Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JAIME V. SERRANO,
Petitioner,

G.R. No. 219876

-versus-

FACT-FINDING INVESTIGATION BUREAU, OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES,
Respondent.

Members:
GESMUNDO, *C.J., Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,*
LOPEZ, J., ***JJ.***

Promulgated:
OCT 13 2021

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DECISION

LAZARO-JAVIER, ***J.*****:**

The Case

This Petition for Review on *Certiorari*[1] seeks the review of the dispositions of the Court of Appeals in CA–G.R. SP No. 131258 entitled *Jaime V. Serrano v. Fact-Finding Investigation Bureau, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, *viz.*:

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* On official leave.
1 *Rollo*, pp. 9-38.

1) **Decision**[2] dated January 29, 2015, affirming the Joint Resolution dated December 19, 2012, and Joint Order dated July 8, 2013, of the Office of the Ombudsman in OMB-P-C-12-0503-G, finding petitioner Jaime V. Serrano guilty of grave misconduct and serious dishonesty; and

2) **Resolution**[3] dated August 10, 2015, denying petitioner's motion for reconsideration.

The Proceedings Before the Ombudsman

By Affidavit-Complaint[4] dated July 11, 2012, and Supplemental Affidavit[5] dated July 17, 2012, the Fact-Finding Investigation Bureau of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (FFIB-MOLEO) charged several police officials and personnel with violation of Republic Act No. 7080,[6] Republic Act No. 3019,[7] Republic Act No. 9184[8] and malversation through falsification of public documents in connection with the repair and refurbishing contracts for twenty-eight (28) V-150 Light Armored Vehicles (LAVs) used by the Philippine National Police (PNP). It essentially alleged:

On August 14, 2007, PNP Director General Oscar C. Calderon sought the repair and refurbishing of ten (10) LAVs in furtherance of the capability build-up program for the PNP's Special Action Force (SAF). Thereafter, Director General Avelino Razon, Jr. requested a supplemental budget for the repair and refurbishing of eighteen (18) additional LAVs. Upon favorable endorsement of Former Department of the Interior and Local Government Secretary Ronaldo V. Puno, then President Gloria Macapagal-Arroyo approved the PNP's request. Consequently, the Department of Budget and Management (DBM) released ₱409,740,000.00 for the transport, repair, repowering, and refurbishing of the twenty-eight (28) LAVs of the PNP.[9]

On December 12, 2007, the PNP National Headquarters Bids and Awards Committee delegated the procurement of the repair and refurbishing contracts to its Logistics Support Service - Bids and Awards Committee (LSS-BAC). Based on the 2012 audit findings of the Commission on Audit (COA)

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2 *Id.* at 39-53.
3 *Id.* at 54-55.
4 *Id.* at 68-77.
5 *Id.* at 102-120.
6 An Act Defining and Penalizing the Crime of Plunder, approved July 12, 1991.
7 Anti-Graft and Corrupt Practices Act, approved August 17, 1960.
8 An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes, approved January 10, 2003.
9 DBM allowed the release of ₱144,940,000 to procure logistical equipment for the repowering/refurbishing of 10 LAVs and the procurement of forty tires for the said vehicles. DBM issued Special Allotment Release Order (SARO) Numbers D-07-06813 and D-07-09829 dated August 30, 2007, and December 17, 2007, respectively, to the PNP. The PNP Directorate for comptrollership then issued Notice of Fund Availability (NFA) No. 000-219-357-2007 on August 31, 2007, to the Logistics Support. Later, DBM also released an additional amount of ₱264,800,000 to support the transportation, delivery expenses, repair, and maintenance of the 18 other remaining LAVs, *id.* at 40-41.

and the report of the Criminal Investigation and Detection Group (CIDG), however, the whole procurement process was irregular and illegal:

- LSS-BAC did not provide bidding documents to possible bidders;
- There was no pre-procurement conference;
- Invitations to bid were published in Alppa Times News which is not a newspaper of general circulation and may not even exist;
- There was no pre-bid conference;
- The procuring agency did not require the bidders to submit their eligibility requirements and their technical and financial documents;
- There was no post-qualification;
- Award and payment were hurriedly made on December 27, 2007; and
- There were ghost deliveries[10] of engines and transmissions.

Thus, it (FFIB-MOLEO) filed administrative and criminal complaints against the police officials involved in the highly irregular transaction. Petitioner, then COA Supervisor and Resident Auditor of the PNP, was also charged as an accessory for failing to observe all the requirements and conditions of Pre-Audit and other existing COA Rules and Regulations.

In his Counter-Affidavit[11] dated August 17, 2012, petitioner riposted that he had no knowledge of the offenses charged. For one, COA Circular No. 95-006 totally lifted all pre-audit activities in all national government agencies, government-owned and controlled corporations, and local government units. Thus, he could not be faulted for failing to observe the conditions of pre-audit. For another, he was simply unable to focus and concentrate on the repair and refurbishing contracts due to his other equally important audit and official functions, as well as the sheer volume of complexity of PNP transactions and the agency's delayed submission of disbursement vouchers. At any rate, he already had an action plan for the year 2008 to stick to as approved by the COA Chairperson. Too, he had already instructed PNP Technical Audit Specialist Amor J. Quiambao (Quiambao) to conduct inspections and contract reviews of the LAV transactions and requested the PNP management to submit the necessary documents for evaluation.

In its Omnibus Reply/Position Paper[12] dated October 29, 2012, FFIB-MOLEO countered that petitioner's excuses were flimsy, if not deliberate attempts to conceal anomalous transactions.

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[10] PNP Crame and SAF Headquarters revealed that the engines of the said vehicles do not carry the brand name "Detroit" but rather "Commando" which were manufactured way back in 1987. There was also no *Record of Inventory, Inspection Report of Unserviceable Property*, and *Waste Material Report* pertaining to the repair of [twenty-eight] 28 LAVs to indicate that the engine and parts of the said vehicles have been actually replaced, *id.* at 41-42.

[11] *Id.* at 276-294.

[12] *Id.* at 323-470.

In his Position Paper[13] dated November 8, 2012, petitioner reiterated his arguments in his counter-affidavit, highlighting the reality that a post-audit of all financial transactions of PNP was physically impossible. Equally important audit functions also consumed his time.

Ruling of the Ombudsman

By Joint Resolution[14] dated December 19, 2012, the Ombudsman absolved Serrano of criminal charges but dismissed him from the service for grave misconduct and serious dishonesty, *viz.*:

> **WHEREFORE**, the Panel:
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> x x x x
>
> d) **FINDING SUBSTANTIAL EVIDENCE** against respondents x x x **JAIME V. SERRANO**, for Grave Misconduct and Serious Dishonesty, they are **DISMISSED** from the government service with forfeiture of all benefits and perpetual disqualification to hold public office effective upon receipt of this Order. If the penalty of dismissal from the service can no longer be served by reason of resignation or retirement, the alternative penalty of [a] **FINE** equivalent to **ONE YEAR** salary is imposed, in addition to the same accessory penalties of forfeiture of retirement benefits and perpetual disqualification to hold public office;
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> x x x x
>
> **SO ORDERED.**[15]

The Ombudsman held petitioner administratively liable for failure to observe the requirements and conditions of existing COA Rules and Regulations. Considering the hefty amount of ₱409,740,000.00 which the repair and refurbishing contracts entailed, it was his duty as COA Supervisor and Resident Auditor of the PNP to conduct a regular audit of such transactions. Lack of sufficient personnel was not a valid excuse. On the other hand, petitioner's inaction demonstrated his disposition to defraud, deceive or betray, and constituted malevolent transgression of law.

Petitioner moved for partial reconsideration[16] on the ground that the FFIB-MOLEO did not even cite a single COA rule or regulation which he allegedly failed to observe as to render him liable for grave misconduct and serious dishonesty.

By Joint Order[17] dated July 8, 2013, the Ombudsman denied petitioner's motion and enumerated the COA regulations he violated, *viz.*:

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13 *Id.* at 471-477.
14 *Id.* at 478-588.
15 *Id.* at 583.
16 *Id.* at 586-595.
17 *Id.* at 608-671.

a. **COA Memorandum No. 2005-027; COA Circular No. 87-278; COA Memorandum No. 87-480; and COA Circular No. 76-34** – petitioner failed to (1) conduct the necessary contract review within twenty (20) days from receipt of the advance copies of approved Purchase Orders and Work Orders from the PNP, and (2) conduct random inspections despite the presence of red flags and fraud indicators, as well as the amount of public fund involved.

b. **COA Circular No. 95-006** – Though pre-audit had been lifted, agencies were required to submit certain documents such as the Monthly Report of Transactions by Disbursing Officer, Notice of Scheduled Deliveries of Procured Items, Pre-Repair Evaluation Report, Report of Waste Materials/Disposals, Schedule of Notice and Opening of Bids, and Notice of BAC Meetings. Non-submission of these documents and reports is a ground for the automatic suspension of payment of their salary until compliance with said requirements.

c. **COA Circular No. 94-001** – Petitioner failed to prepare an Audit Observation Memorandum despite the glaring red-flags and presence of fraud indicators.[18]

Petitioner's claim that his office was understaffed was not an excuse for his failure to comply with the aforecited COA issuances. For the simple act of promptly reporting the red flags and irregularities to PNP management did not require additional COA personnel. The report, if timely prepared, would have forewarned PNP not to proceed with its repairs and refurbishing contracts.

The Proceedings before the Court of Appeals

On appeal,[19] petitioner reiterated that his inaction did not constitute grave misconduct or serious dishonesty. He insisted that it was simply physically impossible to audit all transactions of the PNP; the volume of PNP transactions simply does not allow it, more so, since his functions and duties did not only involve audit activities. At that time, he was also saddled with several subpoenas from the Senate relative to the "Eurogenerals." In any event, he had already directed Quiambao to inspect the delivered items and requested the LSS-BAC to submit the documents relative to the repair and refurbishing contracts for his inspection and review.

In its Comment,[20] the Office of the Solicitor General (OSG) defended the decision of the Ombudsman and implored that petitioner's defense be disregarded. Petitioner's instruction to Quiambao was not enough to protect

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[18] *Id.* at 658-661.
[19] *Id.* at 676-700.
[20] *Id.* at 1398-1416.

government funds; he should have supervised the work and performed his duties with the government's interest in mind.

Decision of the Court of Appeals

By Decision[21] dated January 29, 2015, the Court of Appeals affirmed.

First. Petitioner failed to observe all the requirements and conditions of existing COA Rules and Regulations. As Resident Auditor, it was his sworn duty to conduct a regular audit of all PNP transactions. Further, considering the hefty sum involved in the LAV transactions which totaled ₱409,740,000.00, he should have prioritized the audit of these transactions and made follow-throughs on the same.

Second. Even with the limited number of staff in his office, petitioner could have easily brought the irregularities to the attention of the PNP management so that proper measures could have been implemented.

Third. While petitioner may be correct in arguing that his office was not required to conduct an audit of all the financial transactions of the PNP given the tremendous volume thereof, this should not in any way mean that they can no longer prioritize those transactions of the PNP which involve considerable amounts of money.

Finally. The lifting of pre-audit by the COA under COA Circular No. 95-006 did not render his office useless in detecting anomalous transactions beforehand. Under said circular, agencies were still required to submit to their resident COA auditors certain documents and reports, non-submission of which is ground for automatic suspension of payment of the salaries of the erring officials. Here, petitioner admitted that the PNP failed to submit the documents enumerated under COA Circular No. 95-006. Consequently, he should have ordered the suspension of payment of the salaries of the erring PNP employees. The records reveal, however, that petitioner took no action on the PNP's non-compliance with COA Circular No. 95-006.

Petitioner's repeated and unjustified inaction in both pre-audit and post-audit displayed his willful and flagrant disregard of existing COA Rules and Regulations, rendering him administratively liable for grave misconduct. His attitude towards the audit of the repair and refurbishing contracts revealed an intentional disregard on his part of his bounden duty, as auditor of the COA, to ensure that government funds are properly expended. Likewise, there was malicious intent on the part of petitioner to conceal the truth, rendering him liable for serious dishonesty.

By Resolution[22] dated August 10, 2015, the Court of Appeals denied petitioner's motion for reconsideration.

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21 *Id.* at 39-53.

22 *Id.* at 54-55.

The Present Petition

Petitioner now seeks affirmative relief and prays that dispositions of the Court of Appeals be reversed and set aside. He reiterates his arguments below and relentlessly asserts that he has not committed any act which would constitute grave misconduct and/or serious dishonesty. At any rate, the penalty imposed was not commensurate to his alleged infraction. If he is truly administratively liable, his penalty deserves mitigation because of his thirty-seven (37) long years of public service without any administrative case.

In its Comment,[23] OSG defends the decision of the Court of Appeals. It ripostes that grave misconduct and serious dishonesty warrants dismissal as a penalty and his length of service should be taken against him as he failed to exhibit the sense of duty required of him as COA Supervisor and Resident Auditor of the PNP.

Issue

Is petitioner administratively liable for his inaction as COA Supervisor and Resident Auditor of the PNP in connection with the agency's repair and refurbishing contracts?

Ruling

We deny the petition.

At the outset, there appears to be no factual issue here. Petitioner does not deny, as he in fact admits that he failed to perform either pre-audit or post-audit activities relative to the irregular procurement of the repair and refurbishing contracts. Specifically, petitioner failed to (a) prioritize the audit of the LAV transactions despite the staggering amount of ₱409,740,000.00 involved; (b) bring the non-submission of documents and reports to the attention of PNP management; (c) suspend the payment of salaries of the erring employees as required under COA Circular No. 95-006; and (d) notify his superiors that he could not conduct the audit of the repair and refurbishing contracts.

The core issue, therefore, is whether petitioner's inaction was justified.

Petitioner argues that his failure to conduct pre-audit and post-audit review on the repair and refurbishing contracts relative to the LAV transactions was due to "good and justifiable reasons." **First**, pre-audit activities had already been lifted under COA Circular No. 95-006. **Second**, post-audit of all transactions is not required and, in fact, physically impossible. **Third**, his office was understaffed and he had other equally important duties. **Finally**, he had already ordered the technical inspection of the LAVs and required the submission of pertinent documents for review.

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[23] *Id.* at 1450-1470.

We are not convinced.

First. Although pre-audit activities had already been lifted, as a rule, under COA Circular No. 95-006, the submission of certain documents and reports remains mandatory, *viz.*:

x x x x

6.0 DUTIES AND RESPONSIBILITIES OF AGENCY OFFICIALS

6.01 Pre-audit activities shall henceforth be considered as part of the agency's accounting and fiscal control process. Being a primary responsibility of the agencies, an adequate internal control system shall be instituted in order to achieve economy, efficiency[,] and effectiveness in the management and utilization of the agency resources.

6.02 The head of the government agency concerned shall define or delineate the duties and responsibilities of its officials and employees involved in financial transactions. The responsibility to request and/or issue clearances, notices, advises, or reports heretofore lodged in the Auditor in connection with the pre-audit of disbursement and countersigning of Treasury Warrants/Treasury Checks shall henceforth be assumed by the agency personnel concerned.

6.03 Accountable officers shall submit the records receipts, disbursements, expenditures, operations, and all other transactions, together with the supporting documents, to the Chief Accountants in the manner and within the time frame prescribed in existing rules and regulations.

6.04 Disbursing officers[,] in particular[,] shall faithfully comply with Section 100 of Presidential Decree No. 1445 which require[s] them to **render monthly reports** of their transactions pursuant to existing auditing regulations not later than the fifth day of the ensuing month to the auditor concerned.

6.05 **The official involved in the daily recording of transactions in the books of accounts shall turn over the receipts and the disbursement records with all paid vouchers and documents evidencing the transaction to the Auditor** within ten (10) days from [the] date of receipt of said documents.

6.06 The official responsible for or in charge of accepting deliveries of procured items shall, within twenty-four (24) hours from such acceptance, shall notify the auditor of the time and date of the scheduled deliveries.

6.07 Where the period for submission of reports and documents prescribed in paragraphs 6.03 and 6.04 above cannot be met, as in the case of accountable officers stationed in other countries, the head of the agency concerned shall submit the corresponding request for exemption to the Chairman, Commission on Audit, thru the Auditor, stating the reasons therefor, and the recommended periods for such submission.

6.08 **Pre-repair evaluation shall be performed by management, furnishing a copy thereof to the Auditor within five (5) days from [the] date of evaluation/inspection.**

> 6.09 Inspection of consumable and perishable items, as well as unserviceable and disposable government property and others (sic) assets, shall be conducted by management. **A copy of the report of inspection or its equivalent shall be submitted to the Head of the Auditing Unit within twenty[-]four (24) hours from acceptance of the items delivered** and, in the case of unserviceable and disposable property/assets, immediately after inspection thereof by management.
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> **6.10 Management shall furnish the Auditor with a copy of the schedule or notice of opening of bids and condemnation/destruction of government property and other disposable assets, as the case may be, at least five (5) days before the scheduled time.**
>
> 6.11 The concerned officials of the local government units shall furnish the local auditor with a copy of the rules and procedures for prequalification, bids and awards, and notify the latter of the scheduled meetings of the local Prequalification, Bids and Awards Committee (PBAC) at least five (5) days before its meetings and opening of bids. (Emphases added)
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> x x x x

Non-compliance with the reportorial requirements warrants the suspension of payment of salaries of the erring employees:

> x x x x
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> 7.0 FAILURE TO SUBMIT REPORTS
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> 7.01 Unjustified failure on the part of the official or employee concerned to submit the documents and reports mentioned herein shall be considered a ground for the automatic suspension of payment of this (sic) salary until he shall have complied with the aforesaid requirements, without prejudice to any disciplinary action that may be instituted against him.[24]
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> x x x x

Verily, the role of the Resident Auditor did not become passive and reactive by the mere lifting of pre-audit activities, as a rule, under COA Circular No. 95-006. It did not render Resident Auditors powerless when it comes to detecting and preventing irregular or anomalous transactions entered into by various government agencies. For control measures have remained in place to prevent the wastage, if not depletion of government coffers. Had petitioner implemented these control measures here, the PNP could have avoided wasting its funds on ghost deliveries and illegal contracts relative to the repairs and refurbishing of the twenty-eight (28) LAVs of the PNP.

Second. Even assuming that it is physically impossible to conduct post-audit of all PNP transactions, this is no reason to ignore a ₱409,740,000.00 transaction. To reiterate, petitioner did not perform either pre-audit or post-audit activities. It was as though he was completely hands-off insofar as the transaction was concerned. The sheer magnitude of the amount involved

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[24] COA Circular No. 95-006, May 18, 1995.

would have told him to at least give due attention to the transaction as the probability of wastage if not corruption bears proportionality thereto.

Third. Being undermanned is nothing new to public service. It is not something we can use as a convenient tool to wax negligence and failure. Time and again, the Court has held that having a heavy workload is not a valid excuse. Otherwise, every government employee charged with dereliction of duty would proffer such a convenient excuse to escape liability, to the great prejudice of the public.[25] At any rate, he could have simply called the attention of PNP management as regards the irregularity with the contract and non-compliance with COA Circular 95-006. Surely, this did not require additional personnel.

Finally. We agree with the Court of Appeals that petitioner's instruction to Quiambao was a mere afterthought, an attempt to exculpate himself of administrative liability. Offering such a flimsy excuse trivialized his role as a COA Supervisor. Given the amounts involved and his bounden duty as COA auditor to ensure that government funds are properly expended, he should have exercised a higher degree of care and vigilance in the discharge of his duties in relation to the repair and refurbishing contracts. Had he faithfully executed his duties, the highly irregular transactions would have been discovered earlier. Instead, petitioner was unmindful of his duties as COA Supervisor and Resident Auditor of PNP and allowed the ₱409,740,000.00 transaction to slip through the cracks with ease.

Associate Justice Alfredo Benjamin S. Caguioa, (Justice Caguioa) nevertheless, posits that petitioner be made liable only for simple misconduct as there was allegedly no total inaction on petitioner's part regarding the PNP's repair and refurbishing contract amounting to ₱409,740,000.00. This conclusion is hinged on petitioner's instruction to Quiambao to submit to him the relevant documents.

With due respect, however, petitioner's supposed "action" is clearly more for a show than for real. The Court of Appeals keenly noted:[26]

> The defense of petitioner that his failure to conduct a post[-]audit on the LAV Transactions is completely understandable given the shortage of manpower in his office is untenable. We agree with the Ombudsman that even with the alleged limited number of staff in his office, it would have still not been beyond petitioner's control to conduct a post-audit on the LAV transactions as he could have easily brought up to the attention of his superiors his office's lack of personnel in order that proper measures can be made to solve such problem. The record of the case, however, does not reveal that there was ever any instance wherein petitioner voiced out to his superiors his office's insufficient lack of staff. **It would thus appear that**

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25 See *Seangio v. Parce*, A.M. No. P-06-2252, July 9, 2007, 533 Phil. 697 (2007), citing *Antimaro v. Amores*, A.M. No. P-05-2074, September 16, 2005; See also *Laguio, Jr. v. Amante-Casicas*, A.M. No. P-05-2092, November 10, 2006, citing *Alcover, Sr. v. Bacatan*, A.M. No. P-05-2043, December 7, 2005, and *Salvador v. Serrano*, A.M. No. P - 062104, January 31, 2006.

26 *Rollo*, pp. 46-50.

the Ombudsman was correct in its contention that the said excuse is merely an afterthought on the part of petitioner to exculpate himself from the administrative offenses presently being charged against him. Furthermore, no matter how poorly manned petitioner's office is, considering the staggering amount involved in the LAV transactions which amounted to Four Hundred Nine Million Seven Hundred Forty Thousand Pesos (Php409,740,000.00), it would have been prudent on petitioner's part to order his office to prioritize the audit of the LAV transactions in order to make sure the same were valid. While petitioner maybe correct in contending that his office is not required to conduct an audit on all the financial transactions of the PNP given the tremendous volume thereof, this should not in any way mean that they can no longer prioritize those transactions of the PNP which involve considerable amounts of money. Petitioner's inability to do anything regarding the audit of the fraudulent LAV transactions is just clearly unjustifiable.

Moreover, in view of the total lifting of pre-audit by the COA under *COA Circular No. 95-006*, as the conduct thereof became the duty of the government agencies concerned, the said agencies were required in the said circular to submit to the COA auditors certain documents and reports, such as the Monthly Report of Transactions by Disbursing Officer, Notice of Scheduled Deliveries of Procured Items, Pre-Repair Evaluation Report, Report of Waste Materials/Disposals, Schedule of Notice and Opening of Bids, and Notice of BAC Meetings. Under *COA Circular No. 95-006*, the non-submission of these documents and reports by the government employees concerned shall be a ground for the automatic suspension of payment of their salary until they have complied with the aforesaid requirements.

A quick look at the documents requested by Mr. Quiambao for petitioner to obtain in order for him to perform a technical review and inspection of the LAV transactions shows that these are basically the same documents enumerated under *COA Circular No. 95-006.* Hence, it would appear that even prior to the request made by Mr. Quiambao, there was already non-submission by the PNP of the documents enumerated under *COA Circular No. 95-006* which, in turn, should have prompted petitioner to order for the suspension of payment of the salaries of the erring PNP employees. **The record, however, reveals no action was also taken by petitioner for the said non-submission.**

This non-submission of the said documents was repeated when the PNP did not comply with petitioner's indorsement letters to the LSS-BAC Director of the PNP requesting for the documents specified by Mr. Quiambao. **Once more, petitioner failed to take any measures against such inaction and did not order the suspension of the salaries of the concerned employees of the PNP. Neither did he bring the non-submission of the said required financial documents to the attention of the PNP Management. Lastly, petitioner also characteristically did not do anything for his office to acquire the documents specified by Mr. Quiambao following the PNP's inaction.** His allegation that tracers were sent by him to the PNP to follow up the submission of the required documents cannot be considered by this Court, as the same were not substantiated by any evidence. We reiterate the rule in this jurisdiction that mere allegation is not evidence, and is not equivalent to proof.

x x x x

Verily, the documents which petitioner supposedly instructed Quiambao to review and require from the PNP to produce were exactly the same documents required for him to be able to perform his duty as COA Supervisor and Resident Auditor *vis-a-vis* COA Circular No. 95-006. As it was though, despite petitioner's supposed instruction to Quiambao, the documents were not submitted. But instead of compelling compliance, petitioner simply and quietly did nothing more. In fact, he did not even disapprove the payment for this otherwise undocumented transaction though it is basic that the total absence of supporting documents renders any public contract outrightly irregular, anomalous, and unlawful. When petitioner did not disapprove the contract in question, albeit he had the sworn duty to do so, it meant he tacitly approved it.

Justice Caguioa also points out that petitioner purportedly reported the failure of PNP to submit the relevant documents covering the questionable transaction in the PNP Annual Audit Report for 2008. Petitioner even quoted this observation in his counter-affidavit before the Ombudsman, thus:[27]

> 34. Significantly, PNP's delayed submission of the financial reports and disbursement vouchers was among my adverse audit findings for the year 2008. **The pertinent portion of the 2008 Annual Audit Report, particularly Finding No. 25 thereof, reads:**
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> > **25. Submission of financial reports was not made in accordance with section 122 of PD 1445. This always hampers the timeliness of audit/review of the agency's financial transactions.**
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> x x x x

But the report only speaks of supposed documents which were submitted late. Hence, it could not have referred to the relevant documents asked of Quiambao that were never submitted at all. Whichever, petitioner should have disapproved the payment just the same. The transaction being undocumented is the strongest ground to disapprove its payment outright. But he never did. Had petitioner done his job by outrightly disapproving the transaction, he never even had to complain in his annual report about documents supposedly submitted late to his office.

In any event, the lack of specificity and vagueness of his report, *i.e.*, on which financial reports or documents or which contracts he exactly meant, hardly allows us to draw the conclusion that petitioner acted on the repair and refurbishing contracts. No one, as in no one would be able to imagine that the report covered the undocumented transaction worth ₱409,740,000.00 which he unlawfully failed to act on.

This unlawful transaction worth ₱409,740,000.00 of people's money easily got lost because petitioner, as COA Supervisor and Resident Auditor of

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[27] *Id.* at 284.

the PNP, intentionally neglected to disapprove it. The inculpatory evidence against him is too glaring to ignore. How then could he just be guilty of simple misconduct? Downgrading petitioner's liability to simple misconduct will be sending the wrong message that corruption as huge and serious as this one would only deserve a slap on the wrist.

All told, the Ombudsman and the Court of Appeals did not err in ruling that petitioner's inaction was unjustified. But we nevertheless find that petitioner, though guilty of grave misconduct, should be absolved of the charge of serious dishonesty.

FFIB-MOLEO v. Jandayan[28] defines grave misconduct and serious dishonesty, thus:

> As defined, "[m]isconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is considered grave where the elements of corruption and clear intent to violate the law or flagrant disregard of established rule are present."
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> On the other hand, dishonesty has been defined as:
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> "x x x disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity," is classified in three (3) gradations, namely: serious, less serious, and simple. Serious dishonesty comprises dishonest acts: (a) causing serious damage and grave prejudice to the government; (b) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (c) exhibiting moral depravity on the part of the respondent; involving a Civil Service examination, irregularity or fake Civil Service; (d) eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (e) committed several times or in various occasions; (f) committed with grave abuse of authority; (g) committed with fraud and/or falsification of official documents relating to respondent's employment; and (h) other analogous circumstances. x x x
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> x x x x

Here, the Court finds that petitioner's inaction does **not** constitute serious dishonesty. The records are bereft of any proof that there was malicious intent on the part of petitioner to conceal the truth and make false statements which could render him liable for serious dishonesty. To be sure, even the Ombudsman found that petitioner did not conspire with nor act as an accomplice to the principal accused in the corruption charges in relation to the repair and refurbishing contracts.

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[28] G.R. No. 218155, September 22, 2020.

As stated though, the Court agrees that petitioner's inaction indeed amounted to grave misconduct. Based on his own defenses, petitioner does not deny failing to perform his duties as Resident Auditor of the PNP insofar as the repair and refurbishing contracts are concerned. He did not lift a finger for this transaction. More, such omission appears to have been willful and intentional, thus, constitutive of misconduct. His offense was qualified by his clear and deliberate intent to disregard established rules as embodied in the various COA Circulars he violated.

Under Section 52(A)(3) of the Uniform Rules on Administrative Cases in the Civil Service[29] which was still in force when the offense was committed, grave misconduct is a grave offense punishable by dismissal from the service even for the first infraction, thus:

> SECTION 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
> 1. Dishonesty
> 1st offense — Dismissal
> 2. Gross Neglect of Duty
> 1st offense — Dismissal
> 3. Grave Misconduct
> 1st offense — Dismissal
>
> x x x x

What baffles the Court most is petitioner's display of sheer arrogance in claiming that he did nothing wrong. If this is how petitioner sees his inaction, there is serious moral depravity and lack of judgment on his part as he cannot distinguish between right and wrong despite his thirty-seven (37) years in service in the COA. Thus, we agree with the OSG that his length of service should be taken against him as he failed to exhibit the sense of duty required of him as a COA Supervisor and Resident Auditor of the PNP. After serving as a State Auditor for thirty-seven (37) years, he should have known better than ignore a ₱409,740,000.00 transaction.

So must it be.

ACCORDINGLY, the petition is **DENIED**. The **Decision dated January 29, 2015**, of the Court of Appeals in **CA–G.R. SP No. 131258** and its **Resolution dated August 10, 2015**, are **AFFIRMED with MODIFICATION.**

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[29] CSC Resolution No. 991936, September 14, 1999.

Petitioner **JAIME V. SERRANO** is **GUILTY** of **GRAVE MISCONDUCT** and **DISMISSED** from the service. His civil service eligibility is **CANCELLED**, and his retirement benefits, except accrued leave credits, are **FORFEITED**. He is **PERPETUALLY DISQUALIFIED** from holding public office, re-employment in any branch or instrumentality of the government, including any government-owned or controlled corporations, and from taking the civil service examinations.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official leave
MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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
Chairperson, First Division

G.R. No. 219876 – JAIME V. SERRANO, *petitioner, versus* **FACT-FINDING INVESTIGATION BUREAU, OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES,** *respondent.*

Promulgated:

OCT 13 2021

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DISSENTING OPINION

CAGUIOA, *J.*:

The Court of Appeals[1] (CA), in the assailed Decision[2] dated January 29, 2015 and Resolution[3] dated August 10, 2015 in CA-G.R. SP No. 131258 affirmed the ruling of the Office of the Ombudsman (Ombudsman) in OMB-P-C-12-0503-G that petitioner Jaime V. Serrano (Serrano) is administratively liable for Grave Misconduct and Serious Dishonesty.

The *ponencia* modifies the CA ruling by holding Serrano administratively liable for Grave Misconduct, but not for Serious Dishonesty, *viz.*:

> Here, the Court finds that [Serrano's] inaction does **not** constitute serious dishonesty. The records are bereft of any proof that there was malicious intent on the part of [Serrano] to conceal the truth and make false statements which could render him liable for serious dishonesty. To be sure, even the Ombudsman found that [Serrano] did not conspire with nor act as an accomplice to the principal accused in the corruption charges in relation to the repair and refurbishing contracts.
>
> As stated though, the Court agrees that [Serrano's] inaction indeed amounted to grave misconduct. Based on his own defenses, [Serrano] does not deny failing to perform his duties as Resident Auditor of the PNP insofar as the repair and refurbishing contracts are concerned. He did not lift a finger for this transaction. More, such omission appears to have been willful and intentional, thus, constitutive of misconduct. His offense was qualified by his clear and deliberate intent to disregard established rules as embodied in the various COA Circulars he violated.
>
> x x x x
>
> What baffles the Court most is [Serrano's] display of sheer arrogance in claiming that he did nothing wrong. If this is how [Serrano] sees his inaction, there is a serious moral depravity and lack of judgment on his part as he cannot distinguish between right and wrong despite his thirty-

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1 Fourth Division and Former Fourth Division, respectively.

2 *Rollo*, pp. 39-53. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Rosmari D. Carandang (now a Member of this Court) and Agnes Reyes-Carpio.

3 Id. at 54-55.

> seven (37) years in service in the COA. Thus, we agree with the OSG that his length of service should be taken against him as he failed to exhibit the sense of duty required of him as a COA Supervisor and Resident Auditor of PNP. After serving as a State Auditor for thirty-seven (37) years, he should have known better than ignore a ₱409,740,000.000 transaction.[4]

While I agree that there is no basis to hold Serrano liable for Serious Dishonesty, I am also of the view that Serrano should only be liable for Simple Misconduct.

In *Andaya v. Field Investigation Office of the Office of the Ombudsman*[5] (*Andaya*), the Court defined misconduct as follows:

> **Misconduct** is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. **The misconduct is considered to be *grave* if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple.** In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[6]

Relevantly, in *Office of the Ombudsman v. De Guzman*[7] (*De Guzman*), the Court described what constitutes the elements of corruption, willful intent to violate the law, and flagrant disregard of established rules, *viz.*:

> Intentions involve a state of mind, which is difficult to decipher. Nevertheless, the true intent of the offender may be ascertained through his/her subsequent and contemporaneous acts, together with the evidentiary facts. In cases involving administrative liability for grave misconduct, the Court ruled in *GSIS v. Mayordomo* that the element of **corruption** is present **when the public officer unlawfully or wrongfully uses his or her position to procure some benefit at the expense of another**. In *Office of the Deputy Ombudsman for Luzon v. Dionisio*, we held that there is **clear intent to violate the rules when the public officers are aware of the existing rules, yet they intentionally chose to disobey them**. In *Imperial, Jr. v. GSIS*, the Court required establishing **the public officer's propensity to ignore the rules as clearly manifested in his or her actions to constitute flagrant disregard of the rules**.[8]

Meanwhile, in *Yamson v. Castro*[9] (*Yamson*), the Court declared that the element of bad faith must be established independently of the transgression before the erring public official may be held liable for a grave offense, *viz.*:

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4 *Ponencia*, pp. 13-14. Emphasis in the original.
5 G.R. No. 237837, June 10, 2019, 904 SCRA 100.
6 Id. at 111-112. Emphasis and underscoring supplied; citations omitted.
7 G.R. No. 214327, May 3, 2021 (Unsigned Resolution), accessed at <https://sc.judiciary.gov.ph/19925/>.
8 Id. at 5. Emphasis and underscoring supplied; citations omitted.
9 G.R. Nos. 194763-64, July 20, 2016, 797 SCRA 592.

> Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. It becomes grave if it involves any of the additional elements of corruption, such as [willful] intent to violate the law or to disregard established rules, which must be established by substantial evidence. "Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." **Moreover, like other grave offenses classified under the Civil Service laws, bad faith must attend the act complained of.** Bad faith connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.
>
> But to 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 petitioners' 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.[10]

Based on the foregoing cases, therefore, for the misconduct to be considered grave, there must be substantial evidence showing that the public official acted with (1) corruption, (2) willful intent to violate the law, *or* (3) flagrant disregard of established rules. In the language of *Yamson*, there must be bad faith.

Here, it was shown that Serrano failed to conduct a pre-audit and post-audit of the transactions entered into by the Philippine National Police (PNP) for the repair and refurbishing of their light armored vehicles. Both the Ombudsman and the CA, however, recognized that the pre-audit of transactions entered into by government agencies are no longer required under Commission on Audit (COA) Circular No. 95-006.[11] Serrano's liability, therefore, lies in his failure to conduct a post-audit of the PNP transactions, which, according to the Ombudsman, violated the COA auditing rules.[12]

Granting that Serrano violated existing COA auditing rules when he failed to conduct or complete a post-audit of the PNP transactions, the question now becomes whether there is substantial evidence that would show Serrano, in the commission of said infractions, acted with either corruption, clear intent to violate the law, or flagrant disregard of existing auditing rules which would elevate his misconduct to a grave offense.

I submit that there is none.

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10 Id. at 627-628. Emphasis and underscoring supplied; emphasis in the original omitted; citations omitted.

11 See *rollo*, pp. 660 (Ombudsman Joint Order) and 47 (CA Decision).

12 Id. at 660-661.

As discussed in *Andaya* and *De Guzman*, corruption consists in unlawfully and wrongfully using one's station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[13] Here, there is neither proof nor allegation that Serrano benefitted from the anomalous PNP transactions or that he used his position as PNP Resident Auditor to secure benefit for another. It is noteworthy too that he was acquitted as accomplice to the criminal charges of plunder and malversation through falsification of public documents.

Likewise, his failure to complete the post-audit does not amount to a flagrant disregard of the existing rules. In *Imperial, Jr. v. Government Service Insurance System*,[14] the Court explained that flagrant disregard of rules is characterized by the public officer's propensity to ignore the rules, *viz.*:

> Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**[15]

The fact that this is the first administrative case lodged against Serrano in his 37 years in government service negates any imputation of manifest propensity or inclination to ignore existing rules on his part.

Now, the *ponencia* anchors Serrano's liability for Grave Misconduct on the presence of clear intent to violate the rules. The *ponencia* holds that there is complete and unjustifiable failure to act on the part of Serrano, which demonstrates willful intent to violate existing auditing rules. It rules that heavy workload does not justify non-compliance with COA Circular No. 95-006 considering that additional manpower is not needed to inform the PNP management on the non-submission of documents, and that the sheer magnitude of the amount involved should have prompted Serrano to prioritize the transactions.

I disagree.

There is clear intent to violate rules when the public officer is aware of the existing rules, yet he or she chose to disobey them. Although intention is a state of mind, it can be determined through the offender's subsequent and contemporaneous acts, coupled with evidentiary facts.[16]

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13 Supra notes 5 and 7.
14 G.R. No. 191224, October 4, 2011, 658 SCRA 497.
15 Id. at 507-508. Emphasis in the original; citations omitted.
16 *Office of the Ombudsman v. De Guzman*, supra note 7.

A careful review of the records shows that there was no complete inaction on the part of Serrano. As found by the CA, he instructed Technical Audit Specialist Amor J. Quiambao (Quiambao) to conduct an inspection and contract review of the questioned transactions and requested the PNP management to submit the documents needed for the conduct of the review.[17] The instruction was given to Quiambao as early as March 2008,[18] while the request for documents was made in April 2008 — mere months after the conclusion of the anomalous transactions. PNP's failure to submit the documents necessary for the completion of audit was reported in the PNP Annual Audit Report (AAR) for 2008.[19] Indeed, while there was delay on the part of Serrano to order a contract review and inspection of the transactions, still, there is no substantial evidence that this delay was ill-motivated or attended by bad faith. Repeatedly, Serrano recognized his failure to conduct post-audit due to heavy workload and insufficient personnel. Although these justifications may not be enough to exculpate him, his candid acknowledgement of fault negates ill intent on his part.

It is likewise worthy to note that in absolving Serrano of Serious Dishonesty, the *ponencia* finds that "x x x there was [no] malicious intent on [his] part to conceal the truth and make false statement x x x,"[20] and that "x x x even the Ombudsman found that [he] did not conspire with nor act as an accomplice to the principal accused in the corruption charges x x x,"[21] thereby indicating that he had no ill motive or bad faith.

Furthermore, it is also my view that Serrano's failure to issue an Audit Observation Memorandum or to order the disallowance of payment of the transactions cannot be easily interpreted as a tacit approval of the transactions on his part. It bears emphasis that the element of willful intent to violate the rules must be established independently of the infraction committed and must likewise be proven by substantial evidence. In the same vein, it would be presumptuous to conclude that the instruction given by Serrano to Quiambao was a mere afterthought.

Serrano may have "x x x failed to give proper attention to his tasks x x x,"[22] as argued by respondent, but such failure does not amount to corruption, clear intent to violate the law, or flagrant disregard of existing rules, as to elevate Serrano's misconduct to a grave one.

Even granting that the liability of Serrano amounts to Grave Misconduct, I believe that mitigating circumstances are present in this case that would merit the reduction of the penalty of dismissal to one year suspension. On this note, Serrano argues that, should he still be found

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17 *Rollo*, p. 42.
18 Id. at 13.
19 Id. at 1476.
20 *Ponencia*, p. 13.
21 Id.
22 *Rollo*, p. 1457.

administratively liable, the penalty of dismissal is too harsh considering the circumstances present in this case:

> 63. [Serrano] was held administratively liable for his alleged failure to audit the subject transactions. It should be recalled that the complexity and the tremendous volume of government transactions are precisely the reason why COA allows the use of sampling methodologies. These complexity and tremendous volume were aptly considered [in] COA Memorandum No. 85-316-C and COA Memorandum No. 93-316D in acknowledging the fact that it is physically impossible for the auditors to audit all the transactions of an agency.
>
> 64. Given the acknowledged reality that audit of government transactions on a 100% basis is physically impossible to accomplish, dismissal from the government service with forfeiture of benefits is so severe a penalty for [Serrano's] failure to audit the subject transactions. It must also be remembered that the special audit team created to audit these transactions took almost 9 months to conduct such audit, then, it would be unreasonable to impose the penalty of dismissal for [Serrano's] failure to audit them.
>
> 65. Granting strictly for the sake of argument that [Serrano] may be held administratively liable for his failure to audit the subject transactions, the penalty of dismissal from the government service is not commensurate to the alleged infraction.[23]

As previously mentioned, Serrano readily admitted that he failed to perform a post-audit. While his justifications of being understaffed and overburdened with work are not necessarily sufficient to relieve him from liability, it nevertheless illustrates the harshness of the penalty imposed. This becomes more apparent when his 37 years of government service will be considered. Although I am mindful of cases that have held that length of service may be considered as an aggravating circumstance when the offense committed is serious or grave or if length of service is a factor that facilitates the commission of the offense,[24] I believe that the present case calls for a different treatment. After all, in his many years of government service, it is undisputed that he had an unblemished record and that this is his first offense. These circumstances, in my opinion, should be taken together as consideration for the lowering of the imposable penalty on Serrano.

On this point, the Court's pronouncements in the following cases are illuminating:

In *Civil Service Commission v. Belagan*,[25] the Court reduced the penalty to a one-year suspension on respondent who was found guilty of a Grave Misconduct, taking into account his numerous awards, his 37 years of service, and the fact that it was his first time to be administratively charged.

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23 *Rollo*, p. 33.

24 *Committee on Security and Safety, Court of Appeals v. Dianco*, A.M. No. CA-15-31-P, June 16, 2015, 758 SCRA 137, 170.

25 G.R. No. 132164, October 19, 2004, 440 SCRA 578.

In *Fact-finding and Intelligence Bureau, represented by Atty. Melchor Arthur H. Carandang, Office of the Ombudsman v. J. Fernando U. Campaña*,[26] a similar penalty was imposed on respondent who was found guilty of Gross Neglect of Duty, in view of 34 years of unblemished record in government service.

In *Committee on Security and Safety, Court of Appeals v. Dianco*,[27] the Court imposed the lesser penalty of one-year suspension without pay and demotion instead of dismissal upon respondent who was guilty of Serious Dishonesty and Gross Misconduct, appreciating in his favor the mitigating circumstances of admission of infractions, first offense, restitution of amount involved, and his 30 years of service.

Verily, jurisprudence is replete with cases involving grave offenses punishable by dismissal where the Court had nevertheless appreciated mitigating factors to impose a lesser penalty. As applied here, the circumstances in this case warrant the reduction of the penalty to be imposed on Serrano.

Lest it be misunderstood, downgrading Serrano's liability or mitigating the penalty to be imposed on him should not be interpreted as a condonation of his infractions. The duty to sternly wield a corrective hand to discipline errant employees and to weed out from the roster of civil servants those who are found to be undesirable comes with the sound discretion to temper the harshness of its judgment with mercy.[28] Thus, while the Court does not condone the wrongdoing of public officers and employees, neither will it negate any move to recognize mitigating circumstances present in the case, founded as they are under jurisprudence.

Public office is a public trust, and it is the Ombudsman's duty to ensure that public officers and employees are at all times accountable to the people. In this regard, the Ombudsman is empowered to impose penalties in the exercise of its administrative disciplinary authority. Nevertheless, the duty of the Ombudsman as the "protector of the people" should not be marred by overzealousness at the expense of public officers. This is especially true in instances where the supreme penalty of dismissal from service is being imposed. Here, records show that Serrano has been in the government service for 37 years with an unblemished record prior to this case. That the penalty of dismissal would not only mean his separation from service but would also entail the forfeiture of his retirement benefits and perpetual disqualification from holding public office should have impelled the Ombudsman, as well as the reviewing courts, to be more judicious in imputing liability. The zeal of the disciplining authority must always be tempered with evidence.

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26 G.R. No. 173865, August 20, 2008, 562 SCRA 680.

27 A.M. No. CA-15-31-P, January 12, 2016, 779 SCRA 158.

28 *Camsol v. Civil Service Commission*, G.R. No. 238059, June 8, 2020, accessed at <https://scjudiciary.gov.ph/17381/>.

In sum, while I agree with the *ponencia* that Serrano is not guilty of Serious Dishonesty, I disagree with the finding that he is liable for Grave Misconduct. The efforts exerted by Serrano may not have been enough to completely exonerate him, but, at the very least, these efforts negate any willful intent to violate established auditing rules on his part. For such reason, I believe that he should only be held liable for Simple Misconduct. Nevertheless, even granting that he is liable for Grave Misconduct, the circumstances of this case call for a mitigation of the penalty imposed.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice