

RUFINO C. BARTULATA, PETITIONER AND APPELLANT, VS. HON. MACARIO PERALTA, JR., ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-23155. September 09, 1974*

Ponente: ZALDIVAR, J.

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Appeal by petitioner Rufino G. Bartulata from the decision of the Court of First Instance of Rizal, Quezon City Branch, in its Civil Case No. Q-6443, dismissing his petition for mandamus to compel herein respondents Hon. Macario Peralta, Jr., in his capacity as Secretary of National Defense, and Lt. Gen. Pelagio Cruz, in his capacity as Chief of Staff, Armed Forces of the Philippines, to retire him with the rank of second lieutenant in the Philippine Army, the rank that he held when he was honorably discharged from the military service on January 31, 1947, and to pay him his pension differentials. The judgment of the lower court dismissing the petition is predicated on the finding that petitioner Bartulata is neither a recognized guerrilla nor a reserve officer.

The evidence and the record show that Rufino G. Bartulata began his service in the armed forces of the Philippines on January 15, 1924 upon his enlistment in the Philippine Constabulary. When the Pacific war broke out in 1941, he held the rank of sergeant in the Philippine Constabulary. When the order for surrender to the enemy was issued by the high command of the USAFFE, he refused to surrender and, instead, he joined the 108th Infantry, 10th Military District, a guerrilla organization in Mindanao. This guerrilla outfit was recognized on February 13, 1943 by the Headquarters, Philippine Ryukyus Command of the United States Armed Forces, which recognition was later revised to take effect as of September 16, 1942.[1]

While in the service of the aforementioned guerrilla outfit, petitioner Bartulata was promoted to the rank of third lieutenant effective November 1, 1942, and to second lieutenant effective April 1, 1943. His name, rank (2nd Lt.) and serial number (O-24220 PA) appeared in the Roster of Reserve Officers in the Headquarters, Mindanao Zone Military Police Command, Philippine Army, per General Order No. 358, dated June 28, 1946, Army Headquarters APO 75.[2]

After the war, petitioner still carrying the rank of 2nd Lieutenant, continued to render service under the postwar Philippine Army. He was assigned as Junior Officer of the 62nd Military Police Command (PA).[3] As second lieutenant he was paid his salaries and allowances and was allowed to wear his uniform as such officer.[4] His services ended when he was honorably discharged, effective January 31, 1947, as a second lieutenant.[5]

On September 1, 1956, petitioner Bartulata filed an application for retirement pursuant to the provisions of Republic Act No. 340, as amended. Since he had rendered more than 25 years of continuous military service, his application was approved and officially announced in paragraph 13, Special Order No. 126 of General Headquarters, Armed Forces of the Philippines, dated December 19, 1957, retiring him with the rank of Staff Sergeant effective January 31, 1947, the date when he was separated from the service.

Contending that he should be retired as second lieutenant instead of staff sergeant, petitioner Bartulata, on several occasions, requested readjustment of his retirement rank, but said requests were denied by General Headquarters,

Armed Forces of the Philippines, and by the Secretary of National Defense, upon the ground that his name does not appear in the approved reconstructed roster of his guerrilla outfit, and as such it is "conclusive that his service was not recognized or that the recognition of his guerrilla status was revoked." [6] Thereupon, Bartulata sought relief from the lower court, but the latter, on the basis of the stipulation of facts submitted by the parties and the other documents admitted by them, dismissed his petition as stated in the beginning of this opinion. Hence, this appeal.

As can readily be seen, there is no dispute regarding the qualification of petitioner for retirement under Republic Act No. 340, as amended. The question is simply whether or not he should be retired with the rank of staff sergeant as contended by respondents, or with the rank of second lieutenant as claimed by petitioner. Obviously, in the face of the circumstances above narrated, the solution of this problem hinges on the question of whether petitioner is a recognized guerrilla or not.

