



Republic of the Philippines
Supreme Court
 Manila

THE COURT OF THE PHILIPPINES
 PUBLIC RECORDS SERVICE
 08 2018
 BY: *Jad 4.12*
 TIME: _____

SPECIAL FIRST DIVISION

**OFFICE OF THE OMBUDSMAN
 and THE FACT-FINDING
 INVESTIGATION BUREAU
 (FFIB), OFFICE OF THE
 DEPUTY OMBUDSMAN FOR
 THE MILITARY AND OTHER
 LAW ENFORCEMENT OFFICES
 (MOLEO),**

Petitioners,

- versus -

G.R. No. 213500

Present:

LEONARDO-DE CASTRO, CJ.,
 Chairperson,
DEL CASTILLO,
PERLAS-BERNABE,
JARDELEZA,* and
CAGUIOA, JJ.

PS/SUPT. RAINIER A. ESPINA,
 Respondent.

Promulgated:

SEP 12 2018

X-----

RESOLUTION

PER CURIAM:

For resolution is respondent Rainier A. Espina's (Espina) Motion for Reconsideration¹ dated May 10, 2017, seeking to reverse and set aside the Court's Decision² dated March 15, 2017 finding him guilty of Gross Neglect of Duty, and dismissing him from government service with all the accessory penalties.

At the outset, it is observed that except for Espina's plea to reduce the imposable penalty³ by considering the averred mitigating circumstances of:

* Designated Additional Member per Raffle dated September 5, 2018.

¹ *Rollo*, pp. 598-635.

² *Id.* at 581-592. See also *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017, 820 SCRA 541.

³ *I.e.*, to mere suspension from office for a period ranging from sixty (60) days to six (6) months in accordance with Sections 2 and 5 (b), Rule 22 of the National Police Commission Memorandum Circular No. 2007-001, entitled the "UNIFORM RULES OF PROCEDURE BEFORE THE ADMINISTRATIVE DISCIPLINARY AUTHORITIES AND THE INTERNAL AFFAIRS SERVICE OF THE PHILIPPINE NATIONAL POLICE (PNP)," issued on March 6, 2007 which provide:

(a) first offense; (b) length of service; and (c) awards/ commendations,⁴ the arguments propounded in his motion had been adequately passed upon by the Court in its March 15, 2017 Decision. In his motion, Espina essentially denies having failed to exercise due diligence when he signed the Inspection Report Forms (IRFs) covering the “ghost deliveries” subject of the case, maintaining that it was not his duty to inspect or accept the deliveries when the IRFs do not bear any irregularities on their face.⁵

As the Court explained in its Decision, while SOP No. XX4⁶ dated November 17, 1993 cited by Espina did not expressly require him, as Acting Chief and Head of the Philippine National Police (PNP) Management Division, to physically re-inspect, re-check, and verify the deliveries to the PNP as reported by the property inspectors under him, he had the duty “to reasonably ensure that [the IRFs] were prepared in accordance with law, keeping in mind the basic requirement that the goods allegedly delivered to and services allegedly performed for the government have actually been delivered and performed.”⁷

Contrary to his claim,⁸ his notation-signature on the IRFs just below the statement “NOTED” did not simply indicate that he took cognizance of the existence of the IRFs, but that he confirmed: (a) the PNP’s receipt of the tires and other supplies when there were actually no such items delivered; and (b) the performance of repair and refurbishment works on the V-150 Light Armored Vehicles when the works procured have not actually been rendered when such IRFs were signed. To reiterate, given the amounts involved and the timing of the alleged deliveries, the circumstances reasonably imposed on Espina a higher degree of care and vigilance in the discharge of his duties. However, he failed to employ the degree of diligence expected of him considering the high position he occupied and the responsibilities it carried.

Section 2. *Range of Penalties.* – The penalties for light, less grave and grave offenses shall be made in accordance with the following ranges:

x x x x

For Grave Offenses:

- 1) Sixty (60) days to Six (6) months suspension (minimum period);
- 2) One (1) rank demotion (medium period);
- 3) Dismissal from the service (maximum period).

Section 5. *Guidelines in the Application of Penalties.* – The imposition of the penalty shall be made in accordance with the manner herein below provided:

x x x x

b) The minimum period of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. (Emphasis supplied)

⁴ See *rollo*, pp. 631-632.

⁵ See *id.* at 605-613.

⁶ *Id.* at 648-651.

⁷ *Id.* at 588. See also *Office of the Ombudsman v. Espina*, *supra* note 2, at 555-556.

⁸ See *id.* at 607-608.

Be that as it may, the presence of mitigating circumstances should be appreciated in favor of Espina, meriting the reduction of the penalty to be imposed on him.

Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service⁹ (RRACCS) grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Hence, in several cases,¹⁰ the Court has reduced the imposable penalty of dismissal from service for humanitarian reasons in view, among others of respondent's length of service, unblemished record in the past, and numerous awards.¹¹

In *Office of the Court Administrator v. Egipto, Jr.*,¹² the Court imposed the penalty of one (1)-year suspension without pay instead of dismissal from service to respondent who was found guilty of gross neglect of duty, considering his length of service, among others. In *Fact-finding and Intelligence Bureau v. Campaña*,¹³ a similar penalty was imposed on respondent who was found guilty of a grave offense meriting dismissal, in view of his length of service, his unblemished record in the past, and the fact that it was his first offense. In *Civil Service Commission v. Belagan*,¹⁴ the Court also imposed a one (1)-year suspension on respondent who was found guilty of a grave offense warranting dismissal, taking into account his numerous awards, and the fact that it was his first time to be administratively charged.

Considering that it is Espina's first offense in his 29 straight years of active service in the Armed Forces of the Philippines and the PNP which were attended with numerous awards or service commendations,¹⁵ and untainted reputation in his career as a police officer¹⁶ that was not disputed,¹⁷ the Court is equally impelled to remove him from the severe consequences of the penalty of dismissal from service,¹⁸ following jurisprudential precedents and pursuant to the discretion granted by the RRACCS. While the Court does not condone the wrongdoing of public officers and

⁹ As prescribed in Civil Service Commission (CSC) Resolution No. 11-01502, promulgated on November 8, 2011. While the RRACCS has been repealed by the 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS) which took effect on August 17, 2017, the RRACCS remains applicable to pending cases filed before its effectivity, provided it will not unduly prejudice substantive rights (see Section 124, Rule 23 of the 2017 RACCS).

¹⁰ See *Cabauatan v. Uvero*, A.M. No. P-15-3329, November 6, 2017; *Fact-finding and Intelligence Bureau v. Campaña*, 584 Phil. 654, 668 (2008); *Buntag v. Paña*, 520 Phil. 175, 180 (2006); and *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 699 (2005).

¹¹ See *CSC v. Belagan*, 483 Phil. 601, 625 (2004).

¹² See Unsigned Resolution in A.M. No. P-05-1938, January 30, 2018.

¹³ See supra note 10, at 668.

¹⁴ Supra note 11, at 625.

¹⁵ *Rollo*, pp. 598, 631-632, and 639-647.

¹⁶ *Id.* at 598.

¹⁷ Despite the opportunity given by the Court, the OSG merely filed a Manifestation and Motion dated November 16, 2017, stating that it will dispense with the filing of a Comment to Espina's Motion for Reconsideration. See *id.* at 761-763.

¹⁸ See Unsigned Resolution in *Office of the Court Administrator v. Chavez*, A.M. Nos. RTJ-10-2219 and 12-7-130-RTC, August 1, 2017.

employees, neither will it negate any move to recognize their length of service in the government.¹⁹ Consequently, the Court hereby reduces the penalty imposed on him to one (1)-year suspension from service without pay, reckoned from the time that the Office of the Ombudsman's (Ombudsman) Joint Resolution²⁰ dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

However, it is well to point out that a public official is considered to be on preventive suspension while the administrative case is on appeal.²¹ Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal eventually adjudged.²² Thus, the period within which Espina was preventively suspended prior to the promulgation of this Decision²³ shall be credited in his favor, and he may now be reinstated to his former rank as Police Senior Superintendent without loss of seniority rights and all rights appurtenant thereto.²⁴ Nonetheless, Espina's permanent employment record must reflect the modified penalty.²⁵ Further, it must be clarified that Espina shall not be entitled to back salaries, considering that he was not exonerated of the charges but was, instead, found culpable for another offense emanating from the same acts that were the basis of the original charges against him, and merely removed from the severe consequences of the penalty of dismissal from service.²⁶ The mere reduction of the penalty on appeal does not entitle a government employee to back salaries if he was not exonerated of the charges.²⁷

WHEREFORE, the motion for reconsideration filed by respondent Rainier A. Espina (Espina) is **PARTLY GRANTED**. The Decision dated March 15, 2017 is hereby **MODIFIED**. Accordingly, he is **SUSPENDED**

¹⁹ See *CSC v. Belagan*, supra note 11, at 625.

²⁰ Records, Vol. 65, pp. 07529-07636. Signed by the Investigating Panel created Pursuant to Office No. 248, Series of 2012 and approved by Ombudsman Conchita Carpio Morales.

²¹ Section 47, Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292 or the "ADMINISTRATIVE CODE OF 1987," approved on July 25, 1987, provides, among others, that in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. See also Section 7, Rule III of Ombudsman Administrative Order No. 07 or the "RULES OF PROCEDURE OF THE OMBUDSMAN," approved on April 10, 1990, as amended by Office of the Ombudsman Administrative Order No. 17-03, entitled "AMENDMENT OF RULE III ADMINISTRATIVE ORDER NO. 07" dated September 15, 2003.

²² See *Yamson v. Castro*, 790 Phil. 667, 712 (2016), citing *Gloria v. CA*, 365 Phil. 744, 764 (1999).

²³ Unlike the Ombudsman's Decision, the Court of Appeals Decision and Resolution reinstating respondent in his position is not immediately executory, and is subject to appeal to this court *via* Rule 45 of the Rules of Court. See *Ombudsman v. Delos Reyes*, 781 Phil. 297, 316 (2016).

²⁴ See Section 53 (d) of the RRACCS.

²⁵ See *Yamson, v. Castro*, supra note 22.

²⁶ A government employee may only be entitled to back salaries when: (i) he is found innocent of the charges which caused the suspension, *i.e.*, completely exonerated of the charges, or found guilty of a lesser offense which does not carry the penalty of more than one (1) month suspension; or (ii) his suspension was unjustified because there was no cause for suspension or dismissal, *e.g.*, where the employee did not commit the offense charged, or he is found guilty of another offense for an act different from that for which he is charged (see *Yamson v. Castro*, *id.* at 712-713, citing *CSC v. Cruz*, 670 Phil. 638, 659-661 [2011]). Likewise, it is settled that public officers are entitled to payment of salaries only if they render service. See *Ombudsman v. Delos Reyes*, supra note 23, at 317.

²⁷ *CSC v. Cruz*, *id.* at 657.

for a period of one (1) year without pay, reckoned from the time that the Office of the Ombudsman's Joint Resolution dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

Considering that the period within which Espina was preventively suspended pending appeal is creditable in the implementation of the penalty of one (1)-year suspension herein imposed, he is hereby **REINSTATED** to his former rank as Police Senior Superintendent without loss of seniority rights and all rights appurtenant thereto, but without back salaries.

Let a copy of this Resolution be reflected in the permanent employment record of respondent.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
 Chief Justice
 Chairperson

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
 Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
 Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
 Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
 Chief Justice

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