Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JENNIFER A. AGUSTIN-SE and ROHERMIA J. JAMSANI-RODRIGUEZ, Petitioners,	**G.R. No. 207355**
	Present:
- versus -	CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, MENDOZA, and LEONEN,* *JJ.*
OFFICE OF THE PRESIDENT, represented by Executive Secretary PAQUITO N. OCHOA, JR., ORLANDO C. CASIMIRO, overall Deputy Ombudsman, Office of the Ombudsman, and JOHN I.C. TURALBA, Acting Deputy Special Prosecutor, Office of the Special Prosecutor, Respondents.	Promulgated: 03 FEB 2016

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DECISION

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] to set aside the 29 November 2012 Decision[2] and the 23 May 2013[3] Resolution of the Court of Appeals upholding the 14 June 2011[4] Decision of the Office of the President (OP) to dismiss the complaint of Jennifer A. Agustin-Se and Rohermia J. Jamsani-Rodriguez (petitioners) against respondents Orlando C. Casimiro (Casimiro) and John I.C. Turalba (Turalba).

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* On leave.

1 Under Rule 45 of the 1997 Rules of Civil Procedure.

2 *Rollo*, pp. 45-65. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. concurring.

3 Id. at 66-67. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. concurring.

4 Id. at 481-496. Signed by Executive Secretary Paquito N. Ochoa, Jr.

The Facts

Petitioners are Assistant Special Prosecutors III of the Office of the Ombudsman, who have been assigned to prosecute cases against Lt. Gen. (Ret.) Leopoldo S. Acot (Acot), Bgen. (Ret.) Ildelfonso N. Dulinayan (Dulinayan) and several others before the Sandiganbayan for alleged ghost deliveries of assorted supplies and materials to the Philippine Air Force amounting to about Eighty Nine Million Pesos (₱89,000,000.00).

Sometime in early 1995, the Judge Advocate General's Office of the Armed Forces of the Philippines filed a complaint before the Ombudsman against Acot, Dulinayan and several others which was eventually docketed as OMB-AFP-CRIM-94-0218. In a Resolution dated 12 April 1996,[5] Ombudsman Investigators Rainier C. Almazan (Almazan) and Rudifer G. Falcis II (Falcis) recommended the filing of Informations against Acot, Dulinayan, and several others for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 [RA No. 3019]) and/or for Malversation through Falsification. Casimiro was then the Director of the Criminal and Administrative Investigation Division of the Office of the Ombudsman and the immediate supervisor of Almazan and Falcis. Casimiro concurred with and signed the 12 April 1996 Resolution and indorsed the same to Bgen. (Ret.) Manuel B. Casaclang, then Casimiro's immediate superior.

In a Memorandum dated 10 July 1996,[6] then Special Prosecution Officer III Reynaldo L. Mendoza recommended the modification of the 12 April 1996 Resolution to charge Acot, Dulinayan and several others only with the violation of Section 3(e) of RA No. 3019. In a Memorandum dated 12 January 1998,[7] Special Prosecutor Leonardo Tamayo (Tamayo) recommended that the charges against Acot and Dulinayan be dismissed for lack of evidence. Affirming the recommendation of Tamayo, on 2 March 1998, Ombudsman Aniano A. Desierto approved the 12 April 1996 Resolution with the modification to dismiss the charges against Acot and Dulinayan.

In a Memorandum dated 29 April 2005,[8] Nolasco B. Ducay and Melita A. Cuasay, record officers of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO), brought to the attention of Casimiro (who was then already the Deputy Ombudsman for MOLEO having been appointed on 16 December 1999) that the main folder containing the 12 April 1996 Resolution could not be located despite the records having been returned to the OMB-MOLEO on 6 March 1998. The discovery of the missing folder was made when Col. Proceso I. Sabado and Ltc. Jose R. Gadin, who were co-respondents of Acot and

5 Id. at 149-166.
6 Id. at 67-169.
7 Id. at 170-171.
8 Id. at 207-208.

Dulinayan, applied for a clearance with the Office of the Ombudsman. Due to the delay in the action on the 12 April 1996 Resolution and inexplicable loss of the main folder, Almazan and Falcis, in a Memorandum dated 7 July 2005,[9] strongly recommended a thorough review of the case. Casimiro forwarded the 7 July 2005 Memorandum to Ombudsman Simeon V. Marcelo who directed the Office of Legal Affairs (OLA) to study the records and submit a recommendation.

In a Memorandum dated 25 June 2007,[10] the OLA noted that the 12 April 1996 Resolution had "no force and effect because it was never promulgated." The OLA recommended, among others, the filing of Informations against Acot, Dulinayan and several others. In a Memorandum dated 23 February 2009, Assistant Special Prosecutor II Terence S. Fernando of the Office of the Ombudsman Proper recommended the approval of the OLA's Memorandum. On 3 March 2009, acting pursuant to delegated authority, Casimiro approved both the 25 June 2007 and 23 February 2009 Memoranda. The Informations were thereafter filed against Acot, Dulinayan and several others with the Sandiganbayan.

Acot and Dulinayan filed their respective Motions to Quash/Dismiss and to Defer Arraignment mainly on the grounds that: (1) the right of the State to prosecute had already prescribed; and (2) given the amount of time the case was filed after the preliminary investigation was started almost 15 years, their right to speedy disposition of case had been violated.[11] Dulinayan further alleged that a clearance had been issued by the Office of the Ombudsman stating that there were no pending cases against him. The Sandiganbayan required petitioners, the assigned prosecutors for this case, to comment on the motions filed by Acot and Dulinayan.

To determine the veracity of the statement of Dulinayan that he had been issued a clearance stating that there are no pending cases against him, petitioners confirmed with the Public Assistance Bureau of the Office of the Ombudsman whether such clearance had been issued.[12] Moreover, to determine the events that transpired after the modification of the 12 April 1996 Resolution, petitioners requested certified machine copies of the docket entries with the Records Division.[13] While the issuance of the clearance was timely confirmed, the certified machine copies of the docket entries were delayed; and thus, petitioners were constrained to file several Motions for Extension of Time to File Comment/Opposition to the Motions filed by Dulinayan and Acot.

Based on their evaluation of the records, petitioners found that there were procedural lapses in the handling of the cases, which they attributed to

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9 Id. at 178-179.
10 Id. at 180-194.
11 Id. at 128-142, 144-148.
12 Id. at 195.
13 Id. at 197-198.

Casimiro. Thus, instead of filing the required Comment and/or Opposition with the Sandiganbayan, petitioners submitted a Memorandum dated 5 January 2010,[14] which contained their findings against Casimiro. This Memorandum, while addressed to then Special Prosecutor Dennis M. Villa-Ignacio, was submitted to Turalba, who was the Officer-in-Charge, Director, Prosecution Bureau V. Turalba, however, merely attached the said Memorandum as part of the records and thereafter relieved petitioners from the cases, alluding that they were remiss in their duty to file the necessary Comment and/or Opposition with the Sandiganbayan.[15] Turalba filed his own Comment and/or Opposition which prompted petitioners to seek the approval of Villa-Ignacio of their version of the draft Comment and/or Opposition, which they eventually filed with the Sandiganbayan.[16] However, the Informations against Acot, Dulinayan and several others were subsequently dismissed by the Sandiganbayan for violation of the accused's right to speedy disposition of the case.

In the meantime, Turalba furnished Casimiro with the 5 January 2010 Memorandum of petitioners. Casimiro thereafter required petitioners to explain why they should not be held criminally and administratively liable for insubordination, gross neglect and conduct prejudicial to the best interest of the service.[17] Instead of responding to Casimiro, petitioners submitted a Memorandum dated 20 January 2010 to Villa-Ignacio explaining their actions.[18]

Thereafter, on 4 February 2010, Casimiro filed a Complaint[19] against petitioners with the Internal Affairs Board (IAB) of the Office of the Ombudsman for the crime of libel and Section 3(e) of RA No. 3019, and administratively, for grave misconduct, conduct prejudicial to the best interest of the service, gross neglect of duty, and insubordination. Pending investigation, petitioners were placed under preventive suspension.

On 3 November 2010, petitioners filed their own Complaint[20] before the OP, alleging that Casimiro and Turalba committed the following administrative infractions: (1) grave misconduct, (2) gross negligence; (3) oppressions, (4) conduct grossly prejudicial to the best interest of the service; (5) violation of the rules on confidentiality; (6) violation of Office Order No. 05-18, and Office Order No. 05-13; and (7) violation of Section 35 of RA No. 6770,[21] amounting to dishonesty and gross misconduct.[22]

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14 Id. at 209-219.
15 Id. at 220-222.
16 Id. at 227-234.
17 Id. at 242-244.
18 Id. at 246-250.
19 Id. at 257-264.
20 Id. at 97-127.
21 The Ombudsman Act of 1989.
22 *Rollo*, pp. 97-127.

The Ruling of the Office of the President

In a Decision dated 14 June 2011,[23] the OP dismissed the complaint filed against Casimiro and Turalba. On the allegation that Casimiro caused the delay in the investigation of the cases against Acot, Dulinayan and several others, the OP ruled that:

> This Office finds that the delay in the preliminary investigation of OMB-AFP-CRM-94-0218 could not be validly attributed to respondent Casimiro, whose participation in the disposition of the case is his initial review as Director, submission of the Memorandum of 7 July 2005 and the Information in accordance with the Resolution dated 12 April 1996, as approved by Ombudsman Desierto, and his approval of the final resolution of the case by delegated authority and of the various Informations for violation of Section 3(e) of Republic Act No. 3019 against the accused, now docketed as SB-09-CRM-0184 to 0189 of the Sandiganbayan.
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> This Office agrees with respondent Casimiro that as a mere Director of a Bureau of the Office of the Deputy Ombudsman for Military and other Law Enforcement Offices and who was thereafter appointed Deputy Ombudsman only on December 16, 1999, he had every right to presume regularity in the investigation of the case.
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> In fact, no less than the Office of Legal Affairs of the Office of the Ombudsman, concluded that the Resolution dated 12 April 1996 had never become final.
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> No delay, therefore, may be attributed to respondent Casimiro who came across the records of the case nine (9) years after he signed the Resolution dated 12 April 1996 recommending the filing of informations to his superior, if the Office of the Ombudsman itself never considered that the Resolution dated 12 April 1996 as final and executory.[24]

On the issue of whether Casimiro and Turalba violated the rules on confidentiality, the OP stated:

> The Memorandum dated January 5, 2010 is not confidential or classified information within the ambit of R.A. No. 6713 and R.A. No. 3019.
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> Therefore, Director Turalba could not be faulted for his act of furnishing a copy thereof to respondent Casimiro who was the subject of the investigation which the complainants sought to be conducted. On the other hand, respondent Casimiro cannot be blamed for issuing the Memorandum dated January 18, 2010 directing complainants to explain their action, in view of the latter's insinuation that it was by his fault that the preliminary investigation of OMB-AFP-CRM-94-0218 had been prolonged.[25]

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23 Id. at 481-496.

24 Id. at 493-494.

25 Id. at 495.

On 2 November 2011, the OP denied the Motion for Reconsideration filed by petitioners.[26] On 28 November 2011, they filed a petition for review on certiorari under Rule 43 of the Rules of Court with the Court of Appeals to set aside the decision of the OP.

The Ruling of the Court of Appeals

In a Decision dated 29 November 2012, the Court of Appeals affirmed the decision rendered by the OP. The Court of Appeals held:

> As correctly raised by respondent Casimiro, the delay, if any, was necessitated by the layers of preliminary investigation and multiple reviews conducted by the concerned authorities in the Office of the Ombudsman over a period of time under different leaderships starting from Ombudsman Desierto, to Ombudsman Marcelo and thereafter, to Ombudsman Gutierrez. **It must be emphasized that for his part, respondent Casimiro concurred with the findings of his subordinates, Almazan and Falcis, who conducted the preliminary investigation against Acot and company, and who issued the 12 April 1996 Resolution recommending the filing of appropriate criminal Informations against the latter**. This, in turn, was recommended for approval by Casaclang, respondent Casimiro's immediate superior, to Ombudsman Desierto.
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> From the foregoing factual antecedents, it becomes evident that upon review of the 12 April 1996 Resolution, the charges against Acot and Dulinayan were approved for dismissal by Ombudsman Desierto, and not for the filing of Information as recommended and concurred with by Almazan and Falcis, and respondent Casimiro, respectively. Thus, respondent Casimiro cannot be faulted in the delay, if any, in filing the appropriate criminal Informations against Acot and Dulinayan considering that Ombudsman Desierto overruled the recommendations and concurrence by the Investigators and Casimiro as to the finding of probable cause against the said military officials. **Simply put, there was nothing to be filed before the Sandiganbayan against Acot and Dulinayan after the approval and modification of the 12 April 1996 Resolution as the charges against them were approved for dismissal.**[27]

In a Resolution dated 23 May 2013,[28] the Court of Appeals denied the Motion for Reconsideration[29] filed by petitioners on 21 December 2012. Thereafter, this petition for review on certiorari under Rule 45 of the Rules of Court was timely filed on 19 June 2013.

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26 Id. at 497-498.
27 Id. at 58-59. Emphasis in the original.
28 Id. at 66-67.
29 Id. at 68-96.

The Issues

In this petition, petitioners seek a reversal of the decision of the OP and the Court of Appeals, and raise the following issues for resolution:

> A. WHETHER THE HONORABLE COURT OF APPEALS CORRECTLY RULED THAT PETITIONERS' RIGHT TO DUE PROCESS WAS NOT VIOLATED BY RESPONDENT OFFICE OF THE PRESIDENT, WHEN IT DID NOT CONSIDER THE EVIDENCE PRESENTED BY THE PETITIONERS DURING THE ADMINISTRATIVE ADJUDICATION;
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> B. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE ARE NO SUBSTANTIAL EVIDENCE ON RECORD AS AGAINST RESPONDENT CASIMIRO FOR THE DELAY IN THE DISPOSITION AND PRELIMINARY INVESTIGATION OF OMB-AFP-CRM-94-0218 (SB-09-CRM-0184-0189), AND AGAINST RESPONDENTS CASIMIRO AND TURALBA FOR VIOLATION OF OFFICE ORDER NO. 05-18, OFFICE ORDER NO. 05-13, VIOLATION OF SEC. 35 OF R.A. 6770 AND SEC. 3 (K) OF R.A. 3019;
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> C. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DECISION OF THE RESPONDENT OFFICE OF THE PRESIDENT THAT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT WAS BY REASON OF THE "DELAY" IN FILING THEIR COMMENT IN SB-09-CRM-0184-0189, TO THE MOTION TO QUASH SEPARATELY FILED BY ACCUSED ACOT AND DULINAYAN;
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> D. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DECISION OF THE RESPONDENT OFFICE OF THE PRESIDENT IN DISMISSING THE COMPLAINT AGAINST RESPONDENTS, WHICH IS NOT IN ACCORD WITH THE EVIDENCE ON RECORD, BUT CONTRARY TO ESTABLISHED JURISPRUDENCE AND ITS PREVIOUS RULINGS;
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> E. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE PROVISIONS OF EXECUTIVE ORDER NO. 13;
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> F. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE RULING OF THE OFFICE OF THE PRESIDENT, WHEN IT FAILED TO RULE ON VARIOUS ISSUES RAISED BY THE PETITIONERS, SUCH AS:
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> > 1. WHEN IT FAILED TO CONSIDER THE FINDINGS OF THE COURT OF APPEALS IN C.A. G.R. 114210 ENTITLED JENNIFER AGUSTIN-SE ET AL. VS. INTERNAL AFFAIRS BOARD ET AL.;

> 2. TO RULE ON THE ISSUE THAT RESPONDENT [OFFICE OF THE PRESIDENT] ERRONEOUSLY CONCLUDED THAT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT WAS JUSTIFIED BY REASON OF THE DELAY IN FILING THEIR COMMENT IN SB-09-CRM-0184-0189;
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> 3. WHETHER OR NOT THE FINDING OF THE RESPONDENT [OFFICE OF THE PRESIDENT] IS CORRECT THAT THERE WAS NO EVIDENCE RELATIVE TO THE UNDUE INJURY CAUSE [SIC] TO THE PEOPLE AND TO PETITIONERS.[30]

The Ruling of the Court

The petition lacks merit.

Question of Law v. Question of Fact

At the outset, we note that questions of fact are raised in this petition which are not proper under Rule 45 of the Rules of Court.

A question of law arises when there is a doubt as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.[31] For a question to be a question of law, it must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of the issue must rest solely on what the law provides on the given set of facts and circumstances. Once it is clear that the issue invites a review of the evidence presented, the question is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[32]

In this case, petitioners allege, among others, that (1) the Court of Appeals did not consider their evidence during the administrative adjudication; (2) the Court of Appeals gravely erred in ruling that there is no substantial evidence on record against Casimiro for the delay in the disposition and preliminary investigation, and against Casimiro and Turalba for violations of Office Order No. 05-18, Office Order No. 05-13, Section 35 of RA No. 6770 and Section 3(k) of RA No. 3019; (3) the Court of Appeals gravely erred in sustaining the finding of the OP that they were preventively suspended by reason of their delay in filing their Comment, (4) the Court of Appeals gravely erred in sustaining the dismissal of the Complaint by the

30 Id. at 12-13.

31 See *Heirs of Nicolas Cabigas v. Limbaco,* 670 Phil. 274 (2011).

32 See *Republic of the Philippines v. Malabanan*, 646 Phil. 631 (2010).

OP which is not in accord with the evidence on record but contrary to established jurisprudence and its previous rulings; and (5) the Court of Appeals gravely erred in sustaining the OP without ruling on the finding of the OP that there was no evidence relative to the undue injury caused to the people and the petitioners.[33] These issues all involve a review of the facts on record or the examination of the probative value of the evidence submitted.

Applying the test of whether the question is one of law or of fact, the aforementioned are questions of fact because petitioners assail the appreciation of evidence by the Court of Appeals.[34] We have previously held that questions on the probative value of the evidence, or those which relate to the analysis of the records by the lower courts are questions of fact which are not proper for review by this Court:

> Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight - all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.[35]

Moreover, it is well-settled that as a general rule, this Court is not a trier of facts.[36] Thus, absent the recognized exceptions to this general rule, this Court will not review the findings of fact of the lower courts.[37] In this case, petitioners failed to show that the exceptions to justify a review of the appreciation of facts by the Court of Appeals are present.

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33 *Rollo*, pp. 12-13.

34 See *Office of the Ombudsman v. De Villa*, G.R. No. 208341, 17 June 2015.

35 *Angeles v. Pascual*, 673 Phil. 499, 505 (2011).

36 *Angeles v. Pascual*, 673 Phil. 499 (2011).

37 In *Sampayan v. Court of Appeals*, 489 Phil 200, 208 (2005), this Court, citing *Insular Life Assurance Company, Ltd. v. Court of Appeals*, recognized the following exceptions: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by parties, which, if properly considered, would justify a different conclusion.

On the contrary, the findings of the Court of Appeals are all supported by the evidence on record and further, are in accordance with the findings of the OP. In fact, other than the bare and general allegation that the Court of Appeals did not consider the evidence presented, petitioners were not able to identify the Court of Appeals' alleged error in the appreciation of facts. A reading of the assailed decisions shows that both the OP and the Court of Appeals considered the pleadings and corresponding evidence submitted by both parties in arriving at their respective decisions. Thus, we find no error in the appreciation of facts by the Court of Appeals.

Due Process

Petitioners allege that their right to due process was violated when the OP (1) did not consider the evidence they have presented and (2) issued its decision without the recommendation of the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) as provided in Executive Order (EO) No. 13.

We find these contentions untenable.

Essence of Due Process in Administrative Cases

The essence of due process is an opportunity to be heard – as applied to administrative proceedings, it is an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[38] In this case, petitioners were given both opportunities – the opportunity to explain their side by filing their pleadings which contained all their allegations and evidence in support of their arguments, and the opportunity to seek a reconsideration of the ruling complained of, as shown by their motions for reconsideration and appeals. As long as parties are afforded these opportunities, the requirement of due process in administrative proceedings is sufficiently met. As evidenced by the pleadings filed during the administrative proceeding, and their subsequent appeal to the Court of Appeals and now to this Court, they have been afforded the fullest opportunity to establish their claims and to seek a reconsideration of the ruling complained of.

Moreover, a reading of the decisions of the Court of Appeals and the OP shows that the evidence petitioners presented had been duly considered. Indeed, aside from their general allegation that the Court of Appeals did not consider their evidence, petitioners failed to identify any conclusion arrived at by the Court of Appeals or the OP that was not supported by the evidence on record. Moreover, both the Court of Appeals and the OP addressed the issues raised by the parties, and subsequently cited the proper evidence on record and quoted the applicable laws and jurisprudence to support their findings. The bare allegation that they were denied due process cannot

[38] *Hon. Flores v. Atty. Montemayor*, 666 Phil. 393 (2011).

overcome the clear fact that they were given every opportunity to establish their claims.

Recommendation of ODESLA

Petitioners further allege that the Court of Appeals gravely erred in applying the provisions of EO No. 13,[39] as the decision of the OP was approved only by the Executive Secretary without the recommendation of the ODESLA. They argue that their right to due process was violated as the decision was rendered by only one person rather than through the recommendation of a collegial body – namely the Investigative and the Adjudicatory Division of the ODESLA.

We find this argument patently baseless. As correctly pointed out by the Court of Appeals, there is nothing in EO No. 13 which states that findings on the complaints against a presidential appointee, such as a Deputy Ombudsman, must be issued by a collegial body. The ODESLA is merely a fact-finding and recommendatory body to the President; and thus, it does not have the power to settle controversies and adjudicate cases. In *Pichay, Jr. v. ODESLA-IAD*,[40] the Court held:

> Under E.O. 12, the PAGC was given the authority to "investigate or hear administrative cases or complaints against all presidential appointees in the government" and to "submit its report and recommendations to the President." The IAD-ODESLA is a fact-finding and recommendatory body to the President, not having the power to settle controversies and adjudicate cases. As the Court ruled in *Cariño v. Commission on Human Rights*, and later reiterated in *Biraogo v. The Philippine Truth Commission*:
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> > Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law.
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> While the Ombudsman's function goes into the determination of the existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD-ODESLA is limited to that of a fact-finding investigator whose determinations and

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[39] Series of 2010, "Abolishing the Presidential Anti-Graft Commission and Transferring its Investigative, Adjudicatory and Recommendatory Functions to the Office of the Deputy Executive Secretary."

[40] 691 Phil. 624 (2012).

> recommendations remain so until acted upon by the President. As such, it commits no usurpation of the Ombudsman's constitutional duties.[41]

Moreover, as the report of the ODESLA is merely recommendatory in nature, its absence does not negate the validity of the decision of the OP. There is nothing in EO No. 13 which states that the lack of recommendation of the ODESLA renders the OP's decision in an administrative case void. Thus, it cannot be said that petitioners were deprived of their right to due process.

Inordinate Delay

Petitioners posit that the delay in the filing of the Informations against Acot, Dulinayan and several others should be attributed to Casimiro. They further argue that this delay amounts to grave misconduct, conduct prejudicial to the interest of the service, and gross neglect of duty.

While it is unfortunate that the filing of the Informations has taken an inexplicable amount of delay from the preliminary investigation, this cannot be blamed solely on Casimiro. The records show that the initial delay was incurred because of the procedural layers of review done to the 12 April 1996 Resolution recommending the filing of Informations against Acot, Dulinayan and several others. Moreover, considering that the 12 April 1996 Resolution was modified to dismiss the charges against Acot and Dulinayan, Casimiro cannot be faulted for the delay in the filing of the Informations against them as there was nothing to be filed. Casimiro was appointed Deputy Ombudsman only on 16 December 1999 and thus, had every right to presume regularity in the investigation of the cases. The delay, therefore, cannot be attributed to Casimiro.

Petitioners also bewail the fact that there was no apparent movant in the case against Acot, Dulinayan and several others; and thus, Casimiro, by reviewing this case, showed unusual interest. However, the records show that the case was brought to the attention of the MOLEO when Col. Sabado and Ltc. Gadin, co-respondents of Acot and Dulinayan, requested for their Ombudsman Clearance. This was when the record officers found out that the first folder of the case was missing and that the action taken on the 12 April 1996 Resolution after its 2 March 1998 modification was unknown. As these facts were brought to the attention of Casimiro, it would have been highly irresponsible for him to turn a blind eye to the irregularities uncovered. To expect Casimiro, who was then the Deputy Ombudsman for the MOLEO, to turn a blind eye to this anomaly would have been more suspect and highly irregular.

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[41] Id. at 639-642.

Confidentiality of Memorandum

Petitioners allege that the Court of Appeals gravely erred when it affirmed the decision of the OP holding that Casimiro did not violate Section 3(k) of RA No. 3019, Office Order No. 05-13 and Office Order No. 05-18.

In particular, petitioners aver that Casimiro and Turalba, in conspiracy with each other, violated Section 3(k) of RA No. 3019, as well as Section 7, paragraph (c) of RA No. 6713,[42] when the latter furnished Casimiro with the 5 January 2010 Memorandum which they alleged was of a confidential nature. Petitioners further allege that they are considered "whistleblowers" under Office Order No. 05-18, Series of 2005 (Rules on Internal Whistleblowing and Reporting); and thus, they should be protected against any retaliatory action of Casimiro. This allegation is again based on the premise that their 5 January 2010 Memorandum calling for the investigation of Casimiro is a "protected disclosure" which should not have been disclosed by Turalba to Casimiro.

We find these contentions to be without merit.

Protected disclosure is defined as "the deliberate and voluntary disclosure by an official or employee who has relevant information of an actual, suspected or anticipated wrongdoing by any official or employee, or by any OMB organizational unit."[43] On the other hand, a whistleblower refers "to an official or employee who makes protected disclosure to his immediate supervisor, other superior officers, the Tanodbayan and/or his duly authorized/designated representative or the Internal Affairs Board (IAB)."[44] Petitioners insist that based on the foregoing definitions, the 5 January 2010 Memorandum is a protected disclosure; and thus, they are considered whistleblowers who should be protected from retaliatory action.[45]

A reading of the Rules on Internal Whistleblowing and Reporting, however, will show that the conditions for "protected disclosure" have not been met in this case. Specifically, Section 7 provides:

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42 Code of Conduct and Ethical Standards for Public Officials and Employees.

43 Section II (a), Office Order No. 05-18, 24 January 2005.

44 Section II (b), Office Order No. 05-18, 24 January 2005.

45 "Retaliatory Action" pertains to negative or obstructive responses or reactions to a disclosure of misconduct or wrongdoing taken against the whistleblower and/or those officials and employees supporting him, or any of the whistleblower's relatives within the fourth civil degree either by consanguinity or affinity. It includes, but is not limited to, civil, administrative or criminal proceedings commenced or pursued against the whistle blower and/or those officials and employees supporting him, or any of the whistleblower's relatives within the fourth civil degree either by consanguinity or affinity, such as forcing or attempting to force any of them to resign, to retire and/or transfer; negative performance appraisals; fault-finding; undue criticism; alientation; blacklisting; and such other similar acts.

> Section 7. Conditions for Protected Disclosure. -
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> Whistleblowers shall be entitled to the benefits under these Rules, provided that all the following requisites concur:
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> (a) The disclosure is made voluntarily, in writing and under oath;
> (b) The disclosure pertains to a matter not yet the subject of a complaint already filed with, or investigated by the IAB or by any other concerned office; unless, the disclosures are necessary for the effective and successful prosecutions, or essential for the acquisitions of material evidence not yet in its possession;
> (c) The whistleblower assists and participates in proceedings commenced in connection with the subject matter of the disclosure; and
> (d) The information given by the whistleblower contains sufficient particulars and, as much as possible, supported by other material evidence.

The 5 January 2010 Memorandum does not meet the conditions set forth in Section 7; and thus, it does not qualify as a protected disclosure under the rules. The Memorandum fails to meet the first requirement as the disclosure, while made voluntarily and in writing, was not executed under oath. Contrary to the allegations of petitioners, there is also no indication that the document was to be treated as confidential. If indeed they had intended that the Memorandum be considered of a confidential nature, they should have indicated it clearly, such as by putting the word "confidential" on the face of the document. This they failed to do; and thus, the Memorandum was treated as a regular office memorandum.

Moreover, as correctly pointed out by the Court of Appeals and OP, the allegations made by petitioners could all be easily verified through the records and thus do not fall under the ambit of protected information. There was nothing confidential about the Memorandum. Neither did it contain any classified information. Thus, there could have been no violation of Section 3(k) of RA No. 3019[46] or of Section 7(c) of RA No. 6713.[47] Moreover, as

[46] Section 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

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

[47] Section 7**.** *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(c) Disclosure and/or misuse of confidential information. - Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:

(1) To further their private interests, or give undue advantage to anyone; or

(2) To prejudice the public interest.

there was no violation of Section 7(c) of RA No. 6713, there is also no violation of Office Order No. 05-13 which provides in part:

> Section 1. OMB officials and employees shall not disclose any confidential information acquired by them in the course of their employment in the Office. Pursuant to Section 7(c) of Republic Act 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, they shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public either: (1) to further their private interest or give undue advantage to anyone; or (2) to prejudice the public interest. x x x.

To reiterate, the 5 January 2010 Memorandum was bereft of any confidential character – it was not a protected disclosure nor did it contain any confidential or classified information as provided under the law. As such, Turalba could not have violated any rules on confidentiality when he provided Casimiro with a copy of the said Memorandum.

Malicious Prosecution

As for the allegation that Casimiro was liable for malicious prosecution under Section 35 of RA No. 6770, we find that this argument must also fail.

Section 35 of RA No. 6770 provides:

> Section 35. Malicious Prosecution**.** — Any person who, actuated by malice or gross bad faith, files a completely unwarranted or false complaint against any government official or employee shall be subject to a penalty of one (1) month and one (1) day to six (6) months imprisonment and a fine not exceeding five thousand pesos (₱5,000.00).

In turn, malicious prosecution has been defined as follows:

> In this jurisdiction, the term malicious prosecution has been defined as an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.
>
> x x x x
>
> This Court has drawn the four elements that must be shown to concur to recover damages for malicious prosecution. Therefore, for a malicious prosecution suit to prosper, the plaintiff must prove the

> following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice -- an improper or a sinister motive. The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the knowledge that the charges were false and groundless.[48]

Based on the foregoing, we see that the elements of malicious prosecution are wanting in this case. Based on the Complaint filed by Casimiro before the IAB, there had been probable cause for him to initiate the charges against petitioners. It is of record that petitioners had indeed filed several motions for extension of time, and that instead of filing the necessary Comment, they had submitted the 5 January 2010 Memorandum. This could have constituted conduct prejudicial to the best interest of the service or gross neglect of duty. Moreover, when they were asked by Casimiro to explain their actions, they did not respond, but merely submitted another Memorandum, addressed to Villa-Ignacio, which were considered actions that evinced resistance to authority.[49] In fact, the IAB found petitioners guilty of Simple Discourtesy in the Course of Official Duties and were reprimanded for their conduct.[50] Thus, the gravamen of malicious prosecution – the deliberate initiation of an action with the knowledge that the charges were false and groundless – was absent on the part of Casimiro.

Stare Decisis and Res Judicata

Petitioners further allege that the Court of Appeals gravely erred when it failed to take judicial notice of CA-G.R. No. 114210, where the Twelfth Division of the Court of Appeals found that petitioners were not remiss in peforming their duties in relation to the criminal cases against Acot, Dulinayan and several others.

Again, we do not find any reversible error.

Petitioners, in essence, are arguing that the Court of Appeals should have applied the doctrine of *stare decisis*, which enjoins adherence to judicial precedence, such that lower courts are bound to follow the rule established in a decision of the Supreme Court,[51] or the doctrine of *res judicata*, which provides that a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit.[52]

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48 *Magbanua v. Junsay*, 544 Phil. 349, 364-365 (2007).
49 *Rollo*, p. 412.
50 Id. at 413.
51 *Ting v. Velez-Ting*, 601 Phil. 676 (2009).
52 *Chu v. Spouses Cunanan*, 673 Phil. 12 (2011).

However, we note that the decision being relied on by petitioners was rendered merely by another division of the Court of Appeals, and not this Court. We have previously settled that the decision of a division of the Court of Appeals is not binding on a co-division.[53] We held:

> In the case at bar, this Court holds that there was no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division. **As correctly pointed out by the Special Sixth Division of the Court of Appeals, the decision of its co-division is not binding on its other division. Further, it must be stressed that judicial decisions that form part of our legal system are only the decisions of the Supreme Court.** Moreover, at the time petitioners made the aforesaid Manifestation, the Decision dated 14 December 2007 in CA-G.R. SP No. 96717 of the Special Tenth Division was still on appeal before this Court.
>
> Therefore, the Special Sixth Division of the Court of Appeals cannot be faulted for not giving due deference to the said Decision of its co-division, and its actuation cannot be considered grave abuse of discretion amounting to lack or excess of its jurisdiction.[54] (Boldfacing and underscoring supplied)

Moreover, as correctly pointed out by the Court of Appeals, the subject matter in CA-G.R. No. 114210 is different from the issues involved in this case. While this petition involves the administrative complaint filed by petitioners against Casimiro in relation to the alleged failure of Casimiro to file the Informations against Acot, Dulinayan and several others, the petition involved in CA-G.R. No. 114210 is the administrative complaint filed by petitioners which relates to the delay incurred by petitioners in filing the necessary pleadings before the Sandiganbayan. Thus, the Court of Appeals did not err in not taking judicial notice of CA-G.R. No. 114210.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 29 November 2012 Decision and the 23 May 2013 Resolution of the Court of Appeals, which affirmed the 14 June 2011 Decision of the Office of the President.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

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53 *Quasha Ancheta Peña Nolasco Law Office v. CA*, 622 Phil. 738 (2009).

54 Id. at 748-749.

WE CONCUR:

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(on leave)
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

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