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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PATRICK U. GABUTINA,
Petitioner,

G.R. No. 205572

Present:

PERLAS-BERNABE, J.
Chairperson,

HERNANDO,
INTING,
DELOS SANTOS, and

BALTAZAR-PADILLA, * JJ.

-versus-

OFFICE OF THE OMBUDSMAN,
Respondent.

Promulgated:

07 OCT 2020

[Signature]

X ----- X

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the February 15, 2012² Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 04641-MIN which dismissed outright the Petition for Review filed by petitioner Patrick U. Gabutina (Gabutina) due to technical infirmities and considering that the assailed September 8, 2011³ and February 18, 2005⁴ Orders, and the October 29, 2004 Decision⁵ of the Office of the Ombudsman, in Administrative Case No. OMB-C-A-04-0072-B have already attained finality.

Said Orders and Decision found Gabutina guilty of Grave Misconduct and for receiving for personal use a fee, gift, or other valuable thing in the course of his official duties or in connection therewith, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment, in violation of Rule IV, Section 52, paragraph A, sub-paragraphs 3

* On leave.

¹ *Rollo*, pp. 3-14.

² *Id.* at 180-185; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Edgardo A. Camello and Carmelita Salandanan-Manahan.

³ *Id.* at 29-33.

⁴ *Id.* at 99-104.

⁵ *Id.* at 84-98; approved by Overall Deputy Ombudsman Margarito P. Gervacio, Jr.

and 9 of Memorandum Circular No. 19, s. 1999 or the Revised Uniform Rules on Administrative Cases in the Civil Service. Also assailed is the December 17, 2012 Resolution⁶ of the CA denying Gabutina's motion for reconsideration.

The Antecedents:

On January 21, 2004, John Kenneth T. Moreno (Moreno) filed an Affidavit-Complaint⁷ against Gabutina, Chief of Staff of Congressman Oscar S. Moreno (Congressman Moreno), and Metodio G. Baldivino, Jr., a.k.a. "Jun Balds" (Baldivino), Manager for Infrastructure Projects of Congressman Moreno, before the Office of the Ombudsman Preliminary Investigation and Administrative Adjudication Bureau-A. The Affidavit-Complaint charged both Gabutina and Baldivino with the following crimes: (1) Violation of Republic Act No. 6713 or the Code of Conduct of Ethical Standards for Public Officials and Employees; (2) Violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act; and (3) Swindling (Estafa) under Article 315, No. 1 (b) of the Revised Penal Code.

The following are the facts, as summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

[O]n November 15, 2002, the Complainant [Moreno] received a phone call from Metodio G. Baldivino, Jr., who identified himself as the one in-charge of all the infrastructure projects of Congressman Oscar S. Moreno, Representative of the lone district of Misamis Oriental, Mindanao. During the said conversation, Respondent Baldivino, Jr., requested for an urgent meeting with the Complainant regarding some projects to be [bid]. Thus, they agreed to meet on the following Monday at the New Lane Restaurant in Gingoog City. Therein, Respondent Baldivino allegedly demanded for Php 500,000.00 which, according to him, will be given to Congressman Moreno as an advance "SOP" so that they will cause the award of the Farm to Market Project to the Complainant. Allegedly, it was in the same meeting where Respondent Baldivino called the other Respondent Gabutina to confirm the amount demanded, to which the latter approved. A week later, the Complainant went personally to the Office of Respondent Gabutina at the Staff Office of Congressman Moreno, at the Batasan Complex, to confirm and verify the amount allegedly demanded as advance "SOP" for Congressman Moreno. Thereat, Respondent Gabutina confirmed later receiving part of the said amount and assured the Complainant that the project is forthcoming.

As a consequence thereof, the Complainant deposited the agreed amount in the ATM Account of Respondent Baldivino at the Landbank, Gingoog City on 29 November 2002 and 2 December 2002. Both amounts were withdrawn [by respondent Baldivino] on the same day that they were deposited.

On 28 February 2003, Respondent Baldivino allegedly asked for an additional amount of Php 150,000.00 for another 1.5 million pesos worth of project, and instructed the Complainant to deposit the same under the account of Respondent Gabutina at the Philippine National Bank (PNB), Batasan Branch, Quezon City. However, the Complainant opted to deliver it personally to Respondent Baldivino, in Gingoog City. On 21 April 2003, the herein Respondent gave again the assurance that the said projects will

⁶ Id. at 15-17; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Edgardo T. Lloren and Oscar V. Badelles.

⁷ Id. at 105-107.

be [bid] out in May 2003 to the Complainant, and even texted to the latter the specific control identification number of the two (2) Farm to Market Road Projects, registered with the Pre-qualification, Bids and Awards Committee of the Department of Public Works and Highways (DPWH), Main Office, Port Area, Manila. Unfortunately, the aforesaid projects were [bid] out and given to another contractor based in Butuan City, and not to the Complainant as promised by the Respondents. Henceforth, the Complainant demanded for the return of the principal amount but the Respondents failed to make good their promise to return it despite repeated demands.⁸

In his Counter-Affidavit,⁹ Gabutina denied Moreno's allegations and averred the following, as also summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

[R]espondent Gabutina averred that he never asked for, negotiated or demanded money in consideration of or in exchange for the award of any project or projects funded from appropriation allotted to the Province of Misamis Oriental pertaining to the Congressional District of Hon. Congressman Oscar S. Moreno; that he denied using his position to get commission or SOP money from contractors to enable them to get an assigned or pre-awarded contract projects before the bidding takes place; that pre and post qualifications of contractors for purposes of awarding projects of the government, whether funded from congressional allocation or otherwise, are determined and evaluated pursuant to the rules, regulations, and guidelines that implement acts of Congress or Executive Orders of the President of the Philippines such as R.A. No. 7718 and Department Order No. 152, series of 2000, DPWH; that he had not lobbied, asked, demanded personally or thru Metodio G. Baldivino, from Mr. Kenneth T. Moreno any cut, commission, SOP money as consideration for, exchange, or for what not, of any award of contract for infrastructure project or projects, as to pre-arrange an award in his favor, because that cannot be done or negotiated under and pursuant to government rules on bidding and awarding of government projects; that it is not true that he maintains communications with Mr. Baldivino, Jr., as to pre-determine contractors to whom contracts for infrastructure projects may be [awarded], as there is no such thing as pre-determined/pre-arranged contractors of the congressman's choice; that he is not aware of any meeting between the Complainant and Jun Baldivino, which the latter allegedly called him to confirm an SOP of Php 500,000.00 to get a project worth Php 5M; he likewise denied having met the Complainant, thus, he never received in whole or in part any SOP or grease money that the latter mentioned; and that the Complainant, as contractor, fully knows under government rules and regulations, that awards of contracts for infrastructure project[s] are always done thru public bidding to ensure competitiveness in the prosecution of project, and that in the pre and post qualifications of contracts there is a committee which evaluates the same; a contractor cannot just demand pre-arranged or pre-determined awarding of contracts because of an SOP money.¹⁰

The Findings of the Office of the Ombudsman:

On October 29, 2004, the Office of the Ombudsman rendered a Decision¹¹ finding Gabutina guilty as charged while dismissing the administrative case against Baldivino. The dispositive portion of the Decision reads:

⁸ Id. at 85-87.

⁹ Id. at 114-118.

¹⁰ *CA rollo*, pp. 73-75

¹¹ *Rollo*, pp. 84-98.

WHEREFORE, Public Respondent Patrick U. Gabutina is hereby found GUILTY of Grave Misconduct and receiving for personal use of a fee, gift or other valuable things in the course of official duties or in connection therewith when such fee, gift or other valuable things is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws, pursuant to Section 52, paragraph a, sub-paragraphs 3 and 9, Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service (Memorandum Circular No. 19, Series of 1999). Accordingly, he is meted out the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, including perpetual disqualification from entering government service.

As regards Respondent Metodío G. Baldivino, Jr., the administrative case against him is hereby DISMISSED for lack of disciplinary jurisdiction over his person.

SO ORDERED.¹²

In an Order¹³ dated February 18, 2005, the Office of the Ombudsman dismissed Gabutina's Motion for Reconsideration,¹⁴ viz.:

WHEREFORE, the Motion for Reconsideration dated 14 December 2004 of Movant-Respondent Patrick U. Gabutina is hereby DENIED. The Decision under date of 29 October 2004 of this Office is AFFIRMED in toto.

x x x x

SO ORDERED.¹⁵

On March 17, 2005, Gabutina received the February 18, 2005 Order from the Office of the Ombudsman.¹⁶ On March 27, 2005, instead of filing an appeal under Rule 43 of the Rules of Court with the CA, Gabutina filed a Motion for Leave to File and Admit 2nd Motion for Reconsideration¹⁷ and a 2nd Motion for Reconsideration¹⁸ with the Office of the Ombudsman, on the belief that "a 2nd Motion for Reconsideration would still be the most preferable course of action or ground x x x in consonance with the administration and interest of justice and fair play."¹⁹

While his 2nd Motion for Reconsideration was pending with the Office of the Ombudsman, Gabutina also filed on May 10, 2005 with the same Office a Petition for Review of the Decision dated 29 October 2004 approved by the Overall Deputy Ombudsman,²⁰ assailing the aforesaid Decision. In his Petition for Review, Gabutina admitted that his Motion for Leave and a 2nd Motion for Reconsideration were still pending before the Office of the Ombudsman.

¹² Id. at 96-97.

¹³ Id. at 99-104.

¹⁴ Id. at 122-130.

¹⁵ Id. at 102-103.

¹⁶ Id. at 135.

¹⁷ Id. at 134-137.

¹⁸ Id. at 138-156.

¹⁹ Id. at 135-136.

²⁰ Id. at 56-83.

On May 6, 2008, the Office of the Ombudsman issued an Order²¹ treating Gabutina's Petition for Review dated May 10, 2005 as his third Motion for Reconsideration and denying the same. Citing Rule III, Section 8 of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of Ombudsman, it emphasized that only one motion for reconsideration may be filed before the Office of the Ombudsman, thus, Gabutina's second and third Motions must fail. Furthermore, these Motions shall not stop the Decision of the Office of the Ombudsman from attaining finality. In the end, the Office of the Ombudsman held:

WHEREFORE, the Petition for Review which is hereby treated as respondent's third (3rd) motion for reconsideration is DENIED. The October 29, 2004 Decision as well as the February 18, 2005 Order are hereby AFFIRMED in toto.

So ordered.²²

Despite the repeated denial of the Office of the Ombudsman of his motions, Gabutina filed yet again a Motion for Reinvestigation²³ on June 21, 2011, raising the same issues and grounds as contained in his motions for reconsideration.

On September 8, 2011, the Office of the Ombudsman issued another Order,²⁴ dismissing Gabutina's Motion for Reinvestigation. It reiterated that only one motion for reconsideration or reinvestigation is allowed by the Rules and that all the pleadings filed by Gabutina, though differently captioned, asked for the same thing: the reversal of the Decision dated October 29, 2004. The dispositive portion reads:

WHEREFORE, the motion for reinvestigation is hereby DENIED with finality. The 29 October 2004 Decision and all the subsequent Orders are deemed affirmed in *toto*.

SO ORDERED.²⁵

On December 21, 2011, Gabutina filed a Petition for Review²⁶ with the CA raising the following arguments:

(1) That respondent Office of the Ombudsman erred in giving less weight and consideration to the Order issued by the Regional Trial Court of Misamis Oriental, Branch 43, Gingoog City, dismissing with prejudice the criminal case for estafa against Gabutina and Baldivino,²⁷ [and]

(2) That the Office of the Ombudsman erred in finding conspiracy between Baldivino and Gabutina.²⁸

²¹ Id. at 49-50.

²² Id. at 50.

²³ Id. at 34-48.

²⁴ Id. at 29-32.

²⁵ Id. at 32.

²⁶ Id. at 18-28.

²⁷ Id. at 23.

²⁸ Id. at 24.

The Ruling of the Court of Appeals:

In its Resolution²⁹ dated February 15, 2012, the CA dismissed outright Gabutina's Petition for Review due to several technical infirmities. Moreover, it agreed with the Office of the Ombudsman that Gabutina's 2nd Motion for Reconsideration, his Petition for Review, and Motion for Reinvestigation did not stop the running of the reglementary period for appeal and did not prevent the October 29, 2004 Decision of the Office of the Ombudsman from attaining finality.

On December 17, 2012, the CA rendered another Resolution³⁰ denying Gabutina's Motion for Reconsideration. The CA reiterated that it could no longer review the final and executory Decision of the Office of the Ombudsman.

Thus, this Petition for Review on *Certiorari*.³¹

Issue

In his Petition for Review on *Certiorari* before the Court, Gabutina raises the following issue:

The CA should have given due course and consideration to the Petition for Review, thus, the Court should review the December 17, 2012 Resolution.³²

Our Ruling

The Court denies the Petition for Review on *Certiorari* as the CA did not err in dismissing the Petition for Review filed by Gabutina.

Section 5(g), Rule III of Administrative Order No. 07, also known as the Rules of Procedure of the Office of Ombudsman, as amended by Administrative Order No. 17, enumerates the prohibited pleadings in administrative cases filed with the Office of the Ombudsman, to wit:

Section 5. Administrative adjudication; How conducted. –

XXXX

g) **The following pleadings shall be deemed prohibited** in the cases covered by these Rules:

1. Motion to dismiss, although any ground justifying the dismissal of the case may be discussed in the counter/affidavit/pleadings of the party;
2. Motion for bill of particulars; and

²⁹ Id. at 180-185.

³⁰ Id. at 15-17.

³¹ Id. at 3-14.

³² Id. at 10.

3. Dilatory motions including, but not limited to, motions for extension of time, for postponement, **second motions for reconsideration and/or reinvestigation.**

Said pleadings shall be stricken off the records of the case. (Emphasis supplied)

Section 7, Rule III of the same Administrative Order, which is essentially similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service,³³ additionally provides:

Section 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.**

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

x x x x (Emphasis supplied)

In the case at bar, the facts and the multiple number of pleadings filed by Gabutina are undisputed. After the Office of the Ombudsman promulgated its Decision on October 29, 2004 finding him guilty of Grave Misconduct and Violation of Anti-Graft laws, Gabutina filed his first and only legally allowable Motion for Reconsideration dated December 14, 2004.

When Gabutina received the February 18, 2005 Order of the Office of the Ombudsman denying his December 14, 2004 Motion for Reconsideration, Gabutina had only 15 days from the date of receipt of the written Order on March 17, 2005, or until April 1, 2005, within which to file a verified petition for review with the CA. Instead, Gabutina filed the following pleadings before the Office of the Ombudsman on the following dates:

- (1) Motion for Leave to File and Admit 2nd Motion for Reconsideration on March 27, 2005;
- (2) 2nd Motion for Reconsideration on March 27, 2005;
- (3) Petition for Review on May 10, 2005 while the Motion for Leave and 2nd Motion for Reconsideration were still pending; and
- (4) Motion for Reinvestigation on June 21, 2011.

³³ Section 47 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936) reads:

SECTION 47. *Effect of Filing.* – An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

Gabutina finally filed a Petition for Review with the CA on December 21, 2011, or more than six years from his receipt of the February 18, 2005 Order on March 17, 2005.

Under the above-mentioned provisions of Administrative Order No. 07, as amended, the filing of the four enumerated pleadings, which ought to be stricken off the records of the case, did not have the effect of tolling the prescriptive period for taking an appeal on the October 29, 2004 Decision of the Office of the Ombudsman. Said pleadings, though differently captioned, are all in the nature of a motion for reconsideration since they uniformly pray for the reversal of the October 29, 2004 Decision.

More importantly, since the filing of the said pleadings did not stop the reglementary period for taking an appeal, their filing necessarily did not prevent the October 29, 2004 Decision of the Ombudsman from attaining finality. Even the June 21, 2011 Motion for Reinvestigation wherein Gabutina allegedly raised new evidence, should be stricken off the record as well for having been filed out of time and for being a prohibited pleading. Gabutina's filing of multiple pleadings, despite the clear restrictions under the law, constitute a clear mockery of the judicial system. He must be reminded that though access to the courts is guaranteed, there is and there must be a limit to it.³⁴

In fine, the CA correctly held that the December 21, 2011 Petition for Review of Gabutina should be dismissed outright due to severe procedural lapses.


Finally, the Court cannot anymore relax the rules for Gabutina, as his delay in filing a Petition for Review under Rule 43 of the Rules of Court before the CA spanned more than six years, when, in the first place, he only had 15 days under the law to do so. The Court has consistently held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.³⁵ Under Administrative Order No. 07, as amended, Gabutina only had 15 days from the time he received the February 18, 2005 Order on March 17, 2005 within which to file a Petition for Review with the CA. In the second place, his six-year delay was not justified by any compelling reason; thus, his Petition for Review must fail. Ironically, as respondent, Gabutina should have pursued the procedural remedies available to him. It was his own undoing that rendered his cause a failure.

IN VIEW OF THE FOREGOING, the instant Petition for Review on *Certiorari* is hereby **DENIED**. The October 29, 2004 Decision of the Office of the Ombudsman finding Patrick U. Gabutina guilty of Grave Misconduct and of Violating Anti-Graft laws, and dismissing him from the service with all its accessory penalties, is deemed **FINAL** and **EXECUTORY**.

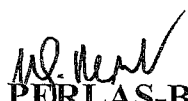
³⁴ *Macalalag v. Ombudsman*, 468 Phil. 918, 924 (2004).


³⁵ *Id.*

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

On leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

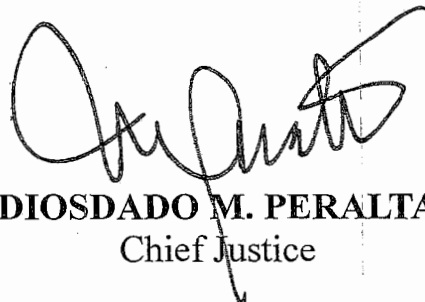
ATTESTATION

I attest that 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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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.


DIOSDADO M. PERALTA
Chief Justice