Petitioner claims that he is a recognized guerrilla officer by virtue of the recognition of the 108th Infantry, 10th Military District, the guerrilla outfit for which he was an officer. [7] Further, he claims to be a reserve officer with the rank of second lieutenant [8] under the terms of Executive Order No. 21 of the late President Sergio Osmena, issued on October 28, 1944, which reads as follows:

"EXECUTIVE ORDER NO. 21

"DECLARATION TO BE ON ACTIVE SERVICE IN THE PHILIPPINE ARMY ALL PERSONS NOW ACTIVELY SERVING IN RECOGNIZED MILITARY FORCES IN THE PHILIPPINES

"WHEREAS, these military forces have contributed in a large measure to all Allied military effort and to the liberation of the Filipino people from the yoke of the Japanese invaders;

"WHEREAS, it is the desire of the Government of the Philippines to recognize this allegiance;

"NOW, THEREFORE, I, SERGIO OSMEÑA, President of the Philippines by virtue of the authority vested in me by the Emergency Power Law, Section 22 (a), and Section 27 of the Commonwealth Act Numbered One notwithstanding, do hereby ordain and promulgate the following:

"1. All persons of any nationality or citizenship, who are actively serving in recognized military forces in the Philippines, are hereby considered to be on active service in the Philippine Army.

"2. The temporary grades of enlisted men, enlisted or promoted in the field of commanders of recognized military forces or by their delegated authority, are hereby confirmed.

"3. The temporary ranks of all officers, appointed or promoted in the field prior to this date by Commanders of recognized military forces are hereby confirmed.

"4. The date of entry into active service in the Philippine Army will be that of joining a recognized military force.

"5. The effective date of rank for commissioned officers and enlisted men will be the date on which they were appointed or promoted to such ranks by the Commander of recognized military forces.

"6. A recognized military force, as used herein, is defined as a force under a Commander who has been appointed, designated or recognized by the Commander-in-Chief, Southwest Pacific Area." (*Italics supplied.*)

The respondents, on the other hand, without disputing the applicability of the above-quoted Presidential executive order to guerrilla services like those of petitioner, contend that said executive order is not by itself self-executory; that the benefits granted thereunder may only be availed of by persons whose claims were duly verified and whose names are included in the roster of recognized guerrillas; and, since the name of petitioner is not carried in

the revised roster[9] of members of the guerrilla unit to which he belonged, then he is an unrecognized guerrilla because "officially he did not serve under said military force and that he was not even a member of said force." [10] Stated differently, although respondents admit the fact that petitioner was a member of a legitimate guerrilla organization (the 108th Infantry, 10th Military District) as shown by its initial roster,[11] they would not credit him for his services under said guerrilla unit and would withhold from him the benefits to which he is entitled by reason thereof, simply because his name, for reason or reasons not disclosed in the record, is not included in the revised roster of recognized guerrillas.

The stand of the respondents had already been asserted before this Court in the case of *Ramiro Aragon vs. Hon. Macario Peralta, Jr., et al.* [12] In rejecting said stand, this Court, speaking of the probative weight of the revised roster, said that the entries in the Army's roster of recognized guerrillas, assuming them to be the official acts or duly authorized public officers, are merely *prima facie* evidence of the facts therein stated. In other words, this roster or list is not to be considered the sole and exclusive evidence of the government's recognition of guerrilla services, as there is nothing in the law making inadmissible other proof of such recognition, where they are material and relevant. Further, this Court said that the recognized roster (drawn up primarily for backpay purposes) must yield to the initial roster (which in that case showed that Aragon was already serving six months before the Leyte landing of the liberation troops).

In the case now before this Court, respondents' theory, as in the Aragon case, must be rejected. In consonance with the ruling in the Aragon case, We hold that the Philippine Government had recognized not only herein petitioner's wartime and post-liberation services in the Army, but also his rank as 2nd lieutenant. The recognition was made when his name was included in the initial roster of the 108th Infantry, 10th Military District; when he was given backpay for services rendered as second lieutenant from April 1, 1943 to May 15, 1945; [13] when he was paid his salaries and allowances as second lieutenant; when he was allowed to wear the uniform as such officer; and when he was honorably discharged with the rank of second lieutenant on January 31, 1947. Even the approval of petitioner's retirement application indicated a clear showing of the recognition of petitioner's guerrilla and post liberation services. It will be noted that in Special Orders No. 126, [14] which officially announced the approval of his retirement, it is stated that he had completed 23 years and 15 days of service. And it will also be noted that in the stipulation of facts, respondents admit that petitioner had rendered more than 23 years of continuous military service. These 23 years and 15 days of service cover the period from January 15, 1924 (date of original enlistment) up to January 30, 1947 inclusive, as the records do not show that he had rendered further military service. If the petitioner, as contended by the respondents, had not served under the 108[th] Infantry, 10th Military District, nor was he a member thereof; [15] or that his guerrilla status was revoked, [16] his wartime services, dating as early as October 1, 1942 and ending May 15, 1945, could not have been included in the computation of his military service. The inclusion of the period from October 1, 1942 to May 15, 1945 in petitioner's military service record simply means his guerrilla services with the 108[th] Infantry, 10th Military District, the only guerrilla outfit he was known and shown to have served in, was duly recognized by the authorities of the Philippine Army. The fact that his name may not be included in the roster of recognized guerrillas of the Philippines that is kept by the authorities of the United States Government should not matter. What should matter are the records of the Philippine Government regarding his military activities, including his services in the guerrilla during the last World War II.

We hold that on the basis of the evidence, amply and adequately showing the Philippine government's due recognition of petitioner's guerrilla services, it is but fair and legal, that he be accorded all the rights, the benefits and the privileges that are due him as a recognized guerrilla to be retired with the rank of second lieutenant, which was his rank when the afore-quoted Executive Order No. 121, confirming it, was promulgated, and which was the rank that he was holding when honorably discharged from the Army.

Respondents, however, would contend that the present action should be dismissed because petitioner "has not exhausted all administrative remedies" available to him before coming to court. Respondents would want petitioner to appeal his case to the Office of the President before availing of court processes. In a long line of decisions, this Court has held that the doctrine requiring the previous exhaustion of administrative remedies is not applicable where the respondent is a department secretary whose acts, as an alter ego of the President, bear the implied or assumed approval of the latter, unless actually disapproved by him.¹⁷ The present proceedings having been brought against the Secretary of National Defense, respondents' contention is clearly untenable.

WHEREFORE, the judgment appealed from is reversed, and the writ of mandamus prayed for is granted. The respondents, or whoever are their present successors in office, are ordered to make such adjustments as would retire petitioner Rufino G. Bartulata with the rank of second lieutenant in the Armed Forces of the Philippines, and to pay him the differentials between the pension and other benefits a second lieutenant in the Armed Forces of the Philippines would be entitled to as of the time of his retirement, and the pension and benefits that were granted to him as a staff sergeant at the time he was retired, to be counted as of January 31, 1947 when he was retired. No pronouncement as to costs.

IT IS SO ORDERED.

Fernando, Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Stipulation of Facts, pars. 2 (d) & (e).

[2] Ibid., par. 2 (c) & (d).

[3] Annex "R" of Amended Complaint.

[4] Stipulation of Facts, par. 2 (f).

[5] Ibid.

[6] Letter-reply of the Office of the Secretary of National Defense to Mr. Bartulata, dated December 28, 1961; Annex "K" of Amended Complaint.

[7] Brief for Petitioner, p. 5; Reply-Brief of Petitioner, pp. 1-2.

[8] Brief of Petitioner, pp. 4-5.

[9] Petitioner's name appeared in the initial roster of the 108th Infantry Reg., 10th Military Dist.; Respondents' Brief, p. 4.

[10] Respondents' Brief, p. 6.

[11] Ibid., p. 7.

[12] G.R. No. L-21390, November 18, 1967; 21 SCRA 937.

[13] Petitioner was given backpay also for services as Sgt. & 3rd Lt., from 1941--1943; See Annex "O", Amended Complaint.

[14] Annex "C", Amended Complaint.

[15] See footnote 10.

[16] See footnote 6.

[17] Gonzales vs. Hechanova, L-21897, Oct. 22, 1963, and Demaisip vs. Court of Appeals, L-13000, Sept. 25, 1959, citing Villena vs. Sec. of Interior, 67 Phil. 451.

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