

VICENTE D. ESPAÑOL, COMPLAINANT, VS. ATTY. MANUEL NOV. DUQUE, RESPONDENT.

Adm. Matter No. P-223. August 30, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In a complaint dated January 17, 1974, Vicente D. Español charges respondent Atty. Manuel Nov. Duque, former Judicial Supervisor and concurrent Chief of Stenographers' Section, Judiciary Division, Department of Justice, now with the Technical and Legal staff of the Chief Justice, with:

- "1. Abuse of discretion in the granting of EFFICIENCY to the stenographers-at-large for the period ending October 31, 1972;
- "2. Usurpation of the functions and administration of the prerogative of the Presiding Judges of the Court of First Instance to where I was detailed pursuant to the lawful Directive of the Secretaries and Undersecretaries of Justice from September 1968 to October 31, 1972 inclusive;
- "3. Violation of Civil Service Rules and regulations in renewals of appointments to those Stenographers holding provisional appointment possessing not fitting eligibilities for the period of his incumbency from 1968 to October 31, 1972;
- "4. Follow-up of vouchers of Stenographers-at-large who are slated for detail in different CFI Courts of the Country more specifically to the herein complaint (Mr. Vicente D. Espanol) and others;
- "5. Incompetency in the running of the office and neglect of duty in the interest of the office and in the early disposition of appealed cases; and
- "6. Conduct unbecoming of a lawyer." (p. 2, rec.).

On February 13, 1974, respondent filed his answer (pp. 16 to 29, rec.). Thereafter, the Assistant Bar Confidant, as investigator, set the case for hearing, which was postponed three times on motion of complainant over the objection of the respondent, to enable the complainant to secure the services of counsel. At the next hearing, complainant appeared again without counsel. After the parties conferred with each other, the complainant filed a motion to withdraw the instant case on the ground that a communication gap between him and the respondent gave rise to his filing the complaint. Notwithstanding such motion to withdraw, the investigator proceeded with the investigation considering the nature of the charges against respondent.

It appears that complainant was a stenographer-at-large of the Judiciary Division of the Department of Justice. On June 24, 1972, the Secretary of Justice issued Memorandum Circular No. 7 requiring, among others, Judges and Clerks of Court of the Courts of First Instance and Circuit Criminal Courts and chiefs of divisions of the Department of Justice to submit recommendations for re-appointment or non-reappointment of temporary and provisional employees under their immediate supervision.

On October 24, 1972, the Secretary of Justice terminated the appointment of the complainant who, on January 17,

1974 — one year and three months after his separation from the service — filed this administrative case against respondent. After hearing, the Assistant Bar Confidant recommended the dismissal of the complaint, stating that:

"At the outset, it must be stated that complainant does not dispute the legality of the termination of his employment by the Secretary of Justice. As borne out by the records, what compelled complainant to file this case is his strong suspicion that respondent had a strong hand in the termination of his services.

"Complainant claims that respondent abused his discretion and recommendatory power when new non-eligibles were reappointed while his name was left out in spite of 24 years of government service. This claim is devoid of any factual basis. Respondent could not possibly abuse a discretion or recommendatory power which he did never possess. Those required to submit recommendations under Memorandum Circular No. 7 were JUDGES, CLERKS OF COURT OF THE FIRST INSTANCE AND CIRCUIT CRIMINAL COURTS, AND CHIEFS OF DIVISION OF THE DEPARTMENT OF JUSTICE. Respondent is a mere Chief of Section, and not a division chief of the Judiciary Division. He is not among those who could recommend. Hence, he cannot possibly be charged of having abused a discretion or recommendatory power which he never had.

"On the second count, complainant contends respondent guilty of usurpation by rating his performance which function should properly belong to the CFI Judges with whom he had been detailed. There is no legal support to this contention. Under Civil Service Rules, respondent, as supervisor and chief of section for stenographers-at-large, is empowered to rate the performance of complainant who is his subordinate. Complainant does not cease to be under respondent by the mere fact of his detail in the field. He is precisely assigned temporarily to a CFI Judge by order of the Secretary of Justice thru the Chief of the Judiciary Division or his representative, the respondent. His performance in the field is channelled to the Chief of the Judiciary Division of the Department of Justice so much so that the rating of the Department of Justice is the reflection of his performance with the CFI Judge with whom he works. Incidentally, the Judge and personnel of the Court with whom complainant had been assigned did not speak well of him as to performance.

"The charge of conduct unbecoming of a lawyer and chief of section — by follow-up of vouchers of stenographers-at-large and demanding monetary consideration in form of loans and liquor — is totally unfounded. A letter of complainant addressed to and presented by respondent as Annex 'HH' belie(ve)s his accusation. In said letter, complainant pleaded respondent to follow-up his voucher, otherwise it would 'just rot in the office.'

"Generally, the detail of a stenographer--at-large in the field necessitates for his immediate departure as he is to take the place of the regular CFI stenographer who is absent. To hasten such departure and to be able to comply at once with the order of the Chief of Division, respondent Chief of Section is compelled in most instances to follow-up vouchers as this would be the financial logistics of the stenographers in their new assignment. What is worst with this unpleasant job of follow-up, respondent herein is charged of demanding monetary consideration in form of loan and liquor. A witness requested to appear in behalf of complainant disclaims any knowledge of the charges and stated that he had nothing to say for or against any of the parties. The other witness similarly requested appeared but showed reluctance to testify for or against the parties. Incidentally, in relation to this charge, respondent as well known among his co-employees, does not drink.

"In connection with the charge of violation of Civil Service Rules, incompetency and neglect of duty, inasmuch as they are only a summation of the charges discussed above, it follows that they cannot stand." (pp. 200 to 203, rec.).

WHEREFORE, this administrative case against respondent Atty. Manuel Nov. Duque is hereby dismissed.

Makalintal, C.J., Ruiz Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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