary investigation. Thus, it is an act which was not solely dependent on Atty. Ledesma's discretion as OIC on the sufficiency of the charges and evidence. Recall that it is an OIC's lack of discretion in the appointment and discipline of employees that makes it incumbent that such matter be deferred to one possessed of such authority. Although the task of signing the Formal Charge devolved upon Atty. Ledesma, the fate of the complaint remained at the discretion of the head of the bureau. Both the BI Commissioner and the DOJ Secretary are disciplining authorities over BI employees. In this instance, the OIC may be presumed to be acting under the cloak of the DOJ's authority and under the supervision of the BI Commissioner.

Venadas misappreciates *Salva v. Valle*,[32] an insubordination case wherein the respondent faculty member was merely issued memorandum orders by the state university president, a far cry from the Formal Charge contemplated under CSC rules. In *Salva*, the memoranda were grossly insufficient both in form and in substance, such that the respondent had no real opportunity to be heard. In that case, even the Commission on Higher Education took a contrary view to the state university's Board of Regents and opined that due process was not observed.

As to holding Venadas in estoppel, records disclose that Venadas vigorously and mindfully participated throughout the administrative proceedings, despite the attempt to downplay an active role. Venadas' submissions were also considered, even if it failed to controvert evidence of culpability. Furthermore, Venadas appears to have been ably represented by counsel. Thus, it would be an error to say that Venadas was not heard on the specific accusations or not given ample opportunity to present evidence in defense. Indeed:

> The essence of due process is simply to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.[33]

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[32] G.R. No. 193773, April 2, 2013.

[33] *Pat-og v. Civil Service Commission*, G.R. No. 198755, June 5, 2013.

Again, "the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard."[34] Here, Venadas was fully and properly notified of the charges and the evidence. It was only the signatory of the Formal Charge that could be made an issue. The bureau also gave ample opportunity for Venadas to contradict the accusations, a right that was fully exercised and exhausted. In view of Venadas' active participation and submission to the BI's jurisdiction, Venadas must not be allowed to belatedly change tack only after obtaining an unfavorable decision.

It must be remembered that this involves an administrative case bearing on Venadas' fitness to continue being employed with a government agency. In this regard, it was adequately shown that Venadas is unworthy of trust at the expense of the agency with which she is identified. "The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust."[35]

There is no merit in Venadas' invocation of more stringent technical rules of procedure and evidence as this is neither a criminal nor a civil case. The transgression of particular concern here is not the failure to return the complainant's money, but the abuse of an insider's access to payroll documents. Even Venadas' assertion that the incriminating evidence against her were not certified true copies is ridiculous, given that these were falsified to lend credence to the money lending scheme. The evidence included not just photocopies of commercial documents, but prints of text messages and various photos of the complainant and the respondent together. The point is that false copies of internal documents wound up in the hands of an outsider; hence, the BI and DOJ's concurring conclusion that Venadas took advantage of being an employee of the BI to lend credibility to a bogus investment scheme.

We recall the guidelines laid down by this Court for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial powers:

> First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the

[34] *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013, citing *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005.

[35] *Office of the Ombudsman v. Regalado*, G.R. Nos. 208481-82, February 7, 2018.

> credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence.
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> Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.[36]

Following the foregoing, we are not inclined to make an exception in this case, considering that the CA concurs with the factual findings of both the BI and the DOJ, the merits of which the CSC did not even tackle.

All told, Venadas was indeed already estopped from assailing the Formal Charge on appeal. "Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial."[37] At any rate, Atty. Ledesma was not entirely unauthorized to issue the Formal Charge and it cannot be said that Venadas was denied due process of law.

The penalty of dismissal from the service, with its accessory penalties, must be sustained. "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."[38] There is also no question that Venadas' conduct is prejudicial to the best interest of the service, as it tarnished the image and integrity of the government agency with which she is connected.

Finally, counsel for petitioner is admonished for the reckless and unsubstantiated accusations against the CA and the *ponente* of the decision under review. Zeal for a client's cause should not be at the expense of counsel's duty as an officer of the court.[39] Merely citing that the case was unloaded to the *ponente*, whom news reports happened to name as among legislators investigated by the Secretary of Justice on the use of PDAF allocations, is a long stretch to impute undue interest in a case or horse trading in the CA. Counsel should know better than to brandish about serious accusations without proof, not the least when it involves the integrity of courts and magistrates.

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36 *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532, 172544-45, November 20, 2013, citing *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

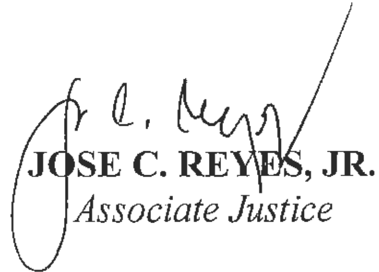
37 *Amoguis v. Ballado*, G.R. No. 189626, August 20, 2018.

38 *Office of the Ombudsman v. Faller*, G.R. No. 215994, June 6, 2016.

39 CODE OF PROFESSIONAL RESPONSIBILITY, Rule 11.04 - A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

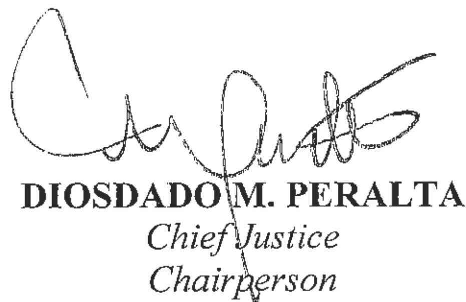
WHEREFORE, the petition is hereby **DENIED.**

SO ORDERED.

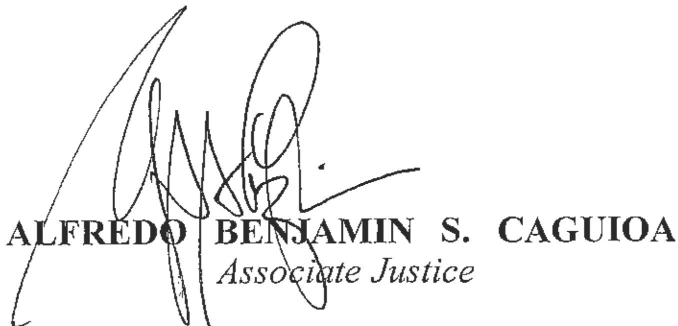


JOSE C. REYES, JR.
Associate Justice

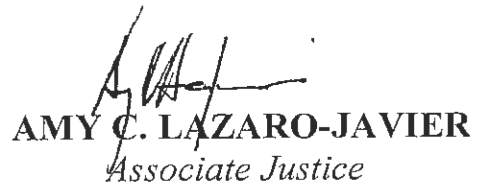
WE CONCUR:



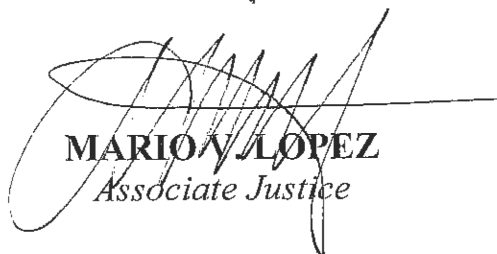
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



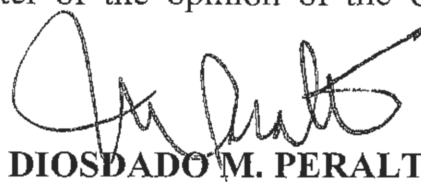
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice