



Republic of the Philippines
Supreme Court
 Manila

EN BANC

ATTY. JANET D. NACION,
 Petitioner,

G.R. No. 204757

Present:

SERENO, C.J.,*
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 VILLARAMA, JR.,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN, and
 JARDELEZA, JJ.**

- versus -

**COMMISSION ON AUDIT,
 MA. GRACIA PULIDO-TAN,
 JUANITO ESPINO and HEIDI
 MENDOZA,**

Promulgated:

Respondents.

March 17, 2015

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* On Official Leave.
 ** No part in view of his participation in the Office of the Solicitor General.

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RESOLUTION

REYES, J.:

This resolves the Petition for *Certiorari*¹ filed by petitioner Atty. Janet D. Nacion (Nacion) to assail the Decision² dated June 14, 2012 and Resolution³ dated November 5, 2012 of respondent Commission on Audit (COA), finding her guilty of grave misconduct and violation of reasonable office rules and regulations.

From October 16, 2001 to September 15, 2003, Nacion was assigned by the COA to the Metropolitan Waterworks Sewerage System (MWSS) as State Auditor V.⁴ On June 27, 2011, when Nacion was already holding the position of Director IV of COA, National Government Sector, a formal charge⁵ against her was issued by COA Chairperson Ma. Gracia M. Pulido Tan (Chairperson Tan) for acts found to be committed when she was still with the MWSS. The pertinent portions of the charge read:

The Administrative Case Evaluation Report dated June 21, 2011 of the Fraud Audit and Investigation Office (FAIO), Legal Services Sector (LSS) as well as the Investigation Report submitted by the Team from the FAIO disclosed the following reprehensible actions:

1. Receiving benefits and/or bonuses from MWSS in the total amount of P73,542.00 from 1999-2003[;]
2. Availing of the MWSS Housing Project;
3. Availing of the Multi-Purpose Loan Program – Car Loan.

Based thereon and upon the recommendation of the Director, FAIO-LSS, this Office finds sufficient basis to administratively charge you with Grave Misconduct and Violation of Reasonable Office Rules and Regulations which are grounds for administrative action under the Civil Service Law, Rules and Regulations.

WHEREFORE, you are hereby formally charged with the aforementioned offenses and required to submit to the Office of the General Counsel, LSS your answer in writing and under oath, within five (5) days from receipt hereof, x x x.⁶

Attached to the formal charge, which was docketed as Administrative Case No. 2011-002, were investigation reports based on MWSS journal vouchers, disbursement vouchers and claims control index. COA's

¹ *Rollo*, pp. 3-30.

² Signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr. and Commissioner Heidi L. Mendoza; *id.* at 32-43.

³ *Id.* at 44-48.

⁴ *Id.* at 33.

⁵ *Id.* at 109-110.

⁶ *Id.*

investigation of its personnel assigned to MWSS was prompted by its receipt of a letter from then MWSS Administrator Diosdado Jose M. Allado, who complained of unrecorded checks and irregularly issued disbursement vouchers that were traced to refer to bonuses and other benefits of the COA MWSS personnel.⁷

In her Affidavit/Answer to Formal Charge,⁸ Nacion admitted that she availed of the MWSS Housing Project and thus, was awarded a 300-square-meter lot at the MWSS Employees Corporate Office Housing Project in Novaliches, Quezon City. This was covered by an Individual Notice of Award⁹ dated April 8, 2003 issued by the MWSS Corporate Office Multi-Purpose Cooperative Housing Project. The cost of the lot was ₱500.00 per sq m or a total of ₱150,000.00, exclusive of development cost and miscellaneous expenses. Nacion invoked an honest belief that she could avail of the benefit given the absence of any prohibition thereon upon COA personnel. COA Resolution No. 2004-005, which prohibited COA employees from availing of all forms of loan, monetary benefits or any form of credit assistance from agencies under their audit jurisdiction, was issued only on July 27, 2004.¹⁰

Nacion admitted that she also availed of the MWSS Multi-Purpose Loan Program – Car Loan, upon an honest belief that she was not prohibited from doing so. She emphasized that her car purchase was not subsidized. She was obligated to pay in full the principal amount of the loan, plus interest and incidental expenses like registration fees and insurance premiums.¹¹

Nacion, however, denied having received bonuses and benefits from MWSS. She argued that the MWSS claims control index and journal vouchers upon which the charge was based were not conclusive proof of her receipt of the benefits, absent payrolls showing her signature. In any case, as a sign of good faith, Nacion offered to, *first*, restitute the full amount of ₱73,542.00 to save government time and expenses in hearing the case and put to rest the issues that arose from it, and *second*, give up her right over the MWSS lot provided she would get back her investment on the property.¹²

⁷ Id. at 85.

⁸ Id. at 111-114.

⁹ Id. at 63.

¹⁰ Id. at 111-112.

¹¹ Id. at 112.

¹² Id. at 112-113.

Ruling of the COA

On June 14, 2012, the COA rendered its Decision¹³ finding Nacion guilty of grave misconduct and violation of reasonable rules and regulations. It cited Section 18 of Republic Act (R.A.) No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, which specifically prohibits COA personnel from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, government-owned and -controlled corporations and government financial institutions, except those compensation paid directly by the COA out of its appropriations and contributions. The COA emphasized that even the availment of all forms of loan was already prohibited prior to the issuance of COA Resolution No. 2004-005, being already proscribed by Executive Order No. 292¹⁴ and the Code of Ethics for Government Auditors.¹⁵

Although grave misconduct is a grave offense that is punishable by the extreme penalty of dismissal from service, Nacion was only meted out a penalty of one year suspension without pay, after the COA considered as mitigating the following circumstances:

Director Nacion did not request for a formal investigation, hence, has saved this Commission from the inconvenience and cost of such proceeding. She also admitted availing both the Housing Project and MPLP Car Loan. Her long years in service [are] also worth considering as she has spent her productive years in the public service. x x x.¹⁶

In addition to the suspension, Nacion was ordered to refund the amount of ₱73,542.00¹⁷ and return the lot which she acquired under the MWSS housing program. The dispositive portion of the COA decision then reads:

WHEREFORE, premises considered, this Commission finds Director Janet D. Nacion **GUILTY** of Grave Misconduct and Violation of Reasonable Office Rules and Regulations proceeding from the same act of receiving unauthorized allowances and other fringe benefits. Accordingly, she is meted the penalty of one (1) year suspension without pay effective upon receipt of this Decision, immediate refund of the amount of P73,542.00, and return of the lot she obtained under the MWSS Employees Housing Project, with a stern warning that repetition of the same or similar infraction shall be dealt with more severely.

¹³ Id. at 32-43.

¹⁴ The Administrative Code of 1987.

¹⁵ *Rollo*, p. 40.

¹⁶ Id. at 41.

¹⁷ Extra Christmas Bonus for CY 2001 - ₱10,000.00, Mid-Year Bonus for CY 2002 - ₱26,771.00, Mid-Year Bonus for CY 2003 - ₱26,771.00, and Anniversary Bonus for CY 2003 - ₱10,000.00; id. at 33.

Let a copy of this Decision form part of the respondent's personal (201) File in this Commission. The Chief Executive Staff, Office of the Chairperson and the Assistant Commissioner, Administration Sector, shall enforce this Decision and report compliance thereof to the Commission Proper.¹⁸

Unyielding, Nacion moved to reconsider, but her plea was denied by the COA in a Resolution dated November 5, 2012.¹⁹ Hence, this petition.

The Present Petition

The core issue for the Court's resolution is: whether or not the COA committed grave abuse of discretion in finding Nacion guilty of grave misconduct and violation of reasonable office rules and regulations.

To support her petition against the COA, Nacion invokes due process as she argues that the records during her tenure with the MWSS should not have been included by the audit team in its investigations, as no office order covering it was issued by the COA Chairman. Furthermore, the documentary evidence considered by the Fraud Audit and Investigation Office (FAIO) did not constitute substantial evidence to prove the commission of the offenses with which she was charged.

Ruling of the Court

The petition is bereft of merit. At the outset, the Court reiterates:

The concept is well-entrenched: grave abuse of discretion exists when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism. Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.²⁰ (Citations omitted)

Thus, the Court emphasized in *Dycoco v. Court of Appeals*²¹ that "[a]n 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.'"²²

¹⁸ Id. at 42.

¹⁹ Id. at 44-48.

²⁰ *Arnaldo M. Espinas, Lillian N. Asprer, and Eleanora R. De Jesus v. Commission on Audit*, G.R. No. 198271, April 1, 2014.

²¹ G.R. No. 147257, July 31, 2013, 702 SCRA 566.

²² Id. at 580, citing *Yu v. Judge Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

Upon review, the Court holds that no such grave abuse of discretion may be attributed to the COA for the procedure it observed, its factual findings and conclusions in Nacion's case.

Due Process in Administrative Proceedings

In administrative proceedings, the essence of due process is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of, and to submit any evidence he may have in support of his defense. The demands of due process are sufficiently met when the parties are given the opportunity to be heard before judgment is rendered.²³ Given this and the circumstances under which the rulings of the COA were issued, the Court finds no violation of Nacion's right to due process. As the Office of the Solicitor General correctly argued, the constitution of a separate fact-finding team specifically for Nacion's case was not necessary for the satisfaction of such right.

It bears stressing that Nacion was formally charged by Chairperson Tan, following evidence that pointed to irregularities committed while she was with the MWSS. Being the COA Chairperson who, under the law, could initiate administrative proceedings *motu proprio*, no written complaint against Nacion from another person was necessary. Section 2 of the COA Memorandum No. 76-48,²⁴ which Nacion herself invokes, provides:

Sec. 2. How commenced. –

(1) Administrative proceedings may be commenced against a subordinate official or employee of the Commission **by the Chairman motu proprio**, or upon sworn, written complaint of any other person. (Sec. 38 [a], PD 807).

x x x x (Emphasis ours)

The power of the COA to discipline its officials then could not be limited by the procedure being insisted upon by Nacion. Neither is the authority of the Chairperson to commence the action through the issuance of the formal charge restricted by the requirement of a prior written complaint. As may be gleaned from the cited provision, a written complaint under oath is demanded only when the administrative case is commenced by a person other than the COA Chairperson.

²³ *Lacson v. Executive Secretary*, G.R. Nos. 165399 and 165475, May 30, 2011, 649 SCRA 142, 155.

²⁴ Rules of Procedure in the Investigation of Administrative Cases against Personnel of the Commission on Audit. Dated April 27, 1976.

Contrary to Nacion's claim, the COA also did not act beyond its jurisdiction when her case was considered by the FAIO investigating team, notwithstanding the fact that the office order which commanded an inquiry upon MWSS personnel merely referred to alleged unauthorized receipt of bonuses and benefits from the agency by Atty. Norberto Cabibihan (Atty. Cabibihan) and his staff. Since Nacion's stint in MWSS was before Atty. Cabibihan's, she argued that the team should not have looked into the records and circumstances during her term. In including benefits received during her term, Nacion claimed that the investigating team acted beyond its jurisdiction and deprived her of the right to due process.

The contention fails to persuade; a separate office order was not necessary for the audit team's investigation of Nacion's case. It should be emphasized that prior to the issuance of the formal charge, the investigations conducted by the team were merely fact-finding. The crucial point was the COA's observance of the demands of due process prior to its finding or decision that Nacion was administratively liable. The formation of a separate fact-finding team that should look specifically into Nacion's acts was not necessary to satisfy the requirement. The formal charge was as yet to be issued by the COA Chairperson, and Nacion's formal investigation commenced only after she had filed her answer to the charge. It was undisputed that Nacion, despite a chance, did not request for such formal investigation, a circumstance which the COA later considered as mitigating. In any case, she was still accorded before the COA a reasonable opportunity to present her defenses, through her answer to the formal charge and eventually, motion for reconsideration of the COA's decision.

