Republic of the Philippines
Supreme Court
Manila

EN BANC

EDILBERTO L. BARCELONA,
Petitioner,

- versus -

DAN JOEL LIM and RICHARD TAN,
Respondents.

G.R. No. 189171

Present:

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

JUNE 03, 2014

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DECISION

SERENO, *CJ:*

This case involves a Petition for Review on Certiorari[1] filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision[2] of the Court of Appeals (CA) dated 26 September 2008, and its subsequent Resolution[3] dated 26 August 2009. Both dismissed the Petition for Review[4] filed by Edilberto L. Barcelona (petitioner) for lack of merit.

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[1] *Rollo*, pp. 10-63.
[2] Id. at 64-73; CA-G.R. SP No. 100595, penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.
[3] Id. at 74-75.
[4] Id. at 259-301.

The CA affirmed the Civil Service Commission (CSC) Resolutions dated 18 December 2006[5] and 28 August 2007,[6] which in turn affirmed the Order dated 27 September 2000 issued by the Chairperson of the National Labor Relations Commission (NLRC), Roy V. Señeres (Chairperson Señeres or simply Chairperson). The Order barred petitioner, who was then the officer-in-charge of the Public Assistance Center of the NLRC, from entering its premises a month before the Efficiency and Integrity Board (Board) could investigate the administrative case for dishonesty and grave misconduct filed against him.

The records disclose that on 14 August 2000, respondent businessman Dan Joel Lim (Lim), the owner of Top Gun Billiards, filed a *Sinumpaang Salaysay* (sworn statement) with the Criminal Intelligence Division of the National Bureau of Investigation (NBI). Lim claimed as follows: (1) his employees, Arnel E. Ditan and Pilipino Ubante, were influenced by petitioner to file a labor complaint against Lim;[7] and (2) petitioner, then an NLRC officer, demanded □20,000 for the settlement of the labor case filed against Lim. On the strength of this sworn statement, the NBI organized an entrapment operation against petitioner.

On 16 August 2000, Lim informed the NBI that petitioner would drop by Top Gun Billiards around seven o'clock in the evening, expecting to receive the □20,000 petitioner was demanding from him; otherwise, petitioner would order that Top Gun Billiards be closed. After Lim handed him the marked bills, petitioner began counting them. The latter was arrested by the NBI right when he was about to put the money in his bag.

After being duly informed of his constitutional rights, petitioner was brought to the NBI office where he was booked, photographed, and fingerprinted. Thereafter, he underwent ultraviolet light examination. The Certification dated 16 August 2000 of the NBI-Forensic Chemistry Division stated that his hands "*showed the presence [of] Yellow Fluorescent Specks and Smudges,*"[8] and that "*[s]imilar examinations made on the money bills showed the presence of yellow fluorescent specks and smudges* x x x."[9]

In a letter to the City Prosecutor of Manila, NBI Director Federico M. Opinion, Jr. recommended the prosecution of petitioner for robbery under Article 293 of the Revised Penal Code (RPC) and violation of Republic Act No. (R.A.) 3019 or the Anti-Graft and Corrupt Practices Act. The NBI filed the Complaint. Finding probable cause, the City

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[5] Id. at 205-219; CSC Resolution No. 062238, penned by CSC Chairperson Karina Constantino-David and concurred in by CSC Commissioners Cesar D. Buenaflor and Mary Ann Z. Fernandez-Mendoza.
[6] Id. at 250-255; Ibid.
[7] Id. at 211-212.
[8] Id. at 212.
[9] Id.

Prosecutor filed with the Regional Trial Court (RTC) of Manila on 18 August 2000 an Information against petitioner for the crime of robbery.

It was further discovered that while the inquest papers were being prepared by the NBI, Richard Tan (Tan), owner of Tai Hing Glass Supply, had filed a similar extortion Complaint against petitioner. The latter supposedly asked him to pay □15,000 in exchange for the settlement of a fabricated case.[10]

Reports of the circumstances leading to the arrest and filing of the Complaints against petitioner were submitted by Tan and Lim to Chairperson Señeres. On 17 August 2000, copies of the documentary evidence[11] against petitioner were likewise endorsed to the Chairperson.[12]

Finding a *prima facie* case against petitioner, Chairperson Señeres issued Administrative Order No. 9-02 Series of 2000 on 1 September 2000, formally charging him with dishonesty and grave misconduct. The Order created a panel (the Board) to look into the present case; require petitioner to file an answer to the charges; conduct an investigation; and thereafter submit its report/recommendation.[13] The Order also placed petitioner under a 90-day preventive suspension upon receipt thereof.

The Board issued a Summons dated 19 September 2000 directing petitioner to answer the charges against him. Both the Order and the Summons were served on him, but he refused to receive them.[14] He never filed an Answer.

Lim, Tan, and the NBI agents involved in the entrapment operations appeared at the preliminary investigation conducted by the Board on 28 September 2000 in order to confirm their accusations against petitioner.

On 23 October 2000, the Board conducted a hearing attended by petitioner with three of his lawyers. He manifested therein that he was not subjecting himself to its jurisdiction.[15] Thus, he left without receiving copies of the Order and other documents pertinent to the case.[16]

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[10] Id. at 212 and 66.

[11] 1) Letter-request of Lim; 2) sworn statement of Lim; 3) written calling cards of petitioner; 4) photocopies of marked money; 5) request for fluorescent powder; 6) record check; 7) Joint Affidavit of Arrest; 8) booking sheet and arrest report; 9) photocopies of petitioner's photographs; 10) photocopy of petitioner's fingerprint card; 11) photocopy of petitioner's NLRC ID card; 12) request for ultraviolet examination; and 13) Certification from forensic chemistry division. Id. at 66-67

[12] Id.

[13] Id. at 111.

[14] See *rollo*, pp. 111-113.

[15] *Rollo*, pp. 114-115.

[16] Id. at 115.

The Board resolved the administrative case *ex parte*. It found that petitioner had been caught red-handed in the entrapment operation. His guilt having been substantially established,[17] the Board in its 31 October 2000 Report/Recommendation[18] found him guilty of dishonesty and grave misconduct. Upon approval of this recommendation by NLRC Chairperson Señeres on 14 November 2000, petitioner was dismissed from service.

A copy of the Board's Decision was received by petitioner on 22 November 2000. On 1 December 2000, he filed a Motion for Extension of Time Within Which to File the Proper Responsive Pleading, but it was denied.[19]

Petitioner appealed to the CSC. In his Appeal Memorandum,[20] he presented his side of the story. He claimed to have visited Lim's establishment to play billiards every now and then. Before going home, he would supposedly drop by the place, which was a mere 5- to 10-minute tricycle ride away from where he lived.[21] When Lim's employees discovered that petitioner worked for the NLRC, they told him of their employer's labor law violations.[22] Thus, petitioner assisted them in filing a case against Lim and later scheduled the case for a conference on 10 August 2000.

Two days before the scheduled conference, petitioner was informed by one of the employees that Lim wanted to speak with him. Lim supposedly offered petitioner money to drop the labor case filed against the former. According to petitioner, this offer was "flatly rejected."[23]

The next day, when petitioner went to Lim's establishment to play billiards, a billiard hustler by the name of Abel Batirzal (hustler) informed him that Lim required everyone playing in the establishment to lay a wager on the games they played.[24] Since he "abhorred" gambling, petitioner decided to discourage the hustler by raising the amount the latter proposed.[25]

Petitioner lost to the hustler. As the former was about to leave the establishment, he discovered that his cellular phone and pack of Philip Morris cigarettes were no longer where he left them. The security guard on duty informed him that a certain Ian Gumban had stolen the items.[26]

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[17] Id. at 124.
[18] Id. at 110-130.
[19] Id. at 27.
[20] Id. at 136-148.
[21] Id. at 17.
[22] Id. at 18.
[23] Id.
[24] Id.
[25] Id. at 19.
[26] Id.

Petitioner went straight to the Western Police District Station and filed a Complaint for theft, billiard hustling, syndicated gambling, swindling, and violation of city ordinances against Lim and three of the latter's employees or friends.[27]

A day after the foregoing incident, or on 10 August 2000, neither Lim nor his employees appeared at the scheduled conference. On the evening of the same day, petitioner went to Lim's establishment to check on the employees. There they told him to consider their Complaint withdrawn, since Lim had already decided to settle the case with them. Accordingly, the case was dropped from the NLRC's calendar.[28]

Petitioner claims that on 16 August 2000, the day of the alleged entrapment, he received a call from Lim. The person who had stolen petitioner's cellphone was supposedly willing to return it at seven that evening at Lim's billiards hall.[29]

When petitioner arrived, he saw Lim and one of the latter's employees. Lim approached petitioner and informed him that the thief could no longer return the phone. The thief had allegedly decided to just pay the value of the phone and entrust the money to Lim. The latter tried to give the money to petitioner and urged him to count it, as the former was not sure how much the thief had given. Petitioner supposedly refused to receive and count the cash and, instead, insisted that Lim arrange a meeting with the thief.[30]

Because petitioner would not take the money, Lim inserted the wad of cash into the open pocket of the former's shoulder bag.[31] Just when petitioner was about to pull out the money and throw it back to Lim, the NBI agents appeared and arrested petitioner who recalls the incident as follows:

> x x x [W]hile trying to retrieve the unduly incriminating wad of money to throw it back to Mr. Lim, about five or seven burly men accosted petitioner without properly identifying themselves and with strong-arm tactics, hand-cuffed him over his vehement protestations. One of the burly men even pointed his gun at petitioner's face as he and his companions wrestled petitioner to a car. x x x.[32]

With respect to Tan, petitioner claims that the latter never demanded or received any sum of money from him. Allegedly, Tan was only

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[27] Id.
[28] Id. at 20.
[29] Id.
[30] Id. at 21.
[31] Id. at 21-22.
[32] Id. at 22.

displeased with petitioner's active assistance to one of Tan's aggrieved employees.[33]

Petitioner further claims that even before Chairperson Señeres formally charged him with dishonesty and grave misconduct, the former had already filed an urgent request for an emergency leave of absence because of the alarming threats being made against him and the members of his family.[34]

Petitioner asked the CSC to nullify the 27 September 2000 Order of Chairperson Señeres. The Order barred petitioner from entering the NLRC premises a month before the hearing conducted by the Board. He then questioned its impartiality. As proof of his allegation, he made much of the fact that the Board denied his Motion for Extension of Time Within Which to File a Proper Responsive Pleading.[35]

Six years after petitioner had filed his Appeal Memorandum, the CSC dismissed it. The dispositive portion of its Resolution[36] dated 18 December 2006 reads:

> **WHEREFORE**, the appeal of Edilberto S. (sic) Barcelona is hereby **DISMISSED**. Accordingly, the Decision dated November 14, 2000 of Roy R. Seneres, [Chairperson,] (NLRC) finding him guilty of Dishonesty and Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of disqualification from re-entering government service, forfeiture of retirement benefits and bar from taking any civil service examinations is hereby **AFFIRMED.**[37]

Petitioner filed a Motion for Reconsideration on 15 January 2007.[38] He questioned the validity of his dismissal by asserting that before its implementation, the NLRC had the legal duty of obtaining its confirmation by the Department of Labor and Employment (Labor) Secretary.[39]

On 28 August 2007, petitioner's Motion for Reconsideration was denied by the CSC through a Resolution.[40]

Petitioner filed a Petition for Review, but it was dismissed by the CA in the assailed Decision dated 26 September 2008.[41]

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[33] Id. at 23.
[34] Id. at 24.
[35] Id. at 26.
[36] Id. at 205-219.
[37] Id. at 219.
[38] Id. at 221-248.
[39] Id. at 29-30.
[40] Id. at 250-255.
[41] Id. at 73.

A Motion for Reconsideration with Motion for Voluntary Inhibition of Honorable Justice Vicente S.E. Veloso (Justice Veloso)[42] was then filed by petitioner. The latter cited the following reasons for the prayer for inhibition:

> 1) Honorable Justice Veloso was a Commissioner of public respondent NLRC at the time of the subject incident; and
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> 2) The undersigned counsel, eldest son of petitioner, just recently resigned from the law firm where the daughter of Justice Veloso is working.[43]

Justice Veloso, in a Resolution[44] dated 27 February 2009, stated that while the grounds invoked by petitioner did not constitute valid bases for an inhibition, the former would voluntarily inhibit "to assuage petitioner in whatever fears he may have" over the CA's handling of the Motion for Reconsideration.

Thereafter, the CA issued the assailed Resolution[45] dated 26 August 2009 denying petitioner's Motion for Reconsideration. In spite of his voluntary inhibition, Justice Veloso still signed the herein questioned Resolution to signify his concurrence.

Hence, this Petition praying for the reversal of the Decision and Resolution of the appellate court and the dismissal of the administrative Complaint filed against petitioner.[46]

This Court required respondents Lim and Tan to file their respective Comments, but neither of them complied. Since copies of the Resolution ordering them to Comment were personally served upon them, the Court resolved to consider them to have waived their right to comment on the Petition.[47]

Petitioner comes before this Court raising the following arguments:

> 1. The CA decided a question of substance "not in accord with the applicable law and jurisprudence" when it:
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> a. Denied petitioner's Motion for Reconsideration with the participation of Justice Veloso, who had earlier voluntarily inhibited himself from the case.
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> b. Ruled that petitioner was not denied due process of

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[42] Id. at 76-97.
[43] Id. at 94-95.
[44] Id. at. 321-322.
[45] Id. at 74-75.
[46] Id. at 60.
[47] Id. at 347; Resolution dated 23 March 2010.

law in spite of overwhelming proof that the NLRC chairperson failed to act with impartiality in deciding petitioner's case.

c. Ruled that petitioner's appeal to the CSC had not been filed on time, even though the commission itself did not question the timeliness of that.

d. Ruled that the findings of the CSC were supported by evidence.

2. The CA, like the CSC, failed to address all the issues presented by petitioner when it chose to keep silent on the following issues:

a. The denial of the right of petitioner to the speedy disposition of his case; and

b. The failure of the disciplining authority to obtain the confirmation by the Department head of the former's decision to dismiss petitioner from service.[48]

We reduce the issues to the following:

I

Whether petitioner was denied due process of law;

II

Whether the factual findings of the CSC are supported by evidence;

III

Whether the CA had the authority to review matters not assigned by the parties as issues;

IV

Whether the right of petitioner to the speedy disposition of his case has been violated by the CSC; and

V

Whether the NLRC violated the Civil Service Rules provision, which allows the execution of a penalty of removal decreed by a bureau or office head, pending appeal thereof to the CSC, only when the penalty has been confirmed by the Secretary of the department concerned.

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[48] Id. at 37-52.

Petitioner was not denied due process of law.

Petitioner claims he was denied due process of law due to the partiality of Chairperson Señeres, the Board, the CSC, and the CA.

Considering the many complaints of petitioner, we deem it best to present an exhaustive outline of his entire evidence therefor. Below are several circumstances he cites to prove that he was not afforded the right to be heard by an independent and impartial tribunal.

According to petitioner, Chairperson Señeres served not only as the former's accuser, but also as judge and executioner.[49] The Chairperson's partiality was supposedly demonstrated by the following acts:

1. On 10 November 2000, petitioner and his two sons allegedly approached and asked Chairperson Señeres why he was persecuting petitioner. The Chairperson supposedly replied: "*Wala akong pakialam. Pasensya kayo. Tapos na ang tatay ninyo*!"[50]

2. Chairperson Señeres issued defamatory press releases to the media announcing the preventive suspension of petitioner and depicting the latter as a corrupt government official. The Chairperson allegedly took advantage of the situation of petitioner in support of the former's then prospective political career, to wit:

> x x x [A]t the expense of petitioner, [he] took advantage of the opportunity to project himself as a graft buster to further his sagging political career and burning senatorial ambitions by immediately issuing press releases and causing the malicious publication of the petitioner's preventive suspension without affording the latter due process of law.[51]

3. Lim never filed a written complaint against petitioner as required by Section 8 of the Civil Service Rules and, consequently, the latter was not given the chance to file a counter-affidavit or comment on the written Complaint as mandated by Section 11 of the Civil Service Rules.

4. No preliminary investigation was conducted as required by Section 12 of the Civil Service Rules.

5. Chairperson Señeres failed to serve the formal charge to

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[49] Id. at 40.
[50] Id. at 41.
[51] Id. at 44.

petitioner in accordance with Section 16 of the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules).[52]

6. The Order dated 1 September 2000, which immediately placed petitioner under a 90-day preventive suspension, supposedly violated the requirement in Section 19 of the Civil Service Rules that an order of preventive suspension be issued only upon service of the formal charge.

7. The Board created by Señeres to investigate the case denied the Motion for Extension of Time filed by petitioner, in order to ensure that the latter would no longer be able to return to work.

As for the Board, its "lack of and glaring absence of impartiality and objectivity" was supposedly shown by the following:[53]

1. A substantial portion of the Report/Recommendation of the Board shows that it delved into petitioner's expression of protest against the Chairperson's unfair treatment, and thereby reinforced petitioner's apprehension that the case would not be resolved on its merits.

2. The denial of petitioner's Motion for Extension of Time Within Which to File the Proper Responsive Pleading dated 1 December 2000 was allegedly unjust and groundless.

With respect to the CSC, petitioner claims that it "curiously amended" Section 43(2) of the Civil Service Rules only three weeks after he had filed his Motion for Reconsideration of the Resolution denying his appeal.[54]

Lastly, petitioner bewails the supposed haphazard manner in which the CA disposed of his claim that he had been denied due process of law. He claimed that it simply dismissed the issue through a one-sentence ruling, which reads:

> On the alleged failure of the NLRC to observe impartiality, suffice it to say that petitioner failed to present proof to substantiate his self-serving allegations.[55]

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[52] CSC MEMORANDUM CIRCULAR NO. 19-99; CSC Resolution No. 99-1936 dated 31 August 1999 (the "Uniform Rules in Administrative Cases in the Civil Service"), which took effect on 27 September 1999.
[53] *Rollo*, pp. 44-45.
[54] Id. at 56.
[55] Id. at 71.

In the eyes of petitioner, it would appear that every agency of the government that had a hand in this case was, at his expense, either motivated by personal bias or driven by the desire to advance its members' political or professional careers in the government.

Petitioner's claims are without merit.

Contrary to the assertions of petitioner, Chairperson Señeres did not act as the former's accuser, judge and executioner.[56] To be clear, the accusers of petitioner were Lim and Tan, while his judge was an independent Board formed to investigate his case. This Court is aware that the Board only had the power to recommend, and that that latter's recommendation was still subject to the approval of the Chairperson. Still, petitioner cannot claim that he was denied due process on this basis alone, because the remedy to appeal to the proper administrative body—the CSC in this case—was still made available to him.

Petitioner claims that Sections 8, 11, 12, 16, and 19 of the Civil Service Rules were violated by Chairperson Señeres. Petitioner misses the point that strict compliance with the rules of procedure in administrative cases is not required by law. Administrative rules of procedure should be construed liberally in order to promote their object as well as to assist the parties in obtaining a just, speedy and inexpensive determination of their respective claims and defenses.[57]

This Court finds that both Chairperson Señeres and the Board essentially complied with the procedure laid down in the Civil Service Rules. Where due process is present, the administrative decision is generally sustained.[58]

The claim of petitioner that he was denied due process is negated by the circumstances of the case at bar.

The Report/Recommendation of the Board shows that both complainant and respondent were given the opportunity to be heard by the Board and to adduce their respective sets of evidence, which were duly considered and taken into account in its Decision.

Petitioner insists that Lim never filed a written complaint against him as required by Section 8 of the Civil Service Rules. Petitioner further complains that he was not given the chance to file a counter affidavit, a right provided by Section 11 of the Civil Service Rules. The records disclose, however, that reports leading to his arrest and the filing of the Complaint against him were submitted by Tan and Lim to the Chairperson

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[56] Id. at 40.
[57] *Police Commission v. Lood*, 212 Phil. 697 (1984).
[58] *Mangubat v. De Castro,* 246 Phil. 620 (1988).

of the NLRC. On the basis of the sworn statements supporting the criminal Complaint against petitioner, Chairperson Señeres found a *prima facie* case against him and issued the Order formally charging him with dishonesty and grave misconduct.

Furthermore, the Board gave petitioner the chance to answer the charges against him when it issued its 19 September 2000 Summons for that very purpose. He does not deny that he was served a copy of the Summons, but that he refused to receive it. It was his choice not to file an answer. After he decided to waive this right, we cannot now allow him to claim that he has been deprived of the right to air his side through an answer or a counter-affidavit.

Petitioner further claims that Chairperson Señeres violated Section 12 of the Civil Service Rules when the latter dispensed with the requirement of conducting a preliminary investigation. It is important to note that this preliminary investigation required by Section 12 of the Civil Service Rules is not the same as that required in criminal cases. Section 12 defines a preliminary investigation of administrative cases in the Civil Service as an "*ex parte* examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices." Petitioner presents no evidence to prove that either Chairperson Señeres or the Board failed to examine these records. In fact, the records show that, on 28 September 2000, Lim and Tan appeared in the preliminary investigation conducted by the Board to confirm their sworn statements and the criminal cases they had filed against petitioner. That he submitted no documents for consideration in the preliminary investigation was his choice.

According to petitioner, no formal charge was ever filed against him as mandated by Section 16 of the Civil Service Rules. He now claims that Chairperson Señeres had no right to place him under preventive suspension, because Section 19 of the Civil Service Rules requires that a formal charge be served on petitioner before an order of preventive suspension may be issued. The provision reads:

> SECTION 19. *Preventive Suspension*. — Upon petition of the complainant or *motu proprio*, the proper disciplining authority may issue an order of preventive suspension upon service of the Formal Charge, or immediately thereafter to any subordinate officer or employee under his authority pending an investigation, if the charge involves:
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> a. dishonesty;
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> b. oppression;
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> c. grave misconduct;
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> d. neglect in the performance of duty; or
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> e. If there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

> An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office.
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> In lieu of preventive suspension, for the same purpose, the proper disciplining authority or head of office, may reassign respondent to other units of the agency during the formal hearings.

In this case, the Order was the formal charge. It was served on petitioner, but he refused to receive it. He claims that on 27 September 2000, or a month before the hearing conducted by the Board, Chairperson Señeres barred him from entering the NLRC premises. Petitioner was thereby denied access to evidence and witnesses that could support his case.[59] But, as revealed by Section 19, Chairperson Señeres had the right to issue an Order of preventive suspension pending investigation by the Board, because petitioner was being charged with dishonesty and grave misconduct.

Moreover, the Order of Chairperson Señeres preventing petitioner from entering the latter's office was also valid under Section 19. This Order was meant to preclude petitioner from possibly exerting undue influence or pressure on the witnesses against him or to prevent him from tampering with documentary evidence on file with his office. This preventive measure is sanctioned by law.

As established by the facts, petitioner was given the opportunity to be heard and to adduce his evidence. This opportunity was enough for one to comply with the requirements of due process in an administrative case. The formalities usually attendant in court hearings need not be present in an administrative investigation, as long as the parties are heard and given the opportunity to adduce their respective sets of evidence.[60]

As regards the charge of lack of impartiality, we agree with the CA's pronouncement that petitioner failed to substantiate his self-serving allegations. Mere suspicion of partiality does not suffice.[61]

Chairperson Señeres released statements to the media regarding the case of petitioner and allegedly told him and his children that the Chairperson did not care about their woes. Assuming this allegation to be true, it did not necessarily mean that Chairperson Señeres was incapable of deciding the case without bias. These acts did not satisfactorily prove the claim that in order to promote and further his political ambitions, he took advantage of petitioner's situation. As the NLRC Chairperson, he had the duty to answer the questions of the media on the status of the

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[59] *Rollo*, p. 26.
[60] Supra note 57.
[61] *Casimiro v. Tandog,* 498 Phil. 660 (2005).

cases against graft and corrupt practices involving government officials under his commission. Furthermore, his statements to petitioner and the latter's family are not sufficient for this Court to believe that every one of his acts, in relation to the case of petitioner, was meant to ensure the latter's downfall at whatever cost.

Similarly, the denial of petitioner's Motion for Extension of Time, does not prove that the tribunal failed to be impartial.

Petitioner is banking on one incident in which his Motion was denied. The denial in itself, without any extrinsic evidence to establish bias, does not prove that he was denied his right to be judged by an impartial and independent tribunal. While petitioner had the right to file a Motion for Extension of Time, he did not have the right to expect that the Motion would be granted. Absent any proof that the denial of this motion was made in grave abuse of discretion amounting to lack or excess of jurisdiction, the Court will not interfere with the pronouncement of the quasi-judicial body.

Lastly, the CSC has the power and the authority to amend the Civil Service Rules whenever it deems the amendment necessary. The insinuation of petitioner that this change was made for the sole purpose of hurting his appeal is a mere product of his imagination. The CSC is under no obligation to review all the cases before it and, on the basis thereof, decide whether or not to amend its internal rules.

We note, though, that the authority of the CSC to amend the rules does not give it the authority to apply the new provision retroactively. The consequence of an illegal retroactive application of a provision is discussed below.

The finding of the CSC that petitioner is guilty of dishonesty and grave misconduct is supported by the evidence.

With respect to the sufficiency of the evidence supporting the factual findings of the CSC, the CA ruled as follows:

> Finally, it is well-settled that findings of fact of quasi-judicial agencies such as the Civil Service Commission are generally accorded respect and even finality by this Court and the Supreme Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration.[62]

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[62] *Rollo*, p. 72, citing *Baybay Water District v. COA,* 425 Phil. 326 (2002).

Petitioner now claims that the CA did not even bother to discuss his allegation that the findings of the CSC were not supported by evidence.[63] Unimpressed by the CA Resolution, he is now asking this Court to review the factual findings of the CSC.

Believing that the CSC found him guilty based on the *Sinumpaang Salaysay* executed by Lim before the NBI, petitioner insists that this piece of evidence is insufficient to support the CSC's conclusions.[64] He claims that there is no specific allegation in the sworn statement of Lim whether petitioner demanded money from the former; "who set the alleged August 16, 2000 meeting at Mr. Lim's billiard center; how it was agreed; and what was the purpose of that meeting."[65]

Petitioner casts doubt on the veracity of the statements of Lim, who supposedly filed a report against him with the NBI a few days after filing a theft Complaint against him.[66] According to petitioner, Lim should not be believed, because all of the latter's allegations are fueled only by vengefulness.

After claiming that Lim's statement should not be trusted because of "ill-motive,"[67] petitioner now questions the motives of the CSC and the NBI.

Anent the reliance of the CSC on the *Sinumpaang Salaysay*, petitioner decries:

> To an unprejudiced, reasonable mind, the statement of Mr. Lim is not sufficient evidence to pin down petitioner for such a serious offense as Dishonesty and Grave Misconduct. The NLRC read more into the document and put words into the mouth of Mr. Lim.
>
> Unfortunately, the CSC blindly affirmed the NLRC's findings just to dispose of the case after unreasonably sitting on it for more than six (6) long years.[68]

With respect to the NBI agents, petitioner harps on their eagerness to believe Lim's Complaint without even bothering to investigate. Petitioner explains his point:

> [T]he NBI agents who conducted the alleged entrapment operation were motivated by the desire to record an "accomplishment" and to obtain "commendatory results" due to the highly competitive police function and law enforcement activities."[69]

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[63] Id. at 48.
[64] Id. at. 49.
[65] Id. at. 50.
[66] Id. at. 50-51.
[67] Id. at. 51.
[68] Id. at. 50.
[69] Id. at. 51.

We affirm the CA's findings.

First, except for his accusations, petitioner presents no proof that the CSC "blindly" affirmed the NLRC's ruling just to get rid of the case. A reading of the Resolutions of the CSC reveals otherwise. They thoroughly discussed the factual circumstances surrounding this case, the evidence, and why and how the conclusion was reached. In order to overcome the validity of these Resolutions, petitioner must present evidence to prove that the evidence relied on by the CSC was unsubstantial.

In attempting to prove that the evidence presented was insufficient to prove his guilt, petitioner asks this Court to focus on the inadequacy of Lim's *Sinumpaang Salaysay*. Contrary to these assertions, however, the following pieces of evidence—in addition to Lim's sworn statement—were considered by the CSC in resolving petitioner's appeal:

1. The sworn statement of Tan, who appeared in the preliminary investigation conducted by the Board to confirm that he had filed a similar extortion Complaint against petitioner;[70]

2. The Report and the evidence presented by NBI Special Investigator Marvin E. de Jemil, who appeared before the Board to confirm the contents of his Report, findings, and evidence against petitioner in support of the administrative charges filed against the latter; and

3. The statement of the arresting officers who apprehended petitioner in the entrapment operation, and who also appeared in the continuing investigation to affirm the contents of their Joint Affidavit of Arrest.[71]

Factual findings of administrative bodies like the CSC are binding on this Court, unless these findings are not supported by substantial evidence.[72] In this case, we rule that the findings of fact and conclusions of the CSC have passed the test of substantiality. It is sufficient that administrative findings of fact are supported by the evidence on record; or, stated negatively, it is sufficient that findings of fact are not shown to be unsupported by evidence.[73] The absence of substantial evidence is not shown by stressing that there is contrary evidence on record, whether direct or circumstantial.[74]

All the pieces of evidence presented before the CSC point to the guilt of petitioner. Several persons, both private individuals and law enforcers, came forward to testify and present evidence to prove the allegations against

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[70] Id. at 113.
[71] Id. at 121-122.
[72] *Dadubo v. CSC*, G.R. No. 106498 (1991), 28 June 1993, 223 SCRA 747 citing *Jaculina v. National Police Commission*, 200 SCRA 489; *Biak-na-Bato Mining Co. v. Tanco, Jr.*, 271 Phil. 339 (1991); *Doruelo v. Ministry of National Defense*, 251 Phil. 400 (1989).
[73] *Baliwag Transit, Inc. v. Court of Appeals*, 231 Phil. 80 (1987).
[74] *Bagsican v. CA*, 225 Phil. 185 (1986); *Heirs of E.B. Roxas, Inc. v. Tolentino*, 249 Phil. 334 (1988).

him. In fact, each testimony corroborated the testimonies of the others, effectively allowing the CSC to form a complete picture of the incidents that led to the ultimate act of extortion.

As defined in the landmark case *Ang Tibay v. Court of Industrial Relations*,[75] all that is needed to support an administrative finding of fact is substantial evidence, which is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The evidence presented in the present case is more than enough to support the conclusion reached.

Where the findings of fact of a quasi-judicial body are supported by substantial evidence, these findings are conclusive and binding on the appellate court.[76] Thus, the CA did not err in ruling that the CSC had committed no error in finding that petitioner was guilty of dishonesty and grave misconduct.

In the case at bar, petitioner accuses the NBI agents of being driven by "ill-motive." In the absence of credible evidence, the presumption of regularity in the performance of their duties prevails over his unsubstantiated and self-serving assertions, to wit:

> Between the naked assertions of accused-appellant and the story recounted by the NARCOM agents, jurisprudence dictates that the latter is to be given more weight. Aside from having in his favor the presumption of regular performance of duty, we find as the court *a quo* did that the testimony of Lt. Cantos is more credible, being fully and convincingly corroborated, as opposed to that of accused-appellant. Besides, no improper motive to falsely accuse appellant could be imputed to him. In the absence of proof of such motive to falsely impute a serious crime against appellant, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses must prevail over the self-serving and uncorroborated claim of having been "framed up."[77]

This rule holds true for the present case. Not only do the NBI agents have in their favor the presumption of regularity in the performance of their duties; their statements are credible and corroborated as well. After being caught red-handed, petitioner needs extrinsic evidence to back up his allegations to prove that the NBI agents had an ulterior motive to falsely impute the crime to him.

The appellate court has the authority to review matters that the parties

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[75] 69 Phil. 635 (1940).
[76] *Bagsican v. Court of Appeals*, supra; *Heirs of E.B. Roxas, Inc. v. Tolentino*, supra.
[77] *People v. Adaya*, 314 Phil. 864, 868-869 (1995) citing *People v. Labra*, 215 SCRA 822 (1992); *People v. Napat-a*, 258-A Phil. 994 (1989); *People v. Khan*, 244 Phil. 427 (1988); *People v. Agapito*, 238 Phil. 680 (1987).

have not specifically raised or assigned as error.

Petitioner questions the propriety of the following pronouncement of the CA:

> We likewise note that petitioner's appeal to the CSC was made beyond the reglementary period. Admittedly, petitioner received the Decision of the NLRC on 22 November 2000. Petitioner's motion for extension of time within which to file the proper responsive pleading filed on 1 December 2000 did not stop the running of the period for its finality, and the Notice of Appeal and Appeal Memorandum were filed only on 27 December 2000 or one (1) month and five (5) days from receipt of the Decision. Petitioner erroneously counted the period within which to appeal from the date he received the Order denying his motion for extension to file his responsive pleading.[78]

While petitioner does not deny that his appeal to the CSC was filed beyond the reglementary period, he argues that the timeliness of his appeal has never been an issue. He thus claims that only the issues raised by the parties may be resolved by the Court.

Petitioner is mistaken. An appeal throws the entire case open for review, *viz*:

> [A]n appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[79]

Petitioner adds that the CA erred in applying technical rules strictly. According to him, if its strict application of the rules would tend to frustrate rather than promote justice, it is within this Court's power to suspend the rules or except a particular case from their operation.[80]

We agree with petitioner's claim that rules of procedure are established to secure substantial justice, and that technical requirements may be dispensed with in meritorious cases. However, we do not see how the CA, in deciding the case at bar, could have overlooked this policy. Although it took notice of the failure of petitioner to file his appeal with the CSC on time, and perhaps used this failure as a supporting argument, it did not dismiss the Petition on that sole ground. In fact, a perusal of the CA Decision now in question will reveal that the appellate court took cognizance of the case and adequately discussed the pertinent issues raised by petitioner.

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[78] *Rollo*, p. 72.

[79] *Sociedad Europa de Financiacion, S.A. v. Court of Appeals,* 271 Phil. 101, 110-111 (1991).

[80] *Rollo*, p. 47 citing *Land Bank of the Philippines v. Planters Development Bank*, 576 Phil. 805 (2008).

No violation of the right of petitioner to the speedy disposition of his case.

Petitioner filed his Notice of Appeal and Appeal Memorandum with the CSC on 27 December 2000,[81] but it only issued its Resolution on 18 December 2006.

According to petitioner, he sees no justifiable reason for the six-year delay in the resolution of his appeal before the CSC.[82] He is now asking this Court to "rectify" the wrong committed against him and his family by absolving him of the administrative charges.[83]

Section 16, Rule III of the 1987 Philippine Constitution, reads:

> Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The right to a speedy disposition of cases is guaranteed by the Constitution. The concept of speedy disposition is flexible. The fact that it took the CSC six years to resolve the appeal of petitioner does not, by itself, automatically prove that he was denied his right to the speedy disposition of his case. After all, a mere mathematical reckoning of the time involved is not sufficient, as the facts and circumstances peculiar to the case must also be considered.[84]

Caballero v. Alfonso, Jr.,[85] laid down the guidelines for determining the applicability of Section 16, Rule III, to wit:

> In the determination of whether or not the right to a "speedy trial" has been violated, certain factors may be considered and balanced against each other. These are length of delay, reason for the delay, assertion of the right or failure to assert it, and prejudice caused by the delay. x x x.

The CSC maintains that "[p]etitioner failed to assert such right before the proceedings in the CSC and, even assuming that there was delay in resolution of his appeal before the CSC, no prejudice was caused to him."[86]

Petitioner, on the other hand, insists that the fact that he made several telephone calls to inquire about the status of his appeal[87] and sent to the Commissioner of the CSC a letter dated 2 March 2001, informing the latter that

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[81] Id. at 53.
[82] Id.
[83] Id. at 56.
[84] *Binay v. Sandiganbayan*, 374 Phil. 413, 447 (1999); *Castillo v. Sandiganbayan*, 384 Phil. 604, 613 (2000).
[85] 237 Phil. 154, 163 (1987).
[86] *Rollo,* p. 388.
[87] Id. at 245.

the case had been "forwarded to CSC-Main without action of CSC-NCR,"[88] sufficiently proves that he did not fail to assert his right.

On this particular point, we have to agree with the CSC that "the alleged telephone calls made by petitioner are self-serving and lack corroborative evidence."[89] Since there is no way of ascertaining whether or not he actually made these phone calls, this allegation cannot be given any probative value.

As to the letter petitioner allegedly sent to CSC Commissioner Jose Erestain, Jr., it is apparent from the face of the letter that there is no indication at all that the intended recipient actually received it.

The right to a speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law. One's right to the speedy disposition of his case must therefore be asserted. [90] Due to the failure of petitioner to assert this right, he is considered to have waived it.

The NLRC did not violate the rule against the execution of a penalty of removal pending appeal to the CSC.

According to petitioner, when he filed his Motion for Reconsideration with the CSC on 15 January 2007, Section 43 of Rule III of the Civil Service Rules provided that a penalty of removal from government service could not be executed pending appeal, unless the Department Secretary concerned confirmed the imposition of the penalty,[91] *viz*:

> SECTION 43. *Filing of Appeals*. — Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.
>
> In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. **Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.**
>
> A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with

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[88] Id. at 177.
[89] Id. at 389.
[90] *Guiani v. Sandiganbayan*, 435 Phil. 467 (2002).
[91] *Rollo*, p. 29.

> its comment, within fifteen (15) days, to the appellate authority. (Emphasis supplied)

However, on 7 February 2007, the CSC issued Resolution No. 07-0244,[92] which amended the aforementioned provision of the Civil Service Rules. The pertinent portion of the CSC Resolution reads:

> Section 43. Filing of Appeals. — Decisions of heads of department, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.
>
> In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.
>
> **Unless otherwise provided by law, the decision of the head of an attached agency imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office is appealable directly to the Commission Proper within a period of fifteen (15) days from receipt thereof. Pending appeal, the penalty imposed shall be executory, including the penalty of removal from the service without need for the confirmation by the department secretary to which the agency is attached.**
>
> A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. The later shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days, to the appellate authority. (Emphasis in the original)

It appears that Section 43 of the Civil Service Rules is self-contradicting. While the second paragraph provides that a penalty of removal "shall be executory only after confirmation by the Secretary concerned," the third paragraph states: "Pending appeal, the penalty imposed shall be executory, including the penalty of removal from the service without need for the confirmation by the department secretary to which the agency is attached." The CSC should look into the implication and/or consequence of its amendment of the rules and should clarify how the newly enacted paragraph can operate, without conflict, with the reenacted provisions of the old Section 43.

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[92] AMENDMENT TO SECTION 43, RULE III OF THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

In any case, even if we were to assume that the new rules now declare that a penalty of removal shall be executory pending appeal, without need for confirmation by the secretary of the Department to which the agency is attached, this rule cannot and should not be applied to petitioner's case.

Resolution No. 07-0244 became effective 15 days after 21 March 2007, the day it was published, or a few months before the CSC denied petitioner's Motion for Reconsideration.

This Court cannot declare that the amendment of the Civil Service Rules while the case of petitioner was pending proves the lack of impartiality on the CSC's part as petitioner claims. However, it can and does now declare that the CSC had no right to retroactively apply the amended provision to petitioner's case.

Laws shall have no retroactive effect, unless the contrary is provided.[93] When petitioner was dismissed, the old Section 43 of the Civil Service Rules was still in effect. The aforecited provision clearly states that the penalty of removal is not executory, pending appeal, unless the penalty is confirmed by Secretary of the Department where the dismissed employee works.

Petitioner now claims that because the penalty of dismissal imposed by Commissioner Señeres was never confirmed by the Secretary of Labor, it could not have been executed while his appeal to the CSC was ongoing; thus, he should have been allowed to continue to work and receive his salary.[94]

We agree.

After a thorough review of the records of this case, however, the Court is convinced that petitioner was never actually barred from returning to work after the 90-day period lapsed. The records disclose that he made no attempt to return to work after the expiration of the suspension period. Thus, he was never prevented from returning to work—he just chose not to go back.

There is no question that 90-day preventive suspension was issued in accordance with law. The moment this period expired, petitioner was automatically reinstated in the service. This rule is clear in Section 20 of the Civil Service Rules, which reads thus:

> SECTION 20. Duration of Preventive Suspension. — When the administrative case against an officer or employee under preventive

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[93] CIVIL CODE OF THE PHILIPPINES, Art. 4.
[94] *Rollo*, p. 57.

> suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of his preventive suspension, unless otherwise provided by special law, he shall be automatically reinstated in the service; provided that, when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the 90 calendar days period of preventive suspension. Provided further that should the respondent be on Maternity/Paternity leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully enjoyed.

Petitioner refused to receive the Order dated 1 September 2001 implementing his 90-day preventive suspension. He was allowed to go to work until 27 September 2000—the day he was supposedly barred from entering the office. Thus, his actual suspension from work began on the latter date and expired 90 days thereafter, specifically on 25 December 2000.

By virtue of Section 20 of the Civil Service Rules, petitioner was automatically reinstated on 26 December 2000—the day after the preventive suspension period expired. Since he never attempted to resume the performance of his duties after the expiration of the preventive suspension, he cannot now claim that the penalty of removal was executed, pending his appeal to the CSC, without the confirmation of the Secretary of Labor. Had it been shown that he was prevented from returning to his post after the expiration of the legally sanctioned preventive suspension, he would have been entitled to the payment of his back salaries from the moment the suspension expired up to the time his dismissal would have been implemented.

That he has never rendered any service to government that would authorize him to collect backwages is beyond cavil. He was never prevented from returning to work after his suspension, thus he is not entitled to any back salary.

With respect the 90-day suspension period, the Civil Service Rules do not state whether an employee placed under preventive suspension is entitled to back salaries for the period of suspension. However, in *Gloria v. Court of Appeals*,[95] we ruled that an employee has no right to compensation for preventive suspension pending investigation, even if the employee is exonerated from the charges. Although a statutory provision was used to justify the ruling therein, we also explained the principle behind the law, to wit:

> The principle governing entitlement to salary during suspension is cogently stated in Floyd R. Mechem's *A Treatise on the Law of Public Offices and Officers* as follows:

[95] 365 Phil. 744 (1999).

> Section 864. ***Officer not entitled to Salary during Suspension from Office***. — An officer *who has been lawfully suspended* from his office is not entitled to compensation for the period during which he was so suspended, *even though it be subsequently determined that the cause for which he was suspended was insufficient*. The reason given is "that salary and perquisites are the reward of express or implied services, and therefore cannot belong to one who could not lawfully perform such services."
>
> Thus, it is not enough that an employee is exonerated of the charges against him. In addition, his suspension must be unjustified. x x x.
>
> The preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty is authorized by the Civil Service Law. It cannot, therefore, be considered "unjustified," even if later the charges are dismissed so as to justify the payment of salaries to the employee concerned. It is one of those sacrifices which holding a public office requires for the public good. For this reason, it is limited to ninety (90) days unless the delay in the conclusion of the investigation is due to the employee concerned. After that period, even if the investigation is not finished, the law provides that the employee shall be automatically reinstated.[96] (Emphasis in the original)

The same logic applies to the present case.

As regards the participation of Justice Veloso in the CA's deliberation on the Motion for Reconsideration after he had deliberately declared that he would voluntarily inhibit himself from hearing the case, this Court is of the opinion that the propriety of his act is best threshed out in an administrative case held for that purpose—one in which he can file his comment and explain his side.

Lastly, considering the gravity of the offense committed by petitioner, the Office of the Ombudsman should be directed to immediately investigate the matter and, if it thereafter finds it necessary, to file the appropriate criminal charges against him.

WHEREFORE, the instant Petition is **DENIED.** The Court of Appeals Decision dated 26 September 2008 and its Resolution dated 26 August 2009 in CA-G.R. SP No. 100595, as well as the Resolutions of the Civil Service Commission dated 18 December 2006 and 28 August 2007 are **AFFIRMED.**

The Office of the Ombudsman is hereby **DIRECTED** to immediately investigate the criminal allegations described in this Decision, and if it finds appropriate, to file the necessary criminal charges against the petitioner.

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[96] Id. at 762.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

MARIA LOURDES P. A. SERENO
Chief Justice