



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROMULO L. NERI,
Petitioner,

G.R. No. 212467

Present:

-versus-

LEONEN, *J.*, Chairperson,
HERNANDO,
INTING,
ROSARIO*, and
LOPEZ, *J.*, *JJ.*

OFFICE OF THE OMBUDSMAN,
TEOFISTO GUINGONA, JR.,
HARRY L. ROQUE, JR., MA.
DOMINGA B. PADILLA, ROEL
GARCIA, BEBU BELCHAND,
AND FR. JOSE P. DIZON,
Respondents.

Promulgated:
July 5, 2021

X-----X

DECISION

LEONEN, *J.*:

The Constitution and our laws demand a high standard of ethics and integrity from public officials and employees. Those who fall short of this standard and diminish the people's confidence in the government shall meet the just punishment meted out by the law.

For this Court's resolution is a Petition for Review on Certiorari¹ assailing the Decision² and Resolution³ of the Court of Appeals, which

* Designated additional Member per Special Order No. 2833.

¹ *Rollo* (G.R. No. 212467), pp. 3–18. Filed under Rule 45 of the Rules of Court.

² *Id.* at 407–418. The July 3, 2013 Decision in CA-G.R. SP. No. 114299 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison of the Sixth Division of the Court of Appeals, Manila.

modified the Office of the Ombudsman's finding and held that Romulo L. Neri (Neri) was administratively liable for simple, not grave, misconduct.

Neri was the director general of the National Economic and Development Authority during the administration of then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo).⁴

Sometime in 2006, Zhing Xing Telecommunications Equipment (ZTE), a Chinese company supplying telecommunications equipment in Hongkong and China, submitted a proposal to put up the National Broadband Network project.⁵ This project would install a nationwide public telecommunications infrastructure linking all government agencies and offices.⁶

ZTE's proposal required a loan between the Philippines and China to fund the project. Upon completion, the project would be turned over to the then Department of Transportation and Communications for operation and maintenance.⁷

Later, China Export-Import Bank sent a letter to the National Economic and Development Authority endorsing ZTE's proposal.⁸

Amsterdam Holdings, Inc. (AHI), a domestic corporation, likewise submitted its proposal to construct the project. Unlike ZTE's bid, AHI's proposal did not require a fund appropriation or guaranty from the government. Moreover, communication expense was also estimated to be 25% lower under AHI's proposal.⁹

In 2007, ZTE and AHI submitted their final proposals. The Department of Transportation and Communications recommended ZTE's proposal, which was forwarded to the National Economic and Development Authority.¹⁰ Neri wrote to the Chinese Minister of Commerce and China Export-Import Bank, informing them that ZTE's bid was approved.¹¹

The government awarded the contract to ZTE. The project was pegged at US\$329,500,000.00.¹²

³ Id. at 469–470. The May 5, 2014 Resolution in CA-G.R. SP. No. 114299 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison of the Sixth Division of the Court of Appeals, Manila.

⁴ Id. at 27.

⁵ Id. at 124.

⁶ Id. at 124, 408.

⁷ Id. at 408.

⁸ Id. at 408–409.

⁹ Id. at 409.

¹⁰ Id.

¹¹ Id. at 409–410.

¹² Id. at 410.

After the NBN-ZTE deal had been signed, the media reported on corruption allegations surrounding it. Notable among these, then Commission on Elections Chair Benjamin Abalos (Abalos) had reportedly bribed ZTE's rivals to back out from the bidding and used his influence as a public official to broker the project for ZTE.¹³

In a Senate inquiry, the owner of AHI, Jose De Venecia III (De Venecia), revealed that Abalos had offered him US\$10,000,000.00 to withdraw AHI's bid. When De Venecia refused, Abalos proposed a partnership between AHI and ZTE instead. De Venecia said that in their meeting with ZTE in China, he found out that ZTE's proposal was overpriced by US\$132,000,000.00.¹⁴

When the deal between AHI and ZTE failed to materialize, Abalos allegedly called De Venecia, hurling invectives and death threats at him.¹⁵

Rodolfo Jun Lozada (Lozada), who served as Neri's technical consultant for the NBN-ZTE deal, also testified in a Senate hearing. He claimed that he started to get involved when Neri introduced him to Abalos in a meeting at the Wack-Wack Golf and Country Club.¹⁶ He alleged that Neri invited him to the National Economic and Development Authority, where De Venecia presented the project. Neri purportedly asked Lozada to reconcile the proposals of ZTE and AHI.¹⁷

Neri also testified in a Senate hearing. He narrated that Abalos had bribed him ₱200,000,000.00 for the NBN-ZTE deal while they were playing golf. Neri said he disclosed this incident to President Macapagal-Arroyo,¹⁸ but when prodded on why the President still accepted ZTE's proposal despite the bribery allegations, he invoked executive privilege.¹⁹

A Complaint²⁰ was later filed before the Office of the Ombudsman against Neri, Abalos, President Macapagal-Arroyo, then First Gentleman Jose Miguel Arroyo, and Abalos, all of whom were alleged to have violated Republic Act No. 3019 and the Revised Penal Code.²¹

The complainants claimed that the contract with ZTE was highly

¹³ Id. at 28–29.

¹⁴ Id. at 30–31.

¹⁵ Id. at 32–33.

¹⁶ Id. at 146.

¹⁷ Id. at 146–149.

¹⁸ Id. at 33–35.

¹⁹ Id. at 35.

²⁰ Id. at 26–44. The Complaint was filed by Teofisto T. Guingona, Jr., Harry L. Roque, Jr., Ma. Dominga B. Padilla, Roel Garcia, Bebu Bulchand, Fr. Jose P. Dizon, et al.

²¹ Id. at 27.

questionable and grossly disadvantageous because the project's cost would be paid through a 15-year loan agreement, while AHI proposed to build the project for only US\$240,000,000.00, which would not be shouldered by the government.²²

For Neri, the complainants averred that he should be charged with dereliction of duties under Article 208 of the Revised Penal Code for maliciously refraining from instituting prosecution and tolerating the corruption surrounding the deal.²³ He allegedly attempted to conceal the criminal acts surrounding the NBN-ZTE deal when he deliberately used executive privilege during the hearing.²⁴

The complainants also alleged that, as the head of the National Economic and Development Authority, Neri had a hand in approving the deal because the agency's approval was required.²⁵ To them, Neri's approval, despite admission that he was bribed, made him an accessory to the crime.²⁶

A fact-finding investigation was conducted over the Complaint, which was consolidated with other cases.²⁷ Neri was then administratively charged with grave misconduct and dishonesty.²⁸

On April 21, 2009, the Office of the Ombudsman found²⁹ Neri guilty of misconduct and suspended him for six months without pay:

PREMISES CONSIDERED, the undersigned panel members respectfully recommend the following:

- 1) That the administrative case against LEANDRO R. MENDOZA, LORENZO G. FORMOSO III and ELMER A. SONEJA be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE;
- 2) However, there being substantial evidence in the administrative case against ROMULO L. NERI, he is hereby found GUILTY of MISCONDUCT and is SUSPENDED without pay for SIX

²² Id. at 28.

²³ Id. at 43.

²⁴ Id.

²⁵ Id. at 43, 409.

²⁶ Id. at 43-44.

²⁷ Id. at 7. The case was consolidated with OMB-C-C-07-0397-I and OMB-C-A-0423-I entitled, "*Cong. Carlos M. Padilla, House of Representatives vs. Sec. Leandro Mendoza, Undersecretary Lorenzo Formoso, et al.*" It was docketed as a criminal case (OMB-C-C-08-0039-B) and administrative case (OMB-C-A-08-0045-B) entitled "*Teofisto Guingona, Jr. Harry L. Roque, Jr., Ma. Dominga B. Padilla, Roel Garcia, Bebu Bulchand, and Fr. Jose P. Dizon vs. Romulo Neri.*"

²⁸ Id.

²⁹ Id. at 123-173. The April 21, 2009 Decision was issued by Director Caesar D. Asuncion, Deputy Special Prosecutor Jesus A. Micael, Deputy Special Prosecutor Rober E. Kallos, Assistant Ombudsman Rodolfo M. Elman, and Deputy Ombudsman for the Military and Other Law Enforcement Offices Emilio A. Gonzalez III and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

(6) MONTHS. The Office of the President thru the Executive Secretary is hereby DIRECTED to forthwith implement the penalty of suspension[.]

SO DECIDED.³⁰

The Office of the Ombudsman ruled that there was substantial evidence showing that Neri committed grave misconduct. While he did not solely approve the project, he was deemed to have mediated—through the National Economic and Development Authority—between Abalos and ZTE.³¹ Further, it noted that Neri did not turn down the bribe, when as a public official, he should have flatly rejected the offer.³² It was also deemed highly improper for Neri to entertain Abalos by attending meetings, conferences, and golf games with ZTE officials.³³

Neri moved for reconsideration, but in an April 19, 2010 Resolution,³⁴ the Office of the Ombudsman denied his Motion.

On appeal, the Court of Appeals denied Neri's appeal but found him liable only for simple misconduct. The dispositive portion of its July 3, 2013 Decision³⁵ reads:

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Joint Decision of the Office of the Ombudsman dated April 21, 2009 is hereby **AFFIRMED with MODIFICATIONS** in that Romulo R. Neri is only held guilty of **SIMPLE MISCONDUCT** and is directed to pay a **FINE** equivalent to his salary for six (6) months as penalty therefor.

SO ORDERED.³⁶ (Emphasis in the original)

The Court of Appeals found substantial evidence to declare Neri guilty of simple misconduct, particularly when he introduced Lozada to Abalos and processed the approval of ZTE's bid despite knowing the bribery involved. It reasoned that Neri should have avoided meeting the ZTE officials, as he was part of the body that would eventually approve the project. For his actions, Neri was found to have undermined the public's trust in the government.³⁷

However, the Court of Appeals did not find the misconduct to be

³⁰ Id. at 172–173.

³¹ Id. at 168.

³² Id. at 170.

³³ Id. at 170–171.

³⁴ Id. at 201–208. The April 19, 2010 Order was issued by Director Caesar D. Asuncion, Deputy Special Prosecutor Jesus A. Micael, Deputy Special Prosecutor Robert E. Kallos, Assistant Ombudsman Rodolfo M. Elman, and Deputy Ombudsman for the Military and Other Law Enforcement Offices Emilio A. Gonzalez III and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

³⁵ Id. at 407–418.

³⁶ Id. at 418.

³⁷ Id. at 416.

grave.³⁸ It noted that Neri was not shown to have approved the project for his own benefit, or that his recommendation was tainted with corruption.³⁹ It also found no proof that he accepted Abalos' bribe.⁴⁰

The Court of Appeals also gave credence to other testimonies which showed that Neri had no choice but to approve the project as a direct order from President Macapagal-Arroyo.⁴¹

Neri moved for reconsideration, but this was denied in the Court of Appeals' May 5, 2014 Resolution.⁴²

Thus, Neri filed a Petition for Review on Certiorari⁴³ before this Court, to which the Office of the Ombudsman⁴⁴ and private respondents,⁴⁵ who were among the original complainants, filed their respective Comments. In turn, Neri filed a Consolidated Reply.⁴⁶

For its part, the Office of the Ombudsman had first intended to file its own petition by filing a Motion for Extension,⁴⁷ docketed as G.R. No. 212476, which this Court granted.⁴⁸ However, it later opted to withdraw the Motion for Extension, noting that the penalty imposed by the Court of Appeals was also the same penalty it had wanted to impose.⁴⁹

This Court had initially consolidated G.R. No. 212476 with this case and deferred action on the Motion to Withdraw,⁵⁰ but eventually granted it.⁵¹ Finally, G.R. No. 212476 was terminated on February 3, 2016,⁵² leaving only G.R. No. 212467 for this Court's resolution.

Here, petitioner mainly argues that the Court of Appeals erred in finding him guilty of simple misconduct. Having dinner with ZTE officials and playing golf with Abalos are harmless acts, he says, and not grounds for misconduct⁵³ since they do not show that he had recommended the approval of ZTE's bid for his benefit, or that there was corruption.⁵⁴ To him, there

³⁸ Id.

³⁹ Id.

⁴⁰ Id. at 416–417.

⁴¹ Id. at 417.

⁴² Id. at 469–470.

⁴³ Id. at 3–18. Petition for Review on Certiorari.

⁴⁴ Id. at 486–546. Public respondent's Comment.

⁴⁵ Id. at 555–564. Private respondents are Teofisto T. Guingona, Jr., Harry L. Roque, Jr., Ma. Dominga B. Padilla, Roe! Garcia, Bebu Bulchand, and Fr. Jose P. Dizon.

⁴⁶ Id. at 585–607.

⁴⁷ *Rollo* (G.R. No. 212476), pp. 4 and 10.

⁴⁸ Id. at 19.

⁴⁹ Id. at 21–22.

⁵⁰ Id. at 29.

⁵¹ Id. at 32.

⁵² Id. at 38.

⁵³ *Rollo* (G.R. No. 212467), p. 13.

⁵⁴ Id.

was no misconduct since he rejected the money Abalos had offered. He also contends that he did not know the instances of bribery involving other high officials at that time.⁵⁵

Petitioner asserts that he cannot stop the evaluation of ZTE's bid because when it was submitted, the National Economic and Development Authority had to automatically review the deal. He claims that he even warned the agency's staff to be cautious in evaluating the bid because of Abalos' previous offer to him. Thus, he says he cannot be held liable with the approval of the ZTE bid.⁵⁶

Petitioner further avers that the National Economic and Development Authority's approval only pertained to the economic feasibility of the project,⁵⁷ and did not choose ZTE as the contractor, which was the Department of Transportation and Communications' job.⁵⁸

Moreover, petitioner denies that he introduced Lozada to Abalos. He posits that Abalos may have already known Lozada as a member of the Wack-Wack Golf and Country Club, where he was the chair. Even if petitioner did introduce the two, he says this was a harmless act.⁵⁹

Petitioner likewise maintains seeing no misconduct in having dinner with the ZTE officials. He claims that per ordinary diplomatic protocol, he had to attend the dinner upon the Chinese embassy officials' invitation. In any case, he says there was no proof of what was discussed in the meeting.⁶⁰

In its Comment,⁶¹ public respondent Office of the Ombudsman argues that the Petition must be denied for raising questions of fact, which cannot be resolved in a Rule 45 petition. It notes that petitioner failed to allege any special reason that would work as an exception for his Petition to be allowed.⁶²

Putting aside the procedural infirmity, public respondent claims that the Petition must still be denied.⁶³ It asserts that the finding of guilt is supported by substantial evidence, and not merely presumptions, as shown in petitioner's meetings with Abalos and the ZTE officials.⁶⁴ His acts allegedly violated the "constitutional mandate that all public officers and

⁵⁵ Id.

⁵⁶ Id. at 13–14.

⁵⁷ Id. at 14.

⁵⁸ Id. at 14–15.

⁵⁹ Id. at 16.

⁶⁰ Id.

⁶¹ Id. at 486–546. Respondent's Comment.

⁶² Id. at 502–504.

⁶³ Id. at 504–505.

⁶⁴ Id. at 506.

employees must at all times be accountable to the people[.]”⁶⁵

To public respondent, petitioner also violated Section 7(d) of Republic Act No. 6713 for accepting favor or entertainment when he attended the dinner hosted by Abalos, Chinese embassy officials, and ZTE officials. It says this dinner was obviously arranged for a transaction that required his office’s approval.⁶⁶ Petitioner’s excuse for attending was a mere afterthought, it adds, noting that the Chinese embassy officials were not shown to have attended the meetings as part of their diplomatic duties.⁶⁷

Moreover, public respondent argues that petitioner obviously knew Abalos’ role in the NBN-ZTE deal. It maintains that petitioner introduced Lozada to Abalos and the ZTE officials to reconcile the proposals of ZTE and AHI.⁶⁸

Public respondent argues that since petitioner is a public servant, bound by the high standards of public service,⁶⁹ he should have been more circumspect in his dealings.⁷⁰ It says he cannot downplay those meetings as everyday activities, he being the then director general of the National Economic and Development Authority,⁷¹ whose approval for the project was sought after by Abalos and ZTE officials.⁷²

Finally, even if petitioner did not accept the bribe, public respondent

⁶⁵ Id. citing CONST., art. XI, sec 1.

⁶⁶ Id. at 507–508.

⁶⁷ Id. at 508.

⁶⁸ Id.

⁶⁹ Id. at 508–509, citing Republic Act No. 6713 (1989), secs. 2, 4(a), (b), (c) provide:

Section 2. Declaration of Policies. — It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Section 4. Norms of Conduct of Public Officials and Employees. — (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) *Commitment to public interest.* — Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) *Professionalism.* — Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) *Justness and sincerity.* — Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

⁷⁰ Id. at 509.

⁷¹ Id. at 510.

⁷² Id.

says he may still be held administratively liable because financial benefit is not relevant in finding misconduct.⁷³

In their Comment,⁷⁴ private respondents primarily assert that there is substantial evidence to support the charge of grave misconduct against petitioner.⁷⁵ However, unlike public respondent, they argue that petitioner's misconduct is grave enough to warrant the maximum penalty of dismissal.⁷⁶

Private respondents posit that petitioner's acts were essential to complete the deal, since he acted as a conduit who facilitated Abalos' criminal design.⁷⁷ They aver that when petitioner was bribed, he should have ensured that ZTE was disqualified from the bid and properly reported this incident;⁷⁸ yet, he even attempted to conceal the crime by maliciously using executive privilege during the Senate hearing.⁷⁹

In remaining silent and tolerating the bribery, private respondents say he became complicit to the corruption⁸⁰ as a co-conspirator and a direct participant by indispensable cooperation.⁸¹

Private respondents add that in approving ZTE's bid despite the bribery, petitioner violated Republic Act No. 3019 by paving the way for the contract signing, which was clearly disadvantageous and which caused undue damage and injury to government interest.⁸²

In his Consolidated Reply,⁸³ petitioner contends that his Petition is an exception to the rule that Rule 45 petitions may only raise questions of law. He says the Court of Appeals' conclusion is "due to grave misapprehension of facts and the inferences made are manifestly mistaken" while its findings lack basis.⁸⁴

⁷³ Id. at 511, citing *Japson v. Civil Service Commission*, 663 Phil. 665-678 (2011) [Per J. Nachura, En Banc].

⁷⁴ Id. at 555–564. Private respondents are the same complainants in the original Complaint in this case.

⁷⁵ Id. at 555.

⁷⁶ Id. at 556.

⁷⁷ Id. at 556–557.

⁷⁸ Id. at 557.

⁷⁹ Id. at 559.

⁸⁰ Id. at 558–559, citing Republic Act No. 3019, sec. 3(a), which provides:

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:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

⁸¹ Id. at 559.

⁸² Id. at 560.

⁸³ Id. at 585–607.

⁸⁴ Id. at 606.

Petitioner continues to deny introducing Lozada to Abalos.⁸⁵ He points out that the Office of the Ombudsman's and Court of Appeals' findings were merely culled from the baseless Complaint. He likewise added that there was no testimony during the Senate hearings supporting Lozada's claim.⁸⁶

Petitioner also argues that he merely followed the President's advice "to refuse the bribe offer . . . and just proceed with the processing of the . . . project[.]"⁸⁷ He maintains that he acted in good faith in obeying the orders of a superior, he being the vice chair of the National Economic and Development Authority Board while the President was its chair.⁸⁸ He contends that absent any proof that he acted in bad faith, he is entitled to the presumption of regularity in the performance of his official functions.⁸⁹

Petitioner clarifies that he never played golf with the ZTE officials.⁹⁰ While he admits that he dined with them, he reiterates that these are ordinary acts done by public officials.⁹¹

Petitioner says private respondents themselves admit that there is nothing wrong with public officials sitting in meetings over big government projects. Had it been so, he says Finance Secretary Margarito Teves and Transportation and Communications Secretary Leandro Mendoza should have been included in the Complaint for admitting that they also met with Abalos and the ZTE officials—but they were not.⁹²

Finally, petitioner claims that instead of being liable for misconduct, he should be commended by public respondent because he was a whistleblower who exposed the attempted bribery to the public.⁹³

The issues for this Court's resolution are the following:

First, whether or not the petition may raise questions of fact; and

Second, whether or not there is sufficient evidence to hold petitioner Romuio Neri administratively liable.

The Petition is denied.

⁸⁵ Id. at 587.

⁸⁶ Id. at 588.

⁸⁷ Id. at 594.

⁸⁸ Id.

⁸⁹ Id. at 594–595.

⁹⁰ Id. at 595–596.

⁹¹ Id. at 596.

⁹² Id. at 597–598.

⁹³ Id. at 605.

I

As a rule, only questions of law may be raised in a Rule 45 petition.⁹⁴ This Court will not entertain questions of fact, as it is not its function to analyze and weigh evidence all over again. In *Pascual v. Burgos*:⁹⁵

Review of appeals filed before this court is “not a matter of right, but of sound judicial discretion[.]” This court’s action is discretionary. Petitions filed “will be granted only when there are special and important reasons[.]” . . .

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are “final, binding[.] or conclusive on the parties and upon this [c]ourt” when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

.....

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the “probative value of the evidence presented.” There is also a question of fact when the issue presented before this court is the correctness of the lower courts’ appreciation of the evidence presented by the parties.⁹⁶ (Citations omitted)

However, this is not a hard and fast rule. This Court has laid down the following exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁹⁷ (Citations omitted)

Nevertheless, even if questions of fact are raised in the petition, this Court is given the discretion to review and resolve the case. Under Rule 45,

⁹⁴ RULES OF COURT, Rule 45, sec. 1

⁹⁵ 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

⁹⁶ Id. at 181–183.

⁹⁷ *Medina v. Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division].

Section 6 of the Rules of Court:

SECTION 6. Review Discretionary. — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:

(a) When the court a quo has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or

(b) When the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

In this case, petitioner raises questions of fact in questioning the Court of Appeals' evaluation of evidence, claiming that his Petition falls under the recognized exceptions.⁹⁸ However, the Office of the Ombudsman and the Court of Appeals arrived at similar findings.

In any case, since the Petition raises policy-determining issues which are founded in constitutional and statutory text, this Court exercises its discretion and reviews the case.

II

The Constitution spells out an exacting standard for public officers and employees:

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.⁹⁹

Public officers and employees hold in trust powers that they exercise in behalf of the public. Hence, they are held to higher standards than ordinary citizens to keep the people's faith in the State.¹⁰⁰ In *Rios v. Sandiganbayan*:¹⁰¹

Public servants must bear in mind this constitutional mandate at all times

⁹⁸ *Rollo* (G.R. No. 212467), p. 606.

⁹⁹ CONST., art. XI, sec. 1.

¹⁰⁰ *Canlas v. Bongoian*, 832 Phil. 293 (2018) [Per J. Leonen, Third Division].

¹⁰¹ 345 Phil. 85 (1997) [Per J. Romero, Third Division].

to guide them in their actions during their entire tenure in the government service. "The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account."¹⁰² (Citations omitted)

In line with this constitutionally enshrined policy, the Office of the Ombudsman was created as the protector of the people. Article XI, Section 12 of the Constitution gives it the duty to "act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof."¹⁰³

Under Republic Act No. 6770, or the Ombudsman Act of 1989, the Office of the Ombudsman is vested with full administrative authority to investigate and prosecute erring public officers.¹⁰⁴ Section 13 states:

SECTION 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

For the Office of the Ombudsman to fully carry out its functions, it is granted disciplinary authority over government officials.¹⁰⁵ In *Office of the Ombudsman v. Court of Appeals*:¹⁰⁶

[T]he Office of the Ombudsman [is vested with] full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.¹⁰⁷

In administrative cases before the Office of the Ombudsman, the

¹⁰² Id. at 91.

¹⁰³ CONST., art. XI, sec. 12.

¹⁰⁴ *Vergara v. Ombudsman*, 600 Phil. 26 (2009) [Per J. Carpio, En Banc].

¹⁰⁵ *Office of the Ombudsman v. Samaniego*, 586 Phil. 497 (2008) [Per J. Corona, En Banc].

¹⁰⁶ 524 Phil. 405, 429-430 (2006) [Per J. Callejo, Sr., First Division].

¹⁰⁷ Id. at 429-430.

complainants must prove their allegations by substantial evidence. Substantial evidence is the “relevant evidence as a reasonable mind will accept as adequate to support a conclusion.”¹⁰⁸ This weight of evidence is satisfied if “there is reasonable ground to believe that one is guilty of the act or omission complained of, even if the evidence might not be overwhelming.”¹⁰⁹

When the Office of the Ombudsman’s findings are adequately supported by substantial evidence, they become conclusive on this Court.¹¹⁰ Only grave arbitrariness will warrant judicial intervention in the Office of the Ombudsman’s findings.¹¹¹

Jurisprudence has defined misconduct as a “transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.”¹¹² It generally pertains to “wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.”¹¹³ It indicates “a wrongful intention and not a mere error of judgment.”¹¹⁴ To be a misconduct, an act must “relate to or be connected with the performance of the official functions and duties of a public officer.”¹¹⁵

Misconduct may be grave or simple. Grave misconduct is qualified by: (a) corruption; (b) clear intent to violate the law; or (c) flagrant disregard of an established rule. If none of these elements are present, the misconduct is only simple.¹¹⁶

Corruption is an “act of an official or fiduciary person who unlawfully and wrongfully uses [their] station or character to procure some benefit for [them]self or for another person, contrary to duty and the rights of others.”¹¹⁷

Flagrant disregard of rules, on the other hand, is present when there is an “open defiance of a customary rule” or “repeated voluntary disregard of established rules” or when an officer “arrogated unto [themselves] responsibilities that were clearly beyond [their] duties.”¹¹⁸ Thus, there must be a showing of an official or employee’s “propensity to ignore the rules as

¹⁰⁸ *Office of the Ombudsman v. Fetaivero, Jr.*, 836 Phil. 557, 567 (2018) [Per J. Leonen, Third Division].

¹⁰⁹ *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 299 (2015) [Per J. Perlas-Bernabe, First Division].

¹¹⁰ *Id.*

¹¹¹ *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366–384 (2014) [Per J. Leonen, Second Division].

¹¹² *Id.* at 380–381.

¹¹³ *Office of the Ombudsman v. Espina*, 807 Phil. 529, 540–541 (2017) [Per Curiam, First Division].

¹¹⁴ *Camus v. Civil Service Board of Appeals*, 112 Phil. 301, 306 (1961) [Per J. Paredes, En Banc].

¹¹⁵ *Office of the Ombudsman v. Espina*, 307 Phil. 529, 541 (2017) [Per Curiam, First Division].

¹¹⁶ *Id.*

¹¹⁷ *Chavez v. Garcia*, 783 Phil. 563, 573 (2016) [Per J. Brion, Second Division].

¹¹⁸ *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 297 (2011) [Per J. Brion, En Banc].

clearly manifested by [their] actions.”¹¹⁹

Mere failure to comply with the law must be deliberate and must be carried out to secure benefits for the officer or for other persons. In *Office of the Ombudsman v. De Guzman*.¹²⁰

[T]o be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. There must be evidence, independent of the [offender’s] failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.¹²¹ (Citation omitted)

Further, in grave misconduct, it is not required that the public officer’s act equates to a crime.¹²²

This Court has lowered public officers’ liability from grave to simple when it sees fit to do so. In *Imperial, Jr. v. Government Service Insurance System*,¹²³ the Government Service Insurance System found the petitioner, then its branch manager, guilty of grave misconduct and conduct prejudicial to the best interest of the service for approving salary loans that failed to meet the requirements. The Civil Service Commission and the Court of Appeals affirmed his administrative liability. This Court, however, affirmed the finding of misconduct, but only ruled it as simple.

In so ruling, this Court found no substantial evidence showing that the offense was committed with corruption, intent to violate the law, or flagrant disregard of established rule. It explained that the petitioner’s act could not have been a flagrant disregard of the established rule, seeing as how past branch managers had been authorized to approve applications beyond the prescribed requirements, along with a customary lenient practice in place. It also found that the petitioner had first sought the approval of his immediate supervisor before acting on the loans.¹²⁴

Just the same, this Court will not hesitate to impose the correct nomenclature and penalty on those who commit grave misconduct.

In *Office of the Ombudsman v. Celiz*,¹²⁵ a complaint for grave

¹¹⁹ Id.

¹²⁰ 819 Phil. 282 (2017) [Per J. Leonen, Third Division].

¹²¹ Id. at 305.

¹²² *Government Service Insurance System v. Manalo*, 795 Phil. 832–859 (2016) [Per J. Del Castillo, Second Division].

¹²³ 674 Phil. 284 (2011) [Per J. Brion, En Banc].

¹²⁴ Id.

¹²⁵ *Office of the Ombudsman v. Celiz*, G.R. No. 236383, June 26, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65262>> [Per J. A.B. Reyes, Jr., Third Division].

misconduct was filed against the respondents for approving an asphalt road project without appropriation, violating the procurement law and Section 3(e) of Republic Act No. 3019. The Office of the Ombudsman found them liable for grave misconduct, but the Court of Appeals only ruled simple misconduct after seeing no evidence of corrupt motives on their part.

This Court reinstated the Office of the Ombudsman's decision, ruling that the respondents acted in willful disregard of the established procurement rules. Despite no appropriation for the project, they repeatedly signed off resolutions that resulted in unwarranted benefits and advantages to the contractor. For their blatant acts, this Court rejected their excuse that they were mere subordinates.¹²⁶

In *Office of the Ombudsman v. Delos Reyes, Jr.*,¹²⁷ the respondent was a division chief at the Philippine Charity Sweepstakes Office, whom the Office of the Ombudsman found guilty of grave misconduct and gross neglect of duty for the delay in submitting a periodic sales report and remitting lotto sales. The Court of Appeals reversed this finding for lack of substantial evidence, holding that the respondent held no such duties. This Court reinstated the Office of the Ombudsman's decision.

Particularly on grave misconduct, this Court found substantial evidence that respondent flagrantly disregarded the rules and acted with a willful intent to violate the law. Since he processed and approved the lotto remittances, he could not have missed how his subordinate manipulated the deposit slips and funds had he performed his duties.¹²⁸

Here, there is substantial evidence supporting the charge of grave misconduct against petitioner. The facts show that his conduct was attended with corruption and a clear intent to violate the law.

First, petitioner admits that he went to a dinner hosted by Abalos, Chinese embassy officials, and ZTE officials, but downplays this meeting as an innocent social event. We disagree.

The dinner is no ordinary meeting. Petitioner was then a key official for the approval of the deal sought by Abalos and ZTE. In accepting the invitation, he violated Section 7(d) of Republic Act No. 6713, which states that "[p]ublic officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment . . . from any person in the course of their official duties . . . or any transaction which may be affected by the functions of their office."

¹²⁶ Id.

¹²⁷ 745 Phil. 366 (2014) [Per J. Leonen, Second Division].

¹²⁸ Id.

Petitioner cannot escape culpability by saying that accepting such invitations are ordinary diplomatic protocols. As public respondent points out, petitioner failed to show that the dinner was arranged for an official function. Worse, he could not account for why Abalos and the ZTE officials were present in the dinner.

In *Sison-Barias v. Rubia*,¹²⁹ this Court held that any meeting with an interested party is deemed grave misconduct. In *Sison-Barias*, one of the respondents was a judge who met with litigants to discuss matters on a case filed before his sala. In finding the judge guilty of grave misconduct, this Court held that the meeting could not be a mere chance encounter, but one that violated the notions of propriety demanded of his position. Citing *Camus v. The Civil Service Board of Appeals*,¹³⁰ this Court said:

Respondents in this case failed to subscribe to the highest moral fiber mandated of the judiciary and its personnel. Their actions tainted their office and besmirched its integrity. In effect, both respondents are guilty of gross misconduct. *This court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."* In *Camus v. The Civil Service Board of Appeals*, this court held that "[m]isconduct has been defined as 'wrong or improper conduct' and 'gross' has been held to mean 'flagrant; shameful' . . . This Court once held that the word misconduct implies a wrongful intention and not a mere error of judgment."¹³¹ (Emphasis supplied, citations omitted)

Akin to a member of the judiciary, petitioner in this case then occupied a highly regarded government position. As a public servant, he is held to high standards of integrity, and is expected to be free from any hint of impropriety and indecency in his conduct. The Constitution demands no less.

As the director general of the National Economic and Development Authority, petitioner had the power over the approval of ZTE's bid. He insists that his office only evaluated the economic viability of the project, and had no discretion as to the contractor to be chosen, but this argument rings hollow. The economic viability of any bid is an indispensable consideration in awarding the contract. Hence, petitioner's meeting with the ZTE officials, who were heavily interested in the project's approval, raised questions on his integrity and fairness in the award of the bid.

Furthermore, petitioner cannot deny being instrumental in Lozada's participation in the processing of ZTE's deal. As Lozada narrated, petitioner

¹²⁹ 736 Phil. 81 (2014) [Per Curiam, En Banc].

¹³⁰ 112 Phil. 301 (1961) [Per J. Parédes, En Banc].

¹³¹ *Sison-Barias v. Rubia*, 736 Phil. 81, 122 (2014) [Per Curiam, En Banc].

introduced him to Abalos and invited him to the National Economic and Development Authority to reconcile the technical specifications of ZTE's and AHI's bid. This is consistent with De Venecia's testimony that Abalos offered him a partnership with ZTE.

Petitioner feigns innocence by claiming that Lozada has never testified on this matter. However, as the Senate had found, it was petitioner who introduced Lozada to Abalos, and their friendship goes way back when Lozada had worked for petitioner at the Department of Budget and Management.¹³²

In pursuing the reconciliation of ZTE's and AHI's bids, petitioner became complicit to Abalos' scheme. He readily lent his position to procure benefits and advantages for Abalos and ZTE. He knew that the partnership between ZTE and AHI was the alternative plan for ZTE to get the contract.

Petitioner attempts to wash his hands by claiming that he was merely following then President Macapagal-Arroyo's orders. He maintains that he cannot be held accountable because he was only a part of the collegial body that approved the deal.

We cannot accept this argument.

As part of the Board of the National Economic and Development Authority, petitioner cannot pass on his liability to the President. His vote and opinion on the matter must be viewed separately from the President's. His roles as the director general of the agency and the vice chair of its board cannot be emasculated as a powerless position, blindly following the President's orders.

All these make it clear that petitioner committed grave misconduct.

To reiterate, this Court shall respect the Office of the Ombudsman's findings of fact when they are supported by substantial evidence.¹³³ Here, the Court of Appeals erred in deeming the misconduct as only simple, seeing as how the elements of corruption and clear intent to violate the law are quite patent. Petitioner actively brokered for ZTE's bid by using his public position despite knowing the corruption involved in the project. There is no cogent reason to justify the lowering of liability to simple misconduct.

¹³² Comm. on Accountability of Public Officers and Investigations, S. Rpt. 743, 14th Cong., 3rd Sess. (2009).

¹³³ Id.

The Constitution and our laws demand a high standard of ethics from public officials and employees. Petitioner's acts undoubtedly fell short of this standard and diminished the people's confidence in the government.


WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed July 3, 2013 Decision and May 5, 2014 Resolution of the Court of Appeals in CA-G.R. SP. No. 114299 are **REVERSED and SET ASIDE**. Petitioner Romulo L. Neri is **DISMISSED** from service, which includes the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and perpetual disqualification from reemployment in the government service.

SO ORDERED.




MARVIC M.V.F. LEONEN
Associate Justice

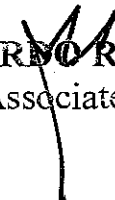
WE CONCUR:



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RICARDO R. ROSARIO
Associate Justice




JOSE P. LOPEZ
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.

**MARVIC M.V.F. LEONEN**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.

**ALEXANDER G. GESMUNDO**

Chief Justice