Substantial Evidence in Administrative Case

The Court also finds no grave abuse of discretion on the part of the COA in holding Nacion administratively liable for the offenses with which she was charged.

In administrative cases, the quantum of evidence that is necessary to declare a person administratively liable is mere substantial evidence.²⁵ This is defined under Section 5, Rule 133 of the Rules of Court, to wit:

²⁵ *Office of the Ombudsman (Visayas) v. Zalzarriaga*, 635 Phil. 361, 367-368 (2010).

Sec. 5. *Substantial evidence.* – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by **substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.** (Emphasis ours)

It is settled that the factual findings of administrative bodies are controlling when supported by such substantial evidence.²⁶ In resolving the present petition, the Court finds no compelling reason to deviate from this general rule. Three separate acts were found to have been committed by Nacion, all sufficient to support the COA's finding of grave misconduct and violation of reasonable office rules and regulations.

Nacion's receipt of the prohibited benefits and allowances were duly proved by documentary evidence. The presentation of documents bearing Nacion's signature to prove her receipt of the money was not indispensable. Recipients of unauthorized sums would, after all, ordinarily evade traces of their receipt of such amounts. Resort to other documents from which such fact could be deduced was then appropriate. In this case, the claims control indices considered by the COA were supported by journal vouchers and entries, which constitute public records. No evidence that could sufficiently challenge the correctness of the contents thereof and the COA's conclusions therefrom was presented by Nacion. On the contrary, the COA correctly elucidated that:

For the receipt of allowances and bonuses amounting to P73,542.00, which she denied receiving for lack of conclusive proof, it must be emphasized that administrative offenses only require substantial, not conclusive, evidence. The MWSS Claims Control Index is used to record payments made to each employee, supplier and other agency internal and external creditors. Its preparation and maintenance are not discretionary upon the agency as COA itself has established the use of it to serve as an effective tool for internal control. The various other recordings that were gathered to support the entries in the index of payment established that allowances and benefits have indeed been extended to Atty. Nacion. It was not a stroke of accident that her name appeared on these documents. Auditors can certainly explain the appearance of specific names in the indices of payment and other documents presented herein. x x x.²⁷

Nacion's availment of the housing and car programs was undisputed. She claimed though to have availed of these benefits upon an honest belief that she was not prohibited from doing so. Her alleged good faith, nonetheless, could not support exoneration. Even her claim that officials from other agencies availed of the same benefits from MWSS could neither

²⁶ *Gonzales III v. Office of the President of the Philippines*, G.R. No. 196231, September 4, 2012, 679 SCRA 614, 661.

²⁷ *Rollo*, p. 39.

qualify as a valid defense nor be treated as a confirmation of good faith. A prohibited act could not be justified by the mere fact that other government officers were doing it, especially since given Nacion's office and distinctive functions, the other officers might not be similarly situated and covered by similar prohibitions.²⁸

Clearly, the acts of Nacion were prohibited under the law. Among those covering the matter is R.A. No. 6758, specifically Section 18 thereof which provides:

Section 18. *Additional Compensation of Commission on Audit Personnel and of Other Agencies.* – In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, except those compensation paid directly by the COA out of its appropriations and contributions.

X X X X

An observance of the prohibition is mandatory given its purpose *vis-à-vis* the roles which COA personnel are required to perform. Given their mandate to look after compliance with laws and standards in the handling of funds by the government agencies where they are assigned to, COA personnel must prevent any act that may influence them in the discharge of their duties. In the present case, the receipt of the subject benefits and allowances was evidently in violation of the prohibition under the aforementioned Section 18. Nacion should have been wary of her actions and the prohibitions pertinent to her functions, especially as they affected the expenditure of MWSS funds which she was duty-bound to eventually examine.

The availment of the loans likewise merited administrative sanctions. Nacion herself cited in her pleadings before the COA some past cases that involved COA officials, who were disciplined for availing of car plans in other offices. Nacion was also covered by COA Resolution No. 86-50, also known as the Code of Ethics for Government Auditors, which demanded from her a high degree of integrity and professionalism, the avoidance of conflict of interest, and resistance to temptations that might be prejudicial to the discharge of her duties and to public interest. Otherwise, she would be placed in an odd situation requiring her review of transactions and expenditures from which she had directly benefited from.

²⁸ See *Atty. Villareña v. The Commission on Audit*, 455 Phil. 908 (2003).

While she vehemently denied it, Nacion benefited from the subject car and housing programs. Her acquisition of the car might not be subsidized by MWSS, but the low three-tier interest rates ranging from 0-6%²⁹ extended to her by the agency was clearly to her advantage. She was also able to avail of MWSS' housing program even when she was not an employee of the agency. Nacion's availment of the benefits of the car and housing programs led to the same results that the prohibition on additional compensation sought to avoid, and defied the rationale for the laws that sought to fortify COA independence. In *Villareña v. The Commission on Audit*,³⁰ the Court emphasized:

The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able properly to perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity. x x x The removal of the temptation and enticement the extra emoluments may provide is designed to be an effective way of vigorously and aggressively enforcing the Constitutional provision mandating the COA to prevent or disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

Stated otherwise, the COA personnel who have nothing to look forward to or expect from their assigned offices in terms of extra benefits, would have no reason to accord special treatment to the latter by closing their eyes to irregular or unlawful expenditures or use of funds or property, or conducting a perfunctory audit. The law realizes that such extra benefits could diminish the personnel's seriousness and dedication in the pursuit of their assigned tasks, affect their impartiality and provide a continuing temptation to ingratiate themselves to the government entity, local government unit, government-owned and controlled corporations and government financial institutions, as the case may be. In the end, they would become ineffective auditors.³¹ (Citations omitted)

Anent her availment of the MWSS housing project, Nacion insists, as an additional defense, that the lot was awarded to her by a private entity that was separate and distinct from MWSS, *i.e.*, the MWSS Corporate Office Multi-Purpose Cooperative Housing Project.³² It is clear, however, that taking into account the rationale for the prohibition upon government auditors against receipt of additional benefits and personal gains, the MWSS Employees Housing Project could not be wholly separated from the MWSS and its officers. If Nacion's participation in the housing project were to be allowed, then the influence and conflict of interest which the law aims to thwart would hardly be prevented. When it denied Nacion's motion to reconsider, the COA then correctly explained the following, taking into account the existing structure of the cooperative *vis-à-vis* the MWSS:

²⁹ 1st □200,000.00 – 0%; Over □200,000.00 – 3%; Over □500,000.00 – 6%.; *rollo*, p. 38.

³⁰ 455 Phil. 908 (2003).

³¹ *Id.* at 917-918.

³² *Rollo*, p. 18.

It must be emphasized that the conceptualization of the MWSS Employees Housing Project, the utilization of the MWSS real property as the site of the MWSS housing project, and the guidelines in the implementation of the housing project were all approved by the MWSS Board of Trustees, as evidenced by the minutes of meetings and resolutions issued by the same Board. It is therefore hard to escape the fact that MWSS officials govern the conduct of official affairs of the cooperative. More so, officials of the cooperative are likewise officials of MWSS. Thus, the cooperative's affairs being controlled by the MWSS, such arrangement makes the cooperative conduit or adjunct of the MWSS. x x x.³³

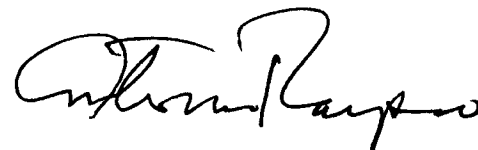
WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.


BIENVENIDO L. REYES
 Associate Justice

WE CONCUR:

(On official leave)
MARIA LOURDES P. A. SERENO
 Chief Justice


ANTONIO T. CARPIO
 Associate Justice


PRESBITERO J. VELASCO, JR.
 Associate Justice


TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


ARTURO D. BRION
 Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)

FRANCIS H. JARDELEZA

Associate Justice *No part
prior to 8/6/2011*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice