



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 204171

Present:

- versus -

CARPIO, *J.*, Chairperson,
DEL CASTILLO,
PEREZ, *
MENDOZA, and
LEONEN, *JJ.*

WILFREDO B. AGUSTINO,
RUDY G. CANASTILLO,
EDWARD G. CANASTILLO,
CECIL C. CALIGAN,
Respondents.

Promulgated:

APR 15 2015

X ----- X

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the November 23, 2011 Decision¹ and the September 27, 2012 Resolution² of the Court of Appeals (*CA*) in CA-G.R. SP No. 03526. The assailed *CA* Decision reversed and set aside the February 28, 2005 Decision³ and the April 21, 2005 Order⁴ of the Office of the Ombudsman (*Ombudsman*) in Administrative Case No. OMB-V-A-03-0204-D, which found the respondents guilty of grave misconduct and imposed upon them the penalty of dismissal from the service.

* Designated Additional Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1977, dated April 15, 2015.

¹ Penned by Acting Executive Justice Pampio A. Abarintos with Associate Justice Ramon Paul L. Hernando and Associate Justice Nina G. Antonio-Valenzuela, concurring of Court of Appeals Special 18th Division; *rollo*, pp. 38-48.

² *Id.* at 50-51.

³ *Id.* at 52-78.

⁴ *Id.* at 79-98.

11

The Facts

In 1998, the national government appropriated Twenty Eight Million Pesos (₱28,000,000.00) for the construction of Junction Bancal-Leon-Camandag Road in Leon, Iloilo, with an approximate stretch of 1.003 kilometers, to be implemented by the Department of Public Works and Highways (*DPWH*).

After a public bidding, the project was awarded to Roma Construction and Development Corporation (*Roma Construction*) for a total contract price of ₱26,851,792.82, to be completed from January 20, 2001 until January 14, 2002. The corresponding contract was signed by and between DPWH-Region VI Assistant Regional Director, respondent Rudy Canastillo (*Rudy Canastillo*), and Roma Construction represented by Rogelio Yap. It was duly approved by DPWH-Regional VI Regional Director, respondent Wilfredo Agustino (*Agustino*). DPWH-Region VI directed the Iloilo Sub-District Engineering Office in Sta. Barbara to manage the implementation of the project, with respondent Edward Canastillo (*Edward Canastillo*) as the acting head and respondent Cecil Caligan (*Caligan*) as the acting assistant head.

Alleged irregularities surrounding the aforesaid project were the subject of various media reports in the province of Iloilo. The Sangguniang Panlalawigan of Iloilo formed itself as a Committee of the Whole to conduct an investigation. Committee hearings were held on July 1, 3, 8, and 17, 2002. An ocular inspection was also conducted at the project site in Barangay Mali-ao, Leon, Iloilo.

On July 18, 2002, Rev. Fr. Meliton B. Oso, Director of the Jaro Archdiocesan Social Action Center, requested the Case Building Team of the Office of the Ombudsman-Visayas to conduct the necessary fact-finding investigation. In the course of its investigation, the Case Building Team required Romulo C. Cabana, Sr. (*Cabana*), then Mayor of Leon, Iloilo, who was the whistleblower of the alleged irregularities, to substantiate his allegations.

In his affidavit,⁵ Cabana enumerated three irregularities in the controversial project. *First*, the contract completion dates were unjustifiably revised several times to delay the project. *Second*, barangay officials and residents testified that it was Timberland Construction, not Roma

⁵ *CA rollo*, pp. 81-89.

Construction, that was working on the project. *Lastly*, under Item No. 102 (3) of the original contract, rock excavation of 15,275.50 cu. m. costing ₱6,248,443.28 was supposed to be undertaken through the use of dynamites. Change Order No. 1,⁶ however, unnecessarily increased the volume of the solid rock for excavation to 28,404.36 cu. m. costing ₱11,618,803.46 even though no increase in blasting activities was observed. Change Order No. 1 was submitted, reviewed, recommended and approved by respondents Caligan, Edward Canastillo, Rudy Canastillo, and Agustino, respectively.

The Case Building Team recommended that an administrative complaint be filed against the respondents. The recommendation was approved by the Deputy Ombudsman for the Visayas on April 1, 2003. Thus, the subject administrative case for grave misconduct was filed.

The respondents denied the allegations against them. As to the issue of delays in the project, they stated that Cabana had not presented any piece of evidence that refuted the work suspension reports of Caligan. With respect to the alleged sub-contracting, the respondents explained that Roma Construction merely leased the equipment of Timberland Construction.

As to the issue involving the solid rock excavation, the respondents averred that changes in the quantities in the original program of works were normal in the project implementation. Significantly, they were made to conform to the result of the “joint as-staked survey.”⁷ Thus, Change Order No. 1, which increased the solid rock extraction volume of 15,275.50 cu. m. to 28,404.36 cu. m., was in line with the provision of law. Moreover, under Item 102 (3), solid rock excavation could be done not only through the use of dynamites but also through rippers. Prior to the complaint, Caligan recommended for Change Order No. 2,⁸ whereby the solid rock excavation was decreased from 28,404.36 cu. m. to only 16,518 cu. m. at a cost of ₱6,738,894.23.

Ombudsman’s Ruling

In its decision, dated February 28, 2005, the Ombudsman held that the respondents committed grave misconduct. On the issue of improper extension of contract completion, it stated that the “Time Suspension Orders/Reports” of Caligan prevailed over the bare allegations of Cabana. Similarly, on the issue of subcontracting, the Ombudsman held that it needed more than mere presence of heavy equipment of Timberland Construction to

⁶ Id. at 99-100.

⁷ Id. at 59.

⁸ Id. at 101-102.

conclude that Roma Construction indeed had the project illegally subcontracted.

On the issue of the solid rock excavation under Item No. 102 (3) of the project contract, however, the Ombudsman found that there was manifest irregularity. Because of Change Order No. 1, the solid rock excavation with a volume of 15,275.50 cu. m. costing ₱6,248,443.28, in the original project contract, was increased to 28,404.36 cu. m. at ₱11,618,803.46. Caligan even testified before the Sangguniang Panlalawigan of Iloilo on July 1, 2002 that the 28,404.38 cu. m. of solid rocks were actually excavated from the mountainside and pushed down the ravine as excess materials.

The respondents failed to convince the Ombudsman that the 28,404.38 cu. m. of solid rocks were actually extracted through blasting operations. To the Ombudsman, it was quite unlikely that such quantity was simply “pushed down the ravine” as testified to by Caligan. During the ocular inspection of the construction site, no excess materials were seen or, at the very least, any sign of massive blasting in the area. The Ombudsman also noted that the person employed by Roma Construction to blast solid rocks was licensed to possess only 150 kilograms of dynamite, which was way below the 5,092 kgs. of dynamite estimated to extract the 15,275.50 cu. m. of solid rocks in the original contract, more so, the 9,466.028 kgs. to blast the 28,404.38 cu. m. in the revised contract.

The Ombudsman concluded that Roma Construction, through the acts of the respondents, excavated less than the 15,275.50 cu. m. of solid rocks as indicated in the original contract, costing ₱6,248,443.28, but was paid the sum of ₱11,618,803.46 which was the cost to blast 28,404.38 cu. m. under Change Order No. 1. It refused to recognize Change Order No. 2, where the volume of solid rocks for excavation was decreased to 16,518.00 cu. m. from 28,404.38 cu. m. under Change Order No. 1. It deduced that the said order was a mere afterthought, as it was prepared by Caligan only after his testimony before the Sangguniang Panlalawigan of Iloilo on July 1, 2002. Hence, the Ombudsman held that the respondents, in the performance of their official duties and in conspiracy with one another, gave unwarranted benefits to Roma Construction and defrauded the government in the amount of ₱5,370,360.18 of public funds. The dispositive portion of the Ombudsman ruling reads:

WHEREFORE, finding substantial evidence to hold respondents Regional Director WILFREDO B. AGUSTINO and Assistant Regional Director RUDY G. CANASTILLO, both of the Department of Public Works and Highways (DPWH), Regional

Office No. 6, Iloilo City, and respondents Acting Head EDWARD G. CANASTILLO and Acting Assistant Head CECIL C. CALIGAN, both of the Iloilo Sub-Engineering District Office, Sta. Barbara, administratively guilty of Grave Misconduct, they should [be] meted out the penalty of DISMISSAL FROM THE SERVICE with all the accessory penalties as provided for by law.

SO DECIDED.⁹

The respondents moved for reconsideration but their motion was denied by the Ombudsman-Visayas in its April 21, 2005 order, which was approved by Acting Ombudsman Orlando C. Casimiro on March 6, 2008.¹⁰

Aggrieved, the respondents filed a petition for review under Rule 43 of the Rules of Court before the CA.

CA Ruling

In its assailed November 23, 2011 Decision,¹¹ the CA granted the petition. It reversed and set aside the Ombudsman's finding of administrative liability against the respondents. The CA was of the view that the evidence presented to prove the respondents' culpability for grave misconduct was insufficient. It found that the Ombudsman erroneously concluded that ₱11,618,803.46, the amount allotted for 28,404.38 cu. m. of rock excavation under Change Order No. 1, was the actual amount expended, when Change Order No. 2 decreased the volume to 16,518.00 cu. m. costing ₱6,738,894.23. The CA further stated that Change Order No. 2 should not be considered as a mere afterthought absent proof that it was issued to circumvent the law. It held that "[u]nless it can be shown cogently and clearly that Change Order No. 2 was issued to circumvent the law, [it] will always uphold the presumption of regularity in the performance of official functions, and authenticity of official documents."¹²

The CA cited the "Statement of Work Accomplished" from October 1, 2002 to December 15, 2002 and the corresponding disbursement voucher presented by the respondents to prove that the volume of solid rock excavated was only 16,518.00 cu. m. costing ₱6,738,894.23. Between these documents presented by the respondents and the mere speculations of the Ombudsman, the CA chose the former to prevail, under the principle that in administrative proceedings, the complainant has the burden of proving his allegations.

⁹ *Rollo*, p. 76.

¹⁰ *Id.* at 98.

¹¹ *Id.* at 38-48.

¹² *Id.* at 44.

The Ombudsman filed its motion for reconsideration, but it was denied by the CA in the assailed September 27, 2012 Resolution.

Hence, this petition.

STATEMENT OF ISSUES

I

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE EVIDENCE PRESENTED TO PROVE RESPONDENT'S CULPABILITY FOR GRAVE MISCONDUCT WAS INSUFFICIENT;

II

REPUBLIC ACT NO. 6670, SECTION 27, OTHERWISE KNOWN AS "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," STATES THAT "FINDINGS OF FACT BY THE OFFICE OF THE OMBUDSMAN WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE ARE CONCLUSIVE."¹³

The Ombudsman, through the Office of the Solicitor General (*OSG*), asserts that Change Order No. 2 was a mere afterthought as it was basically issued to make the blasting activity more believable. During the hearing conducted by the Sangguniang Panlalawigan of Iloilo on July 1, 2002, Caligan only mentioned of Change Order No. 1 and blasting mode as a method for rock excavation. Records show that the undated Change Order No. 2 was forwarded to the office of Agustino only on July 19, 2002. The *OSG* reiterates its contention that the Permit to Blast of the person hired by Roma Construction was limited to 150 kgs. of dynamite which was far below the 5,092 kgs. of dynamite needed to blast the solid rock listed in the detailed estimates.

On May 15, 2013, the respondents filed their Comment,¹⁴ mainly arguing that the Ombudsman had no clear idea of how much solid rock had actually been excavated. The respondents, on the other hand, presented the Statements of Work Accomplished issued by the DPWH-Region VI, which clearly established that only 16,518.00 cu. m. of rock had been excavated at a cost of ₱6,738,894.23, and not ₱11,618,803.46. They further averred that

¹³ Id. at 17.

¹⁴ Id. at 108-133.

blasting was not the only method available because heavy equipment could also be used to excavate the solid rocks. They then pointed out that the Sandiganbayan, in its January 7, 2013 decision,¹⁵ had acquitted them of the crime of violating Section 3(e) of Republic Act (R.A.) No. 3019, involving the same acts.

On October 21, 2013, the OSG filed its Reply,¹⁶ contending that if indeed ripping through heavy equipment was used by Roma Construction to excavate, then ripping should have been included in the detailed estimates from the very beginning.

The Court's Ruling

The Court finds the petition meritorious.

To hold the respondents liable for grave misconduct, the quantum of evidence to support an administrative ruling must be satisfied. In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.¹⁷

The 5,092 kilograms of dynamite under the Detailed Estimates was not used in the project

In government construction projects, both the contractor and the government agency are required to prepare a document known as a detailed estimate to provide the costs of the project. During the bidding process, a prospective bidder submits a detailed estimate, which includes the unit prices of construction materials, labor rates and equipment rentals.¹⁸ In this case, Roma Construction and the DPWH-Region VI submitted a detailed estimate for the road construction project. The central issue revolves around Item No. 102 (3), covering the cost for solid rock excavation.

¹⁵ Id. at 134-164.

¹⁶ Id. at 179-191.

¹⁷ *Ombudsman v. De Chavez*, G.R. No. 176702, November 13, 2013, 709 SCRA 375, 382-383.

¹⁸ IB 10.2.3, IRR of P.D. No. 1594.

In Roma Construction's detailed estimate,¹⁹ solid rock excavation under Item No. 102 (3) had a total cost of ₱6,248,476.50. Specifically, the cost of the rock blasters was pegged at ₱3,284,232.50, while the cost of equipment was ₱1,298,417.50. On the other hand, DPWH's detailed estimate²⁰ indicated that the total cost under Item No. 102 (3) was ₱7,602,360.00. The cost of the blasting materials was ₱3,462,560.00, consisting of 5,092 kilograms of dynamite, 50,920 pieces of blasting caps and 50,920 meters of safety fuse, while the cost of the equipment was ₱2,993,100.00.

These figures depict that the detailed estimates included provisions for both blasting and ripping activities, through the use of dynamites and heavy equipment. Thus, the claim of the respondents that they could use heavy equipment to excavate the solid rocks had a basis. Equally evident from the detailed estimates, however, were the substantial provisions for blasting materials.

The Permit to Blast secured by Roma Construction was limited to only 150 kgs. of dynamite.²¹ This definitely renders impossible the use of 5,092 kgs. of dynamite allotted for the project. Resident and barangay officials apparently testified that they only heard three (3) to four (4) blasts in the project area.²² The ocular inspection also revealed that no major blasting activities were undertaken in the project area.²³ These circumstances raise doubts as to whether Roma Construction actually purchased and used at least 5,092 kgs. of dynamite for the solid rock excavation. If blasting materials in the detailed estimates were not utilized, then how was the amount of ₱3,462,560.00, allotted for dynamites, blasting caps and safety fuse, disbursed? Such amount cannot be simply ignored by the Court.

The respondents rigorously defended the actions of Roma Construction in deviating from the detailed estimates. Although the respondents presented proof that 16,518.00 cu. m. of solid rock were excavated, they did not present a scintilla of evidence to establish that blasting materials were used in the project. They never enlightened this Court if they utilized 5,092 kgs. of dynamite, as indicated in the detailed estimates. The change orders, subsequently issued by the respondents supposedly to provide another detailed estimate of the project cost,²⁴ did not indicate the discontinuance of the use of blasting materials by the contractor. The respondents could have easily presented documents to support the

¹⁹ *CA rollo*, p. 90.

²⁰ *Id.* at 113.

²¹ Cited in Ombudsman Decision, Records, p. 21.

²² *CA rollo*, p. 85.

²³ *Id.* at 85.

²⁴ CI 1, 7(a), IRR of P.D. No. 1594.

procurement of the materials for solid rock excavation, but they failed to do so.

The government allotted a portion of the public funds for the blasting activities and, yet, the respondents failed to faithfully apply those funds for its intended purpose. Such omission without any justification cannot be dismissed. If the Court were to overlook this questionable incident, then it would set a perilous precedent that detailed estimates for government construction projects could be treated as mere scraps of paper. It defeats the purpose of properly delineating the cost of the project for greater accountability.

Change Order No. 1 unreasonably increased the cost of rock excavation and Change Order No. 2 was issued as a mere afterthought

While the DPWH can produce change orders to meet the exigencies of the project, the orders must be issued in good faith and for valid reasons. The pertinent provisions of the Implementing Rules and Regulations (*IRR*) of Presidential Decree of (P.D.) No. 1594 provide:

CI - Contract Implementation:

These Provisions Refer to Activities During Project Construction, i.e., After Contract Award Until Completion, Except as May Otherwise be Specifically Referred to Provisions Under Section II. IB - Instructions to Bidders.

CI 1 - Variation Orders - Change Order/Extra Work Order/Supplemental Agreement

- 7. Any Variation Order (Change Order, Extra Work Order or Supplemental Agreement) shall be subject to the escalation formula used to adjust the original contract price less the cost of mobilization. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within 28 calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Change Orders, Extra Work Orders or Supplemental Agreements are as follows:**

- a. **If the Project Engineer believes that a Change Order, Extra Work Order or Supplemental Agreement should be issued, he shall prepare the proposed Order or Supplemental Agreement accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order, Extra Work Order or Supplemental Agreement, and shall submit the same to the Regional Director of office/agency/corporation concerned.**
- b. **The Regional Director concerned, upon receipt of the proposed Change Order, Extra Work Order or Supplemental Agreement shall immediately instruct the technical staff of the Region to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Regional Director concerned.**
- c. **The Regional Director concerned after being satisfied that such Change Order, Extra Work Order or Supplemental Agreement is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the head of office/agency/corporation for consideration.**
- d. **If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office/agency/corporation committee empowered to review and evaluate Change Orders, Extra Work Orders or Supplemental Agreements recommends approval thereof, the head of office/agency/corporation, believing the Change Order, Extra Work Order or Supplemental Agreement to be in order, shall approve the same. The limits of approving authority for any individual, and the aggregate of, Change Orders, Extra Work Orders or Supplemental Agreements for any project of the head of office/agency/corporation shall not be greater than those granted for an original project. (Emphases supplied)**

In *National Power Corporation v. Judge Alonzo-Legasto*,²⁵ the Court held that a change order could only be performed by the contractor once it was confirmed and approved by the appropriate officials. In this case, the

²⁵ 485 Phil. 732 (2004).

respondents submitted, reviewed, recommended, and approved Change Order No. 1 and 2.

Aside from not using the allotted amount in the detailed estimate for the blasting activity, the respondents issued a change order increasing the cost for the excavation. Change Order No. 1 dubiously increased the volume of the solid rock to be excavated to 28,404.35 cu. m. at a cost of ₱11,618,803.46 under Item 102 (3). In issuing the change order, the respondents failed to adequately comply with the IRR of P.D. No. 1594. The said change order did not contain the detailed estimate of the unit cost of the items of work; the date of inspections and investigations thereon; and the log book thereof. The itemized cost of revision,²⁶ attached to the change order, utterly lacked details on the specific materials to be purchased for the project.

Meanwhile, Change Order No. 2 was issued to show a decrease in the volume of the solid rock excavation indicated in Change Order No. 1 to 16,518.00 cu. m. at a cost of ₱6,738,894.23. The CA ruled in favor of the respondents and stated that no circumstance existed that would render Change Order No. 2 as doubtful.

The Court cannot agree with the CA.

Several circumstances demonstrate that Change Order No. 2 was indeed issued as a mere afterthought, following the July 2002 investigation of the Sangguniang Panlalawigan of Iloilo. *First*, Caligan during the investigation, only mentioned Change Order No. 1 and blasting as the method for solid rock excavation. As the Ombudsman correctly observed, Caligan could have then easily mentioned Change Order No. 2 to remove the clouds of doubt surrounding the project.

Second, Change Order No. 2 did not contain the required detailed estimate of the unit cost of the project. Notably, unlike Change Order No. 1 which was issued after an “as-staked survey,” Change Order No. 2 simply emerged without any technical survey therein.²⁷

Third, the undated Change Order No. 2 was forwarded to the office of respondent Agustino only on July 19, 2002, after the investigation of the

²⁶ CA rollo, p. 100.

²⁷ Id. at 59.

Sangguniang Panlalawigan.²⁸ Surprisingly, even the DPWH itself, through its own Fact-Finding Committee, which was tasked to conduct its investigation on the incident of irregularities over the project,²⁹ never mentioned Change Order No. 2.

All these circumstances, taken together, destroy the presumption of regularity in the performance of official functions and authenticity of official records. Change Order No. 2, which was conveniently made to escape liability, cannot be given any credence by this Court. Such order was merely issued to make the solid rock excavation more acceptable and to prevent the scrutiny of the project. Were it not for the investigation conducted by the Sangguniang Panlalawigan of Iloilo, the respondents would have continued their misconduct and profited from their misdeeds. Verily, the Court can only imagine the ill consequences if the Sangguniang Panlalawigan of Iloilo and the Office of the Ombudsman did not intervene and uncovered the anomalies surrounding the project.

*The Statement of Work
Accomplished cannot
exonerate the
respondents from the
grave misconduct they
committed*

The respondents claim that only 16,518.00 cu. m. of solid rock were excavated through the Statement of Work Accomplished,³⁰ and for which, Roma Construction was paid the amount of ₱6,738,894.23.³¹ The figure was close to the original detailed estimates of Roma Construction (₱6,248,476.50)³² and the DPWH (₱7,602,360.00).³³ The respondents reasoned out that they were able to excavate the required solid rocks by ripping through the use of heavy machineries. The Ombudsman did not present any evidence to controvert the validity of the Statement of Work Accomplished.

The defense of the respondents, however, is not sufficient to exonerate themselves from the administrative charge levelled against them. The charge against them is not a criminal charge of malversation, but an administrative charge of grave misconduct.

²⁸ Cited in Ombudsman Decision. Records, p. 437.

²⁹ Id. at 273-282.

³⁰ *CA rollo*, p. 105.

³¹ Id.

³² Id. at 90.

³³ Id. at 130.

In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident. Misconduct, in the administrative sense, is a transgression of some established and definite rule of action.³⁴ 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.³⁵ The element of misappropriation is not indispensable in an administrative charge of grave misconduct.

In this case, there have been transgressions of a definite rule of action, specifically P.D. No. 1594, on detailed estimates and change orders. The respondents did not abide by their detailed estimate as they disregarded the amount of ₱3,462,560.00 allotted for the use of explosives in the excavation, without any justifiable explanation whatsoever. Despite not utilizing the blasting materials, the respondents still issued Change Order No. 1 to increase the volume and the cost of the excavation. And when the Sangguniang Panlalawigan of Iloilo investigated the anomalies of the project, Change Order No. 2 mysteriously appeared showing a decrease in the volume and the cost of the solid rock excavation.

The Court is convinced that the depraved motives of the respondents were duly proven due to the gravity and number of misconducts committed. Granted that 16,518.00 cu. m. of solid rock were excavated and only ₱6,738,894.23 was paid by the government upon the termination of the project, they are still liable. The wrongdoings committed by the respondents such as disregarding the ₱3,462,560.00 allotment for blasting materials; unreasonably increasing the cost of rock excavation under Change Order No. 1; and issuing Change Order No. 2 as an afterthought, should not be ignored. Clearly, the Ombudsman was correct when it ruled that there was substantial evidence to hold the respondents administratively liable for grave misconduct.

Administrative liability of respondents

The Court holds all the respondents administratively liable for grave misconduct. As stated in the Ombudsman decision, Caligan and Edward Canastillo had direct knowledge of the day-to-day activities in the project site, they being the acting assistant head and acting head of the Iloilo Sub-Engineering District, respectively. Being in the frontline, they had actual

³⁴ *Seville v. COA*, G.R. No. 177657, November 20, 2012, 686 SCRA 28, 32.

³⁵ *Vertudes v. Buenaflor*, 514 Phil. 399, 424 (2005).

Rudy Canastillo and Agustino did not have a direct hand in the implementation of the project,³⁷ but the questionable change orders were recommended and approved by them. Following the IRR of P.D. No. 1594 Agustino, as Regional Director, did not only approve the change orders, but also sent his technical staff to conduct an on-the-spot investigation to verify the need for the work to be prosecuted.³⁸ This should have allowed him to discover the irregularities in the project. The IRR would also indicate that the change order was recommended for approval by Rudy Canastillo, as Assistant Regional Director, and that he was empowered to review and evaluate the change orders.³⁹ Yet, he kept silent on the anomalies of the project. Their deliberate failure to prevent the questionable occurrences in the implementation of the project indicated that they had knowledge of the misdeeds and were in conspiracy with Caligan and Edward Canastillo.

Grave misconduct is punishable by dismissal from the service, even for the first offense.⁴⁰ The respondents should be reminded that grave misconduct has always been and will remain anathema in the civil service. It inevitably reflects on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of public's faith and confidence in the government.⁴¹

WHEREFORE, the petition is **GRANTED**. The November 23, 2011 Decision and the September 27, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03526 are **REVERSED** and **SET ASIDE**. The Decision, dated February 28, 2005, and the Order, dated April 21, 2005, of the Office of the Ombudsman in Administrative Case No. OMB-V-A-03-0204-D, finding Wilfredo Agustino, Rudy Canastillo, Edward G. Canastillo and Cecil C. Caligan **GUILTY** of **GRAVE MISCONDUCT** and ordering their **DISMISSAL** from government service, are hereby **REINSTATED**. The respondents are also perpetually disqualified for reemployment in the government service.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³⁷ Id. at 75.

³⁸ CI 1, 7(b), IRR of P.D. No. 1594.

³⁹ CI 1, 7(d), IRR of P.D. No. 1594.

⁴⁰ Revised Rules on Administrative Cases in the Civil Service (RRACCS), Rule 10, Sec. 46(A)(2).

⁴¹ *Ombudsman v. Mallari*, G.R. No. 183161, December 03, 2014.


WE CONCUR:



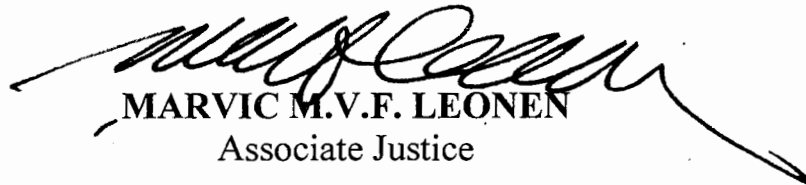
ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
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

11