

**HON. ARTURO C. CORONA, IN HIS CAPACITY AS ACTING SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, COMMODORE ROGELIO A. DAYAN, IN HIS CAPACITY, AS GENERAL MANAGE...**

*G.R. No. 97356. September 30, 1992*

Ponente: ROMERO, J.

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**ROMERO, J.:**

The instant petition for review on certiorari once again puts in issue the Department of Transportation and Communications (DOTC) Secretary's power to discipline employees of the Philippine Ports Authority (PPA) below the rank of Assistant General Manager in his capacity as alter ego of the President.

On May 15, 1987, President Corazon C. Aquino issued Administrative Order No. 25 creating a Presidential Committee on Public Ethics and Accountability, Sec. 1 of which declares as a policy that:

"The Department Secretary shall be directly responsible to the President in eradicating graft and corruption in his Department and the offices, agencies, government-owned or controlled corporations attached to or under his Department. The Department Secretary shall likewise be responsible to the President for the implementation of policies and programs to minimize or prevent graft and corruption and to promote the ethical standards of public service."

Pursuant to the mandate of A.O. No. 25, former DOTC Secretary Rainerio Reyes issued Office Order No. 88-318 creating the Administrative Action Board (AAB) "to act, decide and recommend to the Secretary appropriate measures on cases of administrative malfeasance, irregularities, grafts and acts of corruption in the Department."

On August 26, 1988, two PPA police officers; Rosmelito del Mundo and Geronimo Gorospe, filed in the AAB which was then presided by Chairman Onofre Villaluz, a complaint for dishonesty and conduct prejudicial to the best interest of the service against Leopoldo Bungubung, District Manager of the Port of Manila (AAB-031-88).

Bungubung filed his answer but later, he filed a motion to dismiss assailing the jurisdictional competence of the AAB on the ground that it was the General Manager of the PPA who had jurisdiction over the case. AAB denied the motion to dismiss in a written order which was issued by Secretary Reyes himself upon the recommendation of the AAB.

Subsequently, the PPA General Manager, Rogelio A. Dayan, filed another "formal charge" against Bungubung and one Mario Tan for dishonesty, inefficiency and incompetence in the performance of official duties, willful violation of reasonable office rules and regulations and/or conduct prejudicial to the best interest of the service. Docketed as Adm. Case No. 11-01-88, the case was indorsed to the AAB for appropriate action.

Questioning the jurisdiction of the AAB over the administrative cases against him, Bungubung filed a petition for certiorari with preliminary injunction and/or temporary restraining order with this Court (G.R. Nos. 86468-69). In the resolution of January 26, 1989, the Court required the respondents to file their comment on the petition and

issued a temporary restraining order enjoining the AAB from further acting on the administrative cases.

Meanwhile, on August 26, 1988 or on the same date that the first administrative case against Bungubung was filed, Secretary Reyes also filed a complaint with the AAB against Cristeto Dinopol, then Manager of the Port of Davao, for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and for violation of the Anti-Graft Law (Adm. Case No. AAB-006-88). PPA General Manager Dayan then issued a preventive suspension order against Dinopol. On September 19, 1988, said PPA General Manager also filed Adm. Case No. AAB-016-88 against Dinopol for dishonesty and conduct prejudicial to the best interest of the service.

At the hearings conducted by the AAB, Dinopol actively participated. He presented his evidence therein although he asserted that the PPA General Manager, not the AAB, had jurisdiction to initiate and conduct an administrative investigation under Sec. 8 of P.D. No. 857; the PPA Charter.

On October 27, 1988, the AAB rendered a decision in Adm. Case AAB-006-88 finding Dinopol guilty as charged and imposed on him the penalty of dismissal from the service with cause plus the accessory penalties of cancellation of eligibilities, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service. On November 23, 1988, AAB rendered its decision in Adm. Case AAB-016-88 also finding Dinopol guilty as charged. He was also meted the same penalty and its accessories as those imposed on him in Adm. Case AAB-006-88.

Copies of said decisions were mailed to Dinopol on December 6, 1988 but on that day, Dinopol filed with the Regional Trial Court of Pasig,[1] a petition for certiorari, prohibition and mandamus with prayer for preliminary injunction and/or temporary restraining order challenging the jurisdiction of the AAB over the administrative cases against him. The following day, said court issued an order directing the respondents therein (petitioners herein) "to desist from continuing the proceedings of the Administrative Action Board" and "to observe the status quo on the situation prior to (Dinopol's) suspension."

Respondents therein opposed the application for the issuance of a writ of preliminary injunction but on January 9, 1988, the court issued a resolution ordering the reinstatement of Dinopol to his former position of Port Manager of Davao and the payment to him of back salaries and other emoluments during his preventive suspension. The court also issued the writ of preliminary injunction prayed for by Dinopol.

A motion praying for the reconsideration of the said resolution and for the dissolution of the writ was filed by the respondent officials therein. On the other hand, Dinopol filed a motion to cite the PPA General Manager in contempt of court for failing to reinstate him and pay his back salaries. On January 26, 1989, the court denied the motion and directed the immediate implementation of the writ of preliminary injunction with a warning that in case of non-compliance therewith, respondent officials, therein shall be fined P1,000.00 and imprisoned for a period not exceeding one month.

This prompted the said respondents to file with this Court a petition for certiorari and prohibition with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. Acting on the petition which was captioned as "Hon. Rainerio O. Reyes, etc., et al. v. Engr. Cristeto E. Dinopol, et al." and docketed as G.R. No. 86646, on February 2, 1989, this Court issued the temporary restraining order prayed for and enjoined the lower court to cease and desist from implementing the resolution and writ of preliminary injunction both dated January 9, 1989 as well as the order of January 26, 1989.

G.R. Nos. 86488-69 (the Bungubung case) and G.R. No. 86646 (the Dinopol case) were later consolidated upon the submission of the petitioners in the latter case that the two petitions present the common issue of whether or not the Secretary of the DOTC and/or the AAB have jurisdiction to initiate and hear administrative cases against

PPA personnel whose rank are below that of an assistant general manager. After their consolidation, the two cases were referred to the Court of Appeals "for appropriate action."

The cases were docketed in the Court of Appeals as CA - G.R. No. SP-17195. Asserting that the periods of their preventive suspension had been unduly extended, Bungubung and Dinopol moved for their immediate reinstatement *pendente lite*. The Court of Appeals granted the motion in its resolutions of July 5 and 20, 1989. Hence, then DOTC Secretary Oscar Orbos, PPA General Manager Dayan and then AAB Chairman Villaluz interposed a petition for certiorari and prohibition with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction with this Court, submitting the issue of whether or not Dinopol and Bungubung were entitled to immediate reinstatement and payment of backwages pending adjudication on the merits of their cases by the Court of Appeals.

Acting on said petition which was docketed as G.R. No. 92358, on March 20, 1990, the Court issued a temporary restraining order enjoining the Court of Appeals from implementing its resolutions of July 5, 1989, July 20, 1989 and January 19, 1990. In due course, on November 21, 1990, the Court En Banc rendered a decision granting the petition.[2]

On December 17, 1990, the Court of Appeals promulgated its decision in CA-G.R. SP-17195.[3] In substance, the Court of Appeals ruled that the DOTC Secretary is without jurisdiction over the administrative cases against Bungubung and Dinopol for two reasons:

First. While the Civil Service Law vests upon the Department heads "jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction,"[4] said law cannot prevail over Sec. 8, Art. V of the PPA Charter (P.D. No. 857) which states that "(t)he General Manager (of the PPA) shall, subject to the approval of the Board, appoint and remove personnel below the rank of Assistant General Manager." The Court of Appeals explained:

"The above-quoted provision is in the nature of a special law while the present Civil Service Law granting jurisdiction to department heads, is in the nature of a general law. Special law prevails over general law. Being a special rule limited to the creation and functions of the Philippine Ports Authority, PD No. 857 prevails over the Civil Service Law, insofar as it involves jurisdiction to remove personnel below the rank of Assistant General Manager as specifically lodged in the PPA General Manager. The Civil Service Law authorizes a department head to commence and try administrative cases, but this general provision must yield to the specific provision found in the PPA Charter. The particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment (25 R.C.L., p. 1010, citing numerous cases)."

The appellate court also stressed that, not only is the PPA Charter a particular law - said Charter, having been enacted on December 23, 1975, is a more recent enactment than P.D. No. 807 which was issued on October 6, 1975.

Second. The power of review by the Office of the President has been repealed by P.D. 1409. The DOTC Secretary, acting as the alter ego of the President, can no longer exercise disciplinary jurisdiction over PPA personnel:

"x x x. Further, the power of review by the Office of the President under P.D. No. 807 was repealed by P.D. 1409 creating the Merit Systems Board in the Civil Service Commission (*Meran v. Edralin*, 154 SCRA 235). The theory that Secretary Reyes, acting as alter ego of the President, can no longer be sustained. The Administrative Action Board (AAB) of the DOTC must yield to the jurisdiction of the PPA General Manager."

Petitioner moved for the reconsideration of the decision of the Court of Appeals but the motion was denied.

Hence, the instant recourse through a petition for review on certiorari submitting that the Court of Appeals' decision is contrary to law and settled jurisprudence because: (a) it effectively deprived the DOTC Secretary, acting as the alter ego of the President, of the authority to control and/or supervise personnel actions involving employees of the PPA; (b) it nullified the proceedings of the AAB for want of jurisdiction, notwithstanding that respondent Dinopol submitted himