

ROSALINDA DE PERIO SANTOS PETITIONER, VS. EXECUTIVE SECRETARY CATALINO MACARAIG AND SECRETARY RAUL MANGLAPUS, RESPONDENTS.

G.R. No. 94070. April 10, 1992

Ponente: GRINO-AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-94070/>

GRINO-AQUINO, J.:

This is a petition for certiorari* seeking to set aside Administrative Order No. 122 of the Office of the President, finding the petitioner guilty of dishonesty and meting upon her, after appreciating certain mitigating circumstances in her favor, the penalty of reprimand with a warning that a repetition of the same or similar offense will be dealt with more severely. The President affirmed Assignment Order No. 58/88 dated April 27, 1988 of the Secretary of Foreign Affairs recalling the petitioner to the home office from her post as permanent representative to the Philippine Mission to the United Nations and other International Organizations (MISUNPHIL, for short) in Geneva, Switzerland (pp. 84-99, Rollo).

Petitioner Rosalinda de Perio-Santos, a career service officer with the rank of Chief of Mission II and Ambassador Extraordinary and Plenipotentiary, was appointed on July 24, 1986, by her Excellency, President Corazon C. Aquino, to the position of Permanent Representative of the Philippines to the Philippine Mission to the United Nations and other International Organizations with station in Geneva, Switzerland (Annexes A and B, pp. 33-34, Rollo).

On April 6, 1987, petitioner sought a leave of absence from the Department of Foreign Affairs (DFA) to spend the Easter Holidays in New York, U.S.A., with her mother, brothers and sisters at no expense to the Government (p. 84, Rollo). She bought two (2) non-transferable, non-refundable discounted tickets costing SFr.1,597 for herself and her adopted daughter Pia.

Before they could leave Geneva, petitioner received instructions from the home office directing her to proceed to Havana as a member of the Philippine delegation to the UNCTAD G-77 Preparatory Conference from April 20-26, 1987 (Ibid.). For the official trip outside her station, she was entitled, under the “Foreign Service Personnel Manual on Travel, Per Diems, and Daily Allowance Abroad,” to SFr.2,996 for the cost of economy roundtrip fare from Geneva-New York-Geneva portion of her Geneva-New York-Havana-New York-Geneva trip. (Annexes C and D, pp. 35-37, Rollo.) Instead of buying an economy roundtrip ticket, she used for the Geneva-New York-Geneva portion of her trip the two (2) discounted tickets costing only SFr.1,597 for herself and her daughter Pia. They left Geneva for New York en route to Havana on April 15, 1987. On the same day, the DFA approved her application for a leave of absence with pay from April 27 to May 1, 1987 (Ibid.).

After the Havana Conference, she and her daughter spent her vacation leave in New York before returning to Geneva (Ibid.).

Instead of claiming reimbursement for SFr.2,996, she requested, and received, reimbursement of only SFr.1,597 which she spent for the Geneva to New York, and New York to Geneva portion of her trip, thereby effecting

savings of SFr.1,399 for the Government (p. 35, Rollo).

On September 16, 1987, the DFA sent her a cable (GE-202/87) requesting clarification on “why Mission paid for plane ticket of infant Pia de Perio-Santos (petitioner’s daughter) Geneva-New York-Geneva per CV 216/87 when she was not authorized to accompany her adopting mother at government expense.” (Ibid.)

Petitioner replied that the airfare tickets were for her only and did not include her daughter whose trip was paid from her personal funds (p. 86, Rollo).

On September 21, 1987, the DFA required her to refund the amount representing her daughter’s round-trip ticket since DFA received a copy of the “facture” from the travel agency showing that the amount of SFr.1,597 was in payment of (a) 1 billet adulte-Geneva/New York/Geneva SFr.950, and (b) 1 billet enfant-Geneva/New York/Geneva SFr.673; and that the sum of SFr.673 represented the cost of her daughter’s portion of the ticket (p. 86, Ibid.).

Instead of refunding only the sum of Sfr.673 to the Government, petitioner returned the full amount of SFr.1,597 (Annex E, pp. 38 and 86, Rollo). She thereafter claimed payment for one round-trip economy plane ticket (Geneva-New York-Geneva) in the amount of SFr.2,996 to which she was entitled under the Foreign Service Personnel Manual on Travel, Per Diems and Daily Allowance Abroad.

On October 5, 1987, Deputy Armando Maglaque, and some MISUNPHIL employees filed administrative charges against her for “incompetence; inefficient; corrupt and dishonest activities; rude and uncouth manners; abusive and high-handed behavior; irregular and highly illegal transactions involving funds of the mission.” The charges were referred to Ambassador Luis Ascalon for initial investigation (Comment, p. 182, Rollo). Petitioner explained the circumstances of the purchase of the discounted tickets. On November 26, 1987, Ambassador Ascalon submitted his findings which, with the complaints, were referred to a 5-man Ad Hoc Investigation Committee for preliminary investigation (p. 86, Rollo). The Committee found a prima facie case against petitioner for (1) dishonesty; (2) violation of existing rules and regulations; (3) incompetence and inefficiency; and (4) conduct prejudicial to the best interest of the service.

Ambassador Eduardo Rosal also charged her with estafa before the Tanodbayan. The case was dismissed for insufficiency of evidence (p. 87, Rollo).

On November 23, 1987, DFA recalled her to Manila for consultation. She came home on November 29, 1987 (p. 86, Rollo).

On March 17, 1988, the Board of Foreign Service Administration (BFSA) constituted a new 5-man investigating committee to evaluate the evidence presented by the parties.

Three (3) members of the committee, (Atty. Pineda and Ambassadors Pastores and Garrido) found her liable for misconduct only, and recommended dismissal of the other charges. They also recommended that she be reprimanded and recalled to Manila. Ambassador Arague dissented with respect to the penalty, which he thought should include a six-month suspension. Atty. De Vera found all the charges against Ambassador de Perio-Santos “to be unmeritorious.” (pp. 87-88, Rollo.)

The BFSA met en banc on April 22, 1988 to consider the memorandum-report of the new Investigating Committee. On April 26, 1988, the BFSA, through its Chairman, Undersecretary Jose D. Ingles, submitted a memorandum to the Secretary of Foreign Affairs (SFA), adopting the findings and recommendations of the investigating committee.

In a letter-decision dated April 27, 1988 (p. 50, Rollo), the Secretary of Foreign Affairs affirmed the BFSA’s

recommendation declaring Ambassador de Perio-Santos guilty of the lesser offense of misconduct, instead of dishonesty, meted to her the penalty of reprimand, and recalled her to the home office.

Petitioner filed a motion for reconsideration on the ground that she was denied due process when she was declared guilty of misconduct although it was not one of the charges against her. Conceding that point, the Secretary ordered the records remanded to the BFSa for hearing to give petitioner an opportunity to defend herself against the charge of misconduct which was deemed to have been filed by the Secretary himself since an administrative complaint can be initiated directly by the Department Head (Sec. 37[b], P.D. 807) (p. 91, Rollo).

Insisting that no formal charge of misconduct had been filed against her, and that hence, there was nothing to investigate (p. 91, Rollo), petitioner refused to attend the hearing. Consequently, in his resolution of August 18, 1988, Secretary Manglapus declared his decision of April 27, 1988, “final and executory, effective immediately.” (Annex Q, p. 72, Rollo.)

Petitioner appealed that resolution to the Office of the President, where it was docketed as O.P. Case No. 3903 (p. 91, Rollo).

On January 24, 1989, President Aquino nominated Narcisa L. Escaler as Ambassador and Permanent Representative to the United Nations and other International Organizations in Geneva in lieu of the petitioner. The nomination was confirmed by the Commission on Appointments on March 15, 1989 (pp. 191, 224, Rollo).

On March 30, 1989, President Aquino issued Administrative Order No. 122 (Annex S, pp. 84-99, Rollo) finding petitioner guilty of dishonesty (instead of misconduct) and imposed upon her the penalty of reprimand, with recall to the home office.

The finding of dishonesty was based on:

1. The certification which was made in support of her request for reimbursement of the discounted round-trip ticket stating that “she purchased the said round trip ticket, which consists of two (2) one-way tickets (instead of two roundtrip tickets), one from Geneva to New York and the other from New York to Geneva, as shown in the attached receipt (‘quittance’) of payment to the travel agency. Hence, she was reimbursed, per Check No. UBS-4455589 dated May 7, 1987.” (p. 95, Rollo.)
2. The allegation in her telex ZGE-373-87 (in answer to DFA cable of September 16, 1987) that the Geneva Mission “never paid for the trip of Ambassador de Perio--Santos’ daughter to Mexico which was paid from ambassador’s personal fund” (although the DFA in fact refunded Pia’s portion of the discounted round-trip tickets from Geneva-New York-Geneva). (p. 95, Rollo.)

Petitioner filed a motion for reconsideration and a supplemental memorandum and letter addressed to the President (Annexes X, Y and Z, pp. 146-265, Rollo).

In a Resolution dated January 9, 1990 (Annex AA, pp. 166-167, Rollo), respondent Executive Secretary Catalino Macaraig, Jr., by authority of the President, denied the motion for reconsideration.

In due time she filed this petition for certiorari alleging that the President’s “reprimand and recall orders are not supported by substantial evidence and were issued with gross abuse of discretion and serious error of law” (p. 15, Rollo). The petition has merit.

The general rule is that the factual findings of administrative agencies are binding on this Court and controlling on the reviewing authorities if supported by substantial evidence (*Planters Products, Inc. vs. NLRC*, 169 SCRA 328; *Doruelo vs. Ministry of National Defense*, 169 SCRA 448). Courts of justice will not interfere with purely administrative matters rendered by administrative bodies within the scope of their power and authority (*Gegare*

vs. CA, 177 SCRA 471).

A careful review of the records fails to yield any evidence of dishonesty on the part of the petitioner, or an intent to cheat and defraud the government. Her failure to disclose the fact that her discounted tickets included the fare for her child, was harmless and inconsequential as the two (2) discounted Geneva-New York-Geneva tickets for herself and her daughter were in fact inseparable, intransferable, non-cancellable and non-refundable, in effect one whole fare only, for purposes of the discount. The mother and daughter tickets were, in the words of the petitioner, "married to each other" (p. 8, Rollo). One without the other would not have been entitled to the discount. And if she left her daughter behind, it would have made no difference in the fare because the ticket was not refundable.

Using the discounted tickets was beneficial to the Government for they cost 50% less than an economy round trip ticket that the petitioner was entitled to purchase for the same trip if she travelled alone. She obviously saved money (SFr.1,399) for the government by using her discounted tickets even if her daughter's fare was included therein.

Since petitioner was moved by the best of motives in using the discounted tickets which she had purchased before she received the order to attend the UNCTAD conference in Havana, her action should be commended instead of condemned (*Hernandez vs. Chairman, Commission on Audit*, 179 SCRA 39).

Petitioner's problems probably would not have arisen if before embarking on the Havana trip she had asked DFA for permission to use the two (2) discounted round-trip tickets for the Geneva-New York-Geneva portion of her trip. Her inadvertence was construed by the Government as lack of candor and honesty on her part. The Court believes however that she did not intend to falsify or conceal the truth when she filed a claim for the refund of the total cost of her discounted tickets (SFr.1,597). Her claim for the whole discounted fare was based on the fact that her daughter's ticket was inseparable from her own fare. They had to go together to be entitled to the special discount. Their fare was indivisible, hence, the Government's offer to shoulder only the petitioner's portion of the discounted fare (SFr.950), excluding her daughter's portion (SFr.647) was neither fair nor reasonable.

In view of the DFA's objection to the refund of the entire discounted fare to her, the petitioner returned the whole amount of SFr.1,597 which she had earlier received from the DFA, and asked, in return, for the cost of the regular economy fare (SFr.2,966) which she was legally entitled to purchase for her trip. Thereupon, the Secretary reprimanded her for misconduct and recalled her to the home office. On appeal to the Office of the President, the latter ironically found her guilty of the more serious offense of dishonesty, reprimanded her therefor, and recalled her to Manila. We hold that under the circumstances above narrated, the petitioner's actuation constituted neither dishonesty nor misconduct, hence, the reprimand that was meted to her was unmerited.

Nevertheless, the Court is not disposed to disturb the order of the DFA and the Office of the President recalling the petitioner to the home office. There is no merit in the petitioner's contention that her tour of duty in Geneva was for four (4) years, as provided in Section 260 of P.D. No. 1578 ("Instituting the Administrative Code of 1978"), thus:

"(b) Tour of duty - (1) The tour of duty of a foreign service officer at any post shall be four (4) years commencing on the date of his arrival at the post, after which he shall be transferred to another post." (p. 15, Rollo.)

As pointed out by the Solicitor General, P.D. 1578 was one of those unpublished "secret" decrees which this Court in *Tañada, et al. vs. Tuvera, et al.*, 146 SCRA 446, declared to be inoperative or without legal force and effect. P.D. 1578 was expressly repealed on May 5, 1987, by Executive Order No. 168, entitled "REPEALING PRESIDENTIAL DECREE NO. 1578 ENTITLED 'INSTITUTING THE ADMINISTRATIVE CODE OF

1978.’”

The applicable law therefore is Section 6, Part B, Title III, of R.A. 708 “The Foreign Service Act of the Philippines,” enacted on June 5, 1952, providing that:

“Section 6. Assignments and Transfers - A Foreign Service Officer may be assigned by the Secretary to serve in the Department or in a diplomatic or consular post abroad: Provided, however, that the minimum period during which he may serve in any foreign post shall be one year and the maximum period four years, except in case of emergency or extraordinary circumstances, in which event he may be transferred from one foreign post to another or to the Department by the order of the Secretary without regard to his length of service in his former post.” (Underscoring supplied; p. 202, Rollo.)

Since the petitioner had been appointed to her post on July 24, 1986, she had already served the minimum one-year period of service when her recall on April 22, 1988 came. Her reassignment to Manila did not have to be explained and justified by the Secretary of Foreign Affairs nor the President of the Philippines (p. 51, Rollo).

The presidential prerogative to determine the assignments of the country’s diplomatic personnel is unquestionable. As discussed in the Solicitor General’s “Comment” on the petition for certiorari and prohibition -

“The conduct of the country’s foreign affairs is vested on the President through respondent Manglapus as alter ego of the President. As head of the Department of Foreign Affairs, he is mandated by law to maintain the country’s representation with foreign governments, the United Nations (UN), Association of Southeast Asian Nations (ASEAN), and other international and regional organizations. The foreign service officers and employees abroad represent the interest of the Philippines under the direction, supervision and control of the Chief Executive through respondent Secretary.

“xxx xxx xxx

“Considering that the conduct of foreign relations is primarily an executive prerogative, courts may not inquire into the wisdom or unwisdom in the exercise thereof. This is a principle laid down by the courts from time immemorial. The power to conduct foreign policy and its necessary element of assigning the country’s representatives abroad is best addressed to the wisdom of the executive branch and not to be unduly interfered with by the judiciary (U.S. v. Curtiss Wright Export Corp. 299 U.S. 304; Missouri v. Holland, 352 U.S. 416; U.S. v. Belmont, 301 U.S. 324; U.S. v. Pink, 315 U.S. 203; Jones v. U.S., 137 U.S. 202, 212; Oetegen v. Central Leather Co., 246 U.S. 297, 302; Foster v. Neilson, 2 Pet. 253, 307--09; Williams v. Suffolk Insurance Co., 13 Pet. 414, 419-20; Zemel v. Rusk, 381 U.S. 17; Harisiades vs. Shughnessy, 342 U.S. 580; Chicago Southern Air Lines, Inc. v. Loatherman S.S. Corp. 333 U.S. 103; Haig v. Agee, 453 U.S. 280). In States which follow the principle of separation of powers like the United States and the Philippines, the President holds actual executive power, including the power to conduct foreign relations (Public International Law, Coquia and Santiago, 1984, ed., p. 480). On this, textwriters are nign unanimous:

““The head of State, as the State’s Chief organ and representative in the totality of its international intercourse, with the consequence that all his legally relevant international acts are considered acts of his state. Such acts comprises chiefly the reception and sending of diplomatic agents and consuls, conclusion of treaties, and recognition of states. (Ibid, p. 481, citing Fenwick, International Law, 554 [1965], at p. 758.)

‘The conduct of the external affairs of the State is an executive prerogative. As head of the State, the President deals with foreign states and governments with respect to matters relating to entering into treaties, maintaining diplomatic relations, extending or withholding recognition. Chief Justice Marshall described the President of the United States as the ‘sole organ of the nation in its external relations and its sole representative with foreign nations.’ This apt description likewise applies to the President of the Philippines.’ (Anonuevo-Taro, The 1987 Constitution of the Philippines Explained, 1989 ed., p. 263-264.)

“Thus, the assignment to and recall from posts of ambassadors are prerogatives of the President, for her to exercise as the exigencies of the foreign service and the interests of the nation may from time to time dictate.” (pp. 204--207, Rollo.)

The petitioner’s designation as the permanent representative of the Philippine Government to the United Nations and other International Organizations in Geneva (Annex B, p. 34, Rollo), was one based on the special trust and confidence which the appointing power, the President, had in the appointee. Once that trust and confidence ceased to exist, the incumbent’s continuance in the position became untenable.

The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures (*Corpus vs. Cuaderno*, 13 SCRA 591). When that confidence is lost and the officer holding the position is separated from the service, such cessation is not removal from office but merely an expiration of his/her term (*Cadiente vs. Santos*, 142 SCRA 280).

An incumbent of a primarily confidential position holds office at the pleasure of the appointing power. When the pleasure turns into displeasure, the incumbent is not removed or dismissed from office - his term merely expires (*Ingles vs. Mutuc*, 26 SCRA 171).

“Primarily confidential” denotes “not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state” (*Pinero vs. Hechanova*, 18 SCRA 417; citing *De los Santos vs. Mallare*, 87 Phil. 289).

It is the fact of loss of confidence, not the reason for it, that is important and controlling. As holder of a primarily confidential position, petitioner’s foreign assignment was at the pleasure of the President. The recall order terminating her tour of duty in Geneva and returning her to the home office was merely a change of post or transfer of location of work.

Petitioner may not justifiably assail the appointment of Narcisa Escaler as her replacement in Geneva because the power to appoint is essentially discretionary. The appointing power, the President, has the right of choice which she may exercise freely, according to her best lights (*Pamantasan ng Lungsod ng Maynila vs. Court of Appeals*, 140 SCRA 22). This Court may not order the reinstatement of the petitioner to her former position in Geneva for that would be tantamount to a usurpation by this Court of the power of appointment, which is the exclusive prerogative of the Chief Executive (Article VII, Section 16, 1987 Constitution). It would violate the system of separation of powers which inheres in our democratic republican form of government.

The recall order issued by the Secretary of Foreign Affairs (Assignment Order No. 58/88) was a valid exercise of his authority as an alter ego of the President (*Villena vs. Secretary of Interior*, 67 Phil. 451). His acts, “performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the latter (*Cruz*, Political Law, p. 188, 1987 Edition). His order recalling the petitioner to the home office, having been affirmed by the President, any doubts as to its validity and propriety have thereby been laid to rest.

WHEREFORE, Administrative Order No. 122 of the Office of the President, insofar as it finds the petitioner guilty of dishonesty and reprimands her therefor, is hereby set aside. However, the order recalling her to the home office in Manila is affirmed. No costs.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.

Feliciano, J., I did not take part in the deliberations on this case..

Bellosillo, J., on leave.

* Abad and Associates, Counsel for Petitioner; Solicitor General Francisco I. Chavez, Assistant Solicitor General Ramon S. Desuasido and Solicitor Diosdado Saavedra, Counsels for Respondents.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.