Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

OFFICE OF THE OMBUDSMAN-VISAYAS AND EMILY ROSE KO LIM CHAO, Petitioners,	**G.R. No. 172637**
-versus-	Present: CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
MARY ANN T. CASTRO, Respondent.	Promulgated: 22 APR 2015

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DECISION

BRION, *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Office of the Ombudsman-Visayas (*Ombudsman*) against respondent Assistant City Prosecutor Mary Ann T. Castro (*respondent*), assailing the decision[1] and resolution[2] of the Court of Appeals (*CA*) dated February 13, 2006 and May 2, 2006, respectively, in CA-G.R. SP No. 78933.

BACKGROUND FACTS

Sometime in 2001, Mariven Castro (*Mariven*) purchased on credit a Fuso Canter vehicle from KD Surplus. Mariven executed a promissory note, and then issued six (6) post-dated checks to KD Surplus. The checks were dishonored by the drawee bank for insufficiency of funds when presented for encashment. Mariven inquired from Emily Rose Ko Lim Chao (*Emily*), the

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[1] *Rollo*, pp. 34-44; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justice Isaias P. Dicdican and Associate Justice Apolinario D. Bruselas, Jr.

[2] Id. at 46-48.

owner-manager of KD Surplus, if it was still possible to just return the vehicle in exchange for the issued checks.[3]

At around 2:00 p.m. on September 16, 2002, Mariven's wife, Rosefil Castro (*Rosefil*), accompanied by his (Mariven's) sister, herein respondent, brought the Fuso Canter to KD Surplus' yard for appraisal and evaluation. Emily inspected the vehicle and found out that it had a defective engine, as well as a rusty and dilapidated body. Emily thus refused to accept the vehicle.

Rosefil requested the security on duty, Mercedito Guia (*Guia*), to register in the company's security logbook the fact of entry of the motor vehicle in the premises of KD Surplus. Guia refused to do so as it was already past 5:00 p.m. Upon the prodding of Rosefil, Guia inserted an entry on the upper right portion of the logbook's entry page for the date September 16, 2002, stating that the vehicle had been "checked-in" on that day. This entry was signed by Rosefil.

The respondent then left the premises of KD Surplus, but returned there a few moments later on board a Philippine National Police-Special Weapons and Tactics (PNP-SWAT) vehicle. The respondent signed on the inserted entry in the logbook as a witness, and then brought this logbook outside of KD Surplus' premises. The respondent again left KD Surplus in order to photocopy the logbook. She returned on board the PNP-SWAT vehicle after 30 minutes, and handed the logbook to the security guard. The respondent also asked Emily to sign a yellow pad paper containing a list of the issued checks, and told her to return these checks. When Emily refused, the respondent threatened to file cases against Emily; the respondent also threatened Emily's staff with lawsuits if they will not testify in her favor.

On September 26, 2002, Emily filed an administrative complaint for violation of Republic Act No. 6713 (the Code of Conduct and Ethical Standards for Public Officials and Employees) against the respondent before the Office of the Ombudsman (Visayas). The case was docketed as OMB-V-A-0508-1.

The respondent essentially countered that the case Emily filed was a harassment suit. She further maintained that the police arrived at the premises of KD Surplus ahead of her.

The Ombudsman's Rulings

In its decision[4] dated May 6, 2003, the Ombudsman found the respondent guilty of conduct prejudicial to the best interest of the service, and imposed on her the penalty of "three (3) months suspension from the

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[3] Emily claimed that the arrangements of the return of the vehicle and the refund of the purchase price had not yet been finalized. The respondent, on the other hand, maintained that Emily already agreed to replace the Fuso Canter with another vehicle.

[4] *Rollo*, pp. 55-61.

service without pay." The Ombudsman held that the respondent's act of summoning the PNP-SWAT to go with her to KD Surplus, and riding on their vehicle, overstepped the conventions of good behavior which every public official ought to project so as to preserve the integrity of public service. It added that the respondent had encouraged a wrong perception that she was a "dispenser of undue patronage."[5] The Ombudsman reasoned out as follows:

> To our mind, the presence of SWAT in the vicinity was totally uncalled for as there were neither serious nor even a slight indication of an imminent danger which would justify their presence. Verily, we cannot string along with the complainant's attempt to justify her aforesaid act as an act of prudence because it is very clear that her recourse to the military by calling some members of the SWAT PNP to go with her to complainant's shop was a display of overbearingness and a show of haughtiness. Certainly, respondent cannot deny that if she were not Asst. City Prosecutor Mary Ann Castro, it would be impossible for her to get in a snap of a finger the services of this elite police team whose assistance she availed not for a legitimate purpose but for her personal aggrandizement. Her power and influence as a public official had indeed come into play which she had abused by not using it properly. Hence, we cannot make any other conclusion except that the presence of the SWAT was purposely intended to brag of her clout in the military to possibly bring about fears and apprehension on the part of complainant and the latter's employees.[6]

The respondent moved to reconsider this decision, but the Ombudsman denied her motion in its Order[7] dated July 14, 2003.

Proceedings before the CA

The respondent filed a petition for review before the CA challenging the May 6, 2003 decision and July 14, 2003 order of the Ombudsman. In its February 13, 2006 decision, the CA modified the Ombudsman's ruling, and found the respondent liable for simple misconduct only.

The CA held that the Ombudsman's suspension order was not merely recommendatory. It also ruled that the respondent was not denied due process since she submitted a counter-affidavit where she refuted, among others, Emily's claim that she went to the premises of KD Surplus on board a PNP-SWAT vehicle. The CA also held that the respondent was not suspended for her act of calling for police assistance, but for abusing her position as the Assistant City Prosecutor of Cebu City. According to the CA, the respondent used her office's influence, prestige and ascendancy to use the PNP-SWAT for a purely personal matter.

The CA thus found the respondent liable for simple misconduct only, and reduced the penalty of suspension imposed on her to one (1) month and

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5 Id. at 58.
6 Id. at 57-58.
7 Id. at 59-61.

one (1) day. It held that the respondent's acts were not characterized by the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules.

The respondent and the Ombudsman filed their respective motions for reconsideration. It its resolution of May 2, 2006, the CA denied these motions for lack or merit.

The Present Petition and the Respondent's Comment

In the present petition for review on *certiorari*,[8] the Ombudsman essentially argued that the respondent's act of using her office's influence to use the PNP-SWAT for a purely personal matter constitutes conduct prejudicial to the best interest of the service. It argued that the respondent exhibited irresponsibility and corruption, and showed her lack of integrity when she took advantage of her position as Assistant City Prosecutor to summon the assistance of the elite SWAT Team in order to pressure and harass Emily.

In her Comment,[9] the respondent countered that she had been denied due process since the act of calling for police assistance was not one of the specific acts cited in Emily's complaint as constituting abuse of authority.

OUR RULING

After due consideration, we modify the assailed CA decision and resolution. We agree with the Ombudsman's ruling that the respondent is guilty of conduct prejudicial to the best interest of the service, but modify the imposed penalty.

No denial of due process

We clarify at the outset that contrary to the respondent's claim, her act of seeking police assistance and riding on a PNP-SWAT vehicle when she went to the premises of KD Surplus formed part of Emily's allegations. In Emily's affidavit-complaint, she mentioned that she saw the respondent on board the SWAT vehicle twice: *first*, when the respondent first arrived at the premises of KD Surplus; and *second*, when she returned there after photocopying the company's security logbook.

We emphasize that the respondent refuted these allegations in her counter-affidavit: she admitted that she asked for police assistance while on her way to KD Surplus, but maintained that she was on board a Revo car owned by one Jojo Obera. According to the respondent, she sought police assistance because of a possibility that a trouble might ensue between the

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8 Id. at 7-28

9 Id. at 95-118.

parties. The respondent also stated that the police arrived at KD Surplus ahead of her.

To us, the respondent would have found no need to state that: (1) she was on board a Revo vehicle when she went to KD Surplus; (2) point out that the police arrived ahead of her; and (3) explain why she sought the help of the police, if Emily did not allege that she (respondent) was on board a SWAT vehicle when she went to KD Surplus on two occasions.

Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person charged to answer the accusations against him constitute the minimum requirements of due process. **Due process is simply the opportunity given to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of**.[10]

As earlier stated, the respondent refuted Emily's allegations in her counter-affidavit. The respondent cannot now feign ignorance of the fact that her act of calling for police assistance vis-à-vis riding on board the SWAT vehicle, was not among those included in the charge against her. In addition, the security guard on duty, Guia, stated in his affidavit[11] (which was attached to Emily's affidavit-complaint) that the respondent "arrived riding in a SWAT PNP vehicle with Body No. 240, x x x she signed the logbook as a witness on the inserted entry."[12] Since these allegations formed part of Emily's affidavit-complaint, the Ombudsman has the power to determine the respondent's administrative liability based on the actual facts recited in this affidavit complaint.

The Court's ruling in *Avenido v. CSC*[13] is particularly instructive:

> The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.

We reiterate that the mere opportunity to be heard is sufficient. As long as the respondent was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with; what the law abhors is an absolute lack of opportunity to be heard.[14]

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10 See *Gonzales III v. Office of the President of the Philippines*, G.R. No. 196231, September 4, 2012, 679 SCRA 614, 659.

11 *Rollo*, p. 125.

12 Id.

13 576 Phil. 654, 661 (2008), citing *Dadubo v. Civil Service Commission*, G.R. No. 106498, June 28, 1993, 223 SCRA 747, 754.

14 *Supra* note 10.

Notably, *when the case was called for a preliminary conference, the respondent opted to submit the case for decision on the basis of the evidence on record*.

The respondent's liability

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[15] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[16]

In the present case, the respondent's acts of seeking out the assistance of the SWAT and riding on their vehicle on two occasions en route to KD Surplus are factual matters that the Ombudsman and the CA have passed upon. It is settled that factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, *especially when they are affirmed by the CA.* Furthermore, only questions of law may be raised in petitions filed under Rule 45 of the Rules of Court; the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof.[17] The task of this Court in an appeal by petition for review on *certiorari* is limited to the review of errors of law that the CA might have committed. The issue that remains to be resolved, therefore, is whether the CA correctly found the respondent liable for simple misconduct.

To our mind, the respondent's acts of involving an elite police team like the SWAT in a matter purely personal to her and riding on their vehicle in going to and from the premises of KD Surplus are uncalled for: these were a haughty and an excessive display of the influence that she could wield, ultimately aimed at helping Mariven and Rosefil to compel Emily to accept the "depreciated" vehicle, and to return the bum checks issued by Mariven. These send the wrong impression that public officials could use and exploit the police force for their personal interests.

While it may be true that the respondent merely wanted to ensure the safety of the parties in the event that an untoward incident may happen between Emily and Rosefil, the calling of the SWAT was clearly an overkill; there was also no justification for her to ride in a SWAT vehicle. By calling out the SWAT to the premises of KD Surplus and by riding on their vehicle, she clearly wanted to project an image of power and influence meant to

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[15] See *Government Service Insurance System (GSIS) v. Mayordomo*, G.R. No. 191218, May 31, 2011, 649 SCRA 667, 680.

[16] See *Nacu v. Civil Service Commission*, G.R. No. 187752, November 23, 2010, 635 SCRA 766, 776.

[17] See *Pia v. Gervacio, Jr.*, G.R. No. 172334, June 5, 2013, 697 SCRA 220, 230.

intimidate, bully, and/or browbeat Emily. How the respondent managed to convince an elite police force like the SWAT to accompany her, and to allow her to use their vehicle in a matter purely personal to her, does not favorably reflect on her as well as on the police.

However, we do not agree with the CA that the respondent is guilty of simple misconduct.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[18] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave misconduct necessarily includes the lesser offense of simple misconduct. Thus, a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.[19]

We point out that to constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[20] The respondent in the present case summoned the SWAT for a purely personal matter, *i.e.*, to aid her brother and sister-in-law. There was no link between the respondent's acts and her official functions as a city prosecutor. In *Manuel v. Judge Calimag, Jr.*,[21] the Court explained that:

> x x x Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x."

The respondent's actions, to my mind, constitute conduct prejudicial to the best interest of the service, an administrative offense which need not be related to the respondent's official functions.[22] In *Pia v. Gervacio*,[23] we explained that acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public

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18 See *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005), citing *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9; and *Castelo v. Florendo*, A.M. No. P-96-1179, October 10, 2003, 413 SCRA 219.

19 *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

20 See *Pat-og, Sr. v. Civil Service Commission*, G.R. No. 198755, June 5, 2013, 697 SCRA 567, 585.

21 367 Phil. 162, 166 (1999), citations omitted.

22 See *Michaelina Ramos Balasbas v. Patricia B. Monayao*, G.R. No. 190524, February 17, 2014.

23 *Supra* note 17, at 231, citing *Avenido v. Civil Service Commission*, G.R. No. 177666, April 30, 2008, 553 SCRA 711.

office. Additionally and contrary to the CA's ruling, conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.[24]

In *Manhit v. Office of the Ombudsman (Fact Finding & Intelligence Bureau)*,[25] the Court had the occasion to define "gross" and "prejudicial" in connection with the offense of conduct prejudicial to the best interest of the service, as follows:

> The word "gross" connotes "something out of measure; beyond allowance; not to be excused; flagrant; shameful" while "prejudicial" means "detrimental or derogatory to a party; naturally, probably or actually bringing about a wrong result."[26]

In *Mariano v. Roxas*,[27] the Court ruled that the offense committed by a CA employee in forging some receipts to avoid her private contractual obligations, was not misconduct but conduct prejudicial to the best interest of the service because her acts had no direct relation to or connection with the performance of her official duties." We similarly ruled in *Cabalitan v. Department of Agrarian Reform*[28] that the offense committed by the employee in selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours was not grave misconduct, but conduct prejudicial to the best interest of the service.

Notably, the Court has also considered the following acts or omissions, among others, as constituting conduct prejudicial to the best interest of the service: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safekeep public records and property, making false entries in public documents and falsification of court orders.[29]

In these lights, we hold that the Ombudsman correctly ruled that the respondent's acts of seeking the assistance of the SWAT and in riding on board a SWAT vehicle constitute conduct prejudicial to the best interest of the service, and not misconduct, since there is no nexus between these acts and her official functions. As long as the questioned conduct tarnishes the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee.[30]

With regard to the other acts alleged by Emily in her affidavit-complaint, the Ombudsman and the CA already ruled that the respondent is not administratively liable for her acts of taking the company logbook

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24 See *Espiña v. Cerujano, et al.*, 573 Phil. 254, 263 (2008).
25 559 Phil. 251 (2007).
26 Id. at 262-263.
27 434 Phil. 742, 751 (2002).
28 515 Phil. 421 (2006).
29 *Supra* note 15.
30 Id.

outside of the premises of KD Surplus; and for handing a yellow paper containing a list of the checks issued by Mariven to Emily for the latter's signature. We see no reason to overturn their findings and conclusions in the absence of any showing that these had been arrived at arbitrarily.

We additionally note that Guia, stated in his affidavit that the respondent "*borrowed* the security logbook for the purpose of securing a photocopy" and later returned it to him. We thus find unpersuasive Emily's claim that the respondent took the security logbook outside of the company's premises without permission.

Conduct prejudicial to the best interest of the service is classified as a grave offense with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. Since this is the first time that the respondent had committed these acts, we deem it proper to impose on her the penalty of suspension for six (6) months and one (1) day.

WHEREFORE, premises considered, we **MODIFY** the decision and resolution of the Court of Appeals dated February 13, 2006 and May 2, 2006, respectively, in CA-G.R. SP No. 78933. Respondent Mary Ann. T. Castro is declared guilty of conduct prejudicial to the best interest of the service and is suspended from service for six (6) months and one (1) day.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

MARIA LOURDES P. A. SERENO
Chief Justice