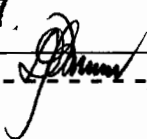


FIRST DIVISION

G.R. No. 213500 – OFFICE OF THE OMBUDSMAN and the FACT-FINDING INVESTIGATION BUREAU (FFIB), OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (MOLEO), *Petitioners, versus* PS/SUPT. RAINIER A. ESPINA, *Respondent.*

Promulgated:

MAR 15 2017.

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SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* in so far as it holds PS/Supt. Rainier A. Espina (Espina) liable for Gross Neglect of Duty under the Revised Rules on Administrative Cases in the Civil Service (RRACCS). I submit this opinion to further emphasize the exceptional circumstances that render the doctrine espoused in *Arias v. Sandiganbayan*¹ (*Arias*) inapplicable to this case.

The facts are simple.

Respondent PS/Supt. Rainier Espina (Espina) served as Acting Chief of the Management Division of the Philippine National Police (PNP) Directorate for Comptrollership (Acting Chief) from September 28, 2007 to February 28, 2008.²

Several months after Espina's term expired, the Fact Finding Investigation Bureau (FFIB) of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO) filed before the Office of the Ombudsman (Ombudsman) an affidavit-complaint and a supplemental complaint charging Espina, several PNP officers and private individuals of: (i) violation of the Plunder Law; (ii) violation of the Anti-Graft and Corrupt Practices Act; (iii) Malversation of Public Funds through Falsification of Public Documents; (iv) violation of the Government Procurement Reform Act and its Implementing Rules and Regulations (IRR);³ and (v) Grave Misconduct and Serious Dishonesty.⁴ The charges stem from the transactional anomalies that attended the repair, refurbishment and procurement of tires relating to twenty-eight (28) units of V-150 Light Armored Vehicles (LAVs) owned by the PNP.⁵

¹ 259 Phil. 794 (1989).

² *Rollo*, p. 53.

³ *Id.*

⁴ *Id.* at 57.

⁵ Decision, p. 2.



Espina was impleaded in his capacity as Acting Chief, for signing Inspection Report Forms (IRFs) which falsely confirmed PNP's receipt of procured LAV parts and the completion of the contracted repair and refurbishment works, thereby facilitating the fraudulent disbursement of government funds in the amount of ₱409,740,000.00.⁶

The Ombudsman initially found probable cause to indict Espina for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act,⁷ Section 65 (b)(4) of the Government Procurement Reform Act⁸ and Malversation of Public Funds through Falsification under Article 217 of the Revised Penal Code.⁹ The Ombudsman likewise found Espina guilty of Grave Misconduct and Serious Dishonesty, warranting the penalty of dismissal from service.¹⁰ Subsequently, the Ombudsman dropped the charges for violation of the Government Procurement Reform Act, but sustained all its prior findings.

In the CA Decision subject of the instant appeal by *certiorari*, the CA ruled that Espina could not be held liable for Grave Misconduct and Serious Dishonesty in the absence of proof of corrupt motives, intent to violate the law and flagrant disregard of established rules.¹¹ Consequently, the CA found Espina guilty only of Simple Misconduct, thus:

⁶ Id.

⁷ Section 3(e) provides:

SEC. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

⁸ Section 65(b)(4) provides:

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

x x x x

(4) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

⁹ Article 217 provides, in part:

Malversation of public funds or property; Presumption of malversation.— Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x x

4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled x x x

¹⁰ Decision, p. 3.

¹¹ *Rollo*, pp. 60-64.

WHEREFORE, premises considered, the Petition is PARTIALLY GRANTED. The Joint Resolution dated 19 December 2012 issued by the Office of the Ombudsman, and its Joint Order dated 08 July 2013 are hereby MODIFIED, as follows:

- (1) The portions in the assailed 19 December 2012 Joint Resolution and 08 July 2013 Joint Order finding Petitioner guilty of Grave Misconduct and Serious Dishonesty are REVERSED and SET ASIDE;
- (2) The penalties of dismissal from government service with forfeiture of all benefits and perpetual disqualification to hold public office meted upon Petitioner are likewise SET ASIDE;
- (3) Petitioner is found GUILTY only of Simple Misconduct and the penalty of SUSPENSION of THREE (3) MONTHS is hereby imposed on him, to be reckoned from the time of his actual dismissal from the service.

The period of time that Petitioner remained dismissed from service shall be credited in the implementation of the penalty of THREE (3) MONTHS [s]uspension herein imposed.

After service of the aforesaid suspension period, the Petitioner shall be REINSTATED to his former rank as Police Senior Superintendent (P S/Supt.) and the retirement benefits as well as Petitioner's right to hold public office shall be RESTORED.

SO ORDERED.¹²

On review before this Court, the *ponencia* set aside the findings of the RTC and CA, holding that the petitioners failed to sufficiently establish Espina's guilt for Serious Dishonesty and Misconduct, both grave and simple.¹³ Instead, the *ponencia* finds that Espina's acts constitute Gross Neglect of Duty under Section 46(A)(1) and (3) of the RRACCS, meriting the penalty of dismissal from government service.¹⁴

While I concur with the *ponencia*, I wish to emphasize that the Court's ruling in this case should not be misconstrued as disregarding the inescapable realities of government service which the Court had taken judicial notice of in *Arias* – "dishonest or negligent subordinates, overwork, multiple assignments and positions." In *Arias*, the Court, recognizing the volume of documents department heads are required to routinely sign, held that such heads "have to rely, to a reasonable extent, on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." Therein, the Court proceeded to rule that a finding of conspiracy to defraud the government cannot be made to rest on the department head's signature alone, in the absence of some reason or irregularity which would impel further inquiry.

¹² Id. at 65.

¹³ Decision, pp. 5-7.

¹⁴ Id. at 7.



The *ponencia* holds that the *Arias* doctrine cannot be applied in this case due to the existence of reasons that should have impelled Espina to go beyond the findings and recommendations reflected on the face of the IRFs. I agree.

Standard Operating Procedure XX4 (SOP 24) prescribes the guidelines for inspection and acceptance of deliveries of supplies, police products, materials and equipment, as well as the repair, renovation and construction works rendered in favor of the PNP. It provides:

- a. Pre-inspection or inspection before an equipment/machinery/vehicle is repaired is done in order that the Technical Property Inspector/Mngmt. Div., DC-Inspector will have a basis of (sic) determining whether a repair is really needed, the scope of work to be done could be established and missing/damaged/worn-out spare parts to be supplied/replaced be determined. Findings of the pre-repair inspection will guide him in the conduct of post-repair inspection.
- b. Pre-repair inspection is [a] pre-requisite for preparation and approval of the corresponding contract.
- c. The **pre-repair portion of the Request for Pre-Repair Inspection Form must be duly accomplished** by Property Officer of the Unit/Office concerned x x x **and shall be forwarded to the ODC¹⁵** (Attn: Mgmt. Div.)[.]
- d. **The corresponding property card should be made available for it is the only evidence/proof that the equipment/vehicle subject for repair is a (sic) government property.**
- e. The acquisition date will show if the equipment really warrants outside services. Manufacturers/suppliers usually give a guarantee period of one (1) year for their products. If the equipment is still within the warranty period, repair should then be made by manufacturer/supplier concerned.
- f. **The acquisition cost will serve as basis for determining the reasonableness of the cost of repair.** More than sixty percent (60%) of the acquisition cost (converted to current rate) is already considered uneconomical.
- g. **The date and nature of the last repair will ensure that repair of the same nature or the same scope of work to be done is not repeated.**
- h. The list of complaints and possible causes related thereto, including the scope of work to be done[,] are determined by the agency authorized technician and engineer.
- i. The property inspectors (ODC & Technical Inspectors) shall then inspect and verify the correctness of the complaint and causes of malfunctioning including the scope and nature of work to be done to the unit in the presence of the Unit, technician/engineer and/or property officer.
- j. All findings/recommendations of the Technical Inspector/Mgmt. Div. ODC Inspector shall be reflected on the pre-[repair] inspection form and should be noted by Chief-Mgmt. Div, ODC.

¹⁵ Office of the Directorate for Comptrollership.



- k. **x x x the accomplished form, together with the approved Work/Job Order/Contract, supplier's invoice/billing account shall be attached to the request for post-repair inspection.**¹⁶ (Emphasis supplied)

In this case, Espina does not deny that he did not conduct further inquiry before affixing his signature on the IRFs in question despite the suspiciously short 7-day period indicated therein within which the repair and refurbishment works on the LAVs were supposedly completed.¹⁷ Espina merely claims that he was not bound to go beyond the findings and recommendations reflected on the IRFs, as he was merely required to “note” the same. A holistic reading of clauses (a) to (k) above, however, shows that in “noting” the findings and recommendations of the ODC inspectors, the Chief of the Management Division is bound to ascertain whether (i) the property subjected to repair constitutes government property, (ii) the conduct of repair was in fact necessary, and (iii) the cost expended for the work done is reasonable. Evidently, these matters can only be verified through a review of the IRFs and the supporting documents that must be appended thereto.

Thus, Espina's liability for gross negligence arises from his reliance on the findings and recommendations of his property inspectors *despite* the glaring irregularities appearing on the face of the IRFs.

Notably, while Espina claims that no apparent irregularities were in fact ascertainable from the IRFs' supporting documents, he failed to submit these supporting documents in evidence, nor prove, by any other means, that these supporting documents were in fact appended to the IRFs at the time he affixed his signature thereon. These evidentiary lapses, whether inadvertent or otherwise, place Espina's compliance with SOP 24 in serious doubt. It bears stressing that his duty to ascertain the propriety of the repairs conducted on the LAVs and the reasonableness of the corresponding cost were positive ones spelled out in SOP 24. It was thus incumbent upon him to show proof that such duty was in fact complied with, particularly in this case, where the anomalies behind the transactions in question could have been easily uncovered, if only he complied with SOP 24.

For these reasons, the instant Petition is hereby denied.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹⁶ *Rollo*, pp. 125-129.

¹⁷ *Id.* at 9.