AUGUSTO 0. DE LA PAZ, PETITIONER AND APPELLANT, VS. CDR RAMON A. ALCARAZ, AS COMMANDER, SERVICE SQUADRON, PHILIPPINE NAVY, ETC., ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-8551. May 18, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appellant Augusto C. de la Paz is a reserve officer in the Philippine Navy, Armed Forces of the Philippines. Prior to February, 1954, he was in the active service of the Philippine, Navy, being the Naval Commanding Officer of Philippine Chaser P-49, RPS Cavite. On November 16, 1953, however, his superior officer, Commander Ramon A. Alcaraz, recommended his immediate reversion to inactive status on the ground of inefficiency; and acting on such recommendation, the Chief of Staff of the Armed Forces, on February 5, 1954, issued an, order reverting appellant to inactive status effective March 4, 1954.

Upon his reversion to inactive status, appellant obtained and was given full arid complete ship's clearances of all government properties, funds, and money account abilities covering his former command. But shortly thereafter, charges were lodged against him for misappropriation of government property allegedly committed while he was still in active military service. Wherefore, the Headquarters of the Philippine Navy summoned appellant to appear for an investigation into the charges with a view to bringing him before a General Navy, Court Martial. Appellant refused to submit to the investigation, claiming that having been reverted to civilian status, he was no longer within the jurisdiction of the Philippine Navy; then on August 7, 1954, he filed a petition before the Court of First Instance of Manila to enjoin respondents Commander Ramon A. Alcaraz and Major Serafin C. Dizon of the Philippine Navy, from subjecting him into the aforesaid investigation. The lower court found his petition without merit and dismissed the same; hence, his present appeal.

There is no question that although appellant had been reverted to inactive (civilian) status in the reserve force of the Philippine Army, he is still amenable to investigation and court-martial under, the Articles of War by the Philippine Navy for alleged acts of misappropriation of government funds committed while he was still in the active military service. As correctly held by the Court below, appellant's case falls within the provisions of Article 95 of the Articles a£ War (Commonwealth Act No. 408, as amended), which provides as follows:

> "Art. 95. Frauds against the Government affecting matter and equipments.—Any person subject to military law who, having charge, possession, custody, or control of any money or other property. of the Commonwealth of the Philippines, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt or
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> Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of an ordinance, arms, equipments, ammunition, clothing,

> subsistence stores, money, or other property of the Commonwealth of the Philippines furnished or intended for the military service thereof; or
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> * * * And if any person, being guilty of any of the offenses aforesaid while in the military service of the Philippines, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. * * *" (Appellees brief, pp. 5-6).

The lower Court did not, therefore, err in refusing to enjoin appellant's investigation by the naval authorities on charges that he had misappropriated public property while he was still in the service of the Philippine Navy, specially since petitioner admits that he is still a member of the Reserve Force.

But appellant insists that the Court below should have admitted his amended petition, which included a prayer for a writ of certiorari to review the order reverting him to inactive (civilian) status, and should have annulled said order because it constituted his summary dismissal from service without due process of law.

The argument is untenable for several reasons. In the first place, appellant was ordered reverted from active status to civilian or inactive status in the Reserve Force, not by the respondents Commander Ramon A. Alcaraz and Major Serafin C. Dizon of the Philippine Navy, but by the chief of Staff of the Armed Forces, upon order of the Secretary of National Defense based on a directive of the President of the Philippines. The Court below could not, therefore, in any case have nullified and set aside said order of reversion because the real party in interest had not been impleaded and made a party to the petition.

In the second place, appellant's reversion to inactive status in the reserve force is not, as he claims, a dismissal from the service. Although he had ceased to be in the active service of the Philippine Navy, appellant nevertheless remain an officer of the Army reserve force. Officers in the naval reserve may be transferred from active to inactive service as the army authorities may see fit (cf. 6 C. J. S. 17, citing Denby vs. Berry, 44 S. Ct. 74, 263 U. S. 29, 68 L. Ed. 148), and appellant can not rightly complain that he had been dismissed or discharged without due process, because mere transfer from active to inactive service in the army is neither dismissal nor discharge.

Furthermore, the matter of transfer from one status to another, or even the dismissal or discharge of officers and servicemen in the armed forces, is a matter entirely within the realm of the military. If petitioner felt aggrieved by the recommendation made by his superior officer of his reversion to inactive status without proper hearing and investigation of his alleged inefficiency, he should have sought redress by appeal to the President of the Philippines, who is the Commander-in-chief of the Armed Forces, through the proper military channels. As provided by Article 120 of the Articles of War, as amended by Republic Act No. 242:

> "Art. 120. Complaints of Wrongs.—Any member of the Armed Forces of the Philippines or Philippine Constabulary who believes himself wrong by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the area or zone commander or the next superior officer in the area or zone where the officer against whom the complaint is made is stationed. The area or zone commander or next superior officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to Headquarters, Armed Forces of the Philippines, a true statement of said complaint, with the proceedings had thereon."

Not having exhausted all administrative remedies, appellant can not seek relief in the courts of justice Miguel, et al. vs. Vda. de Reyes, 93 Phil., 542).

Wherefore, the resolution appealed from is affirmed, with costs against appellant Augusto C. de la Paz. So

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ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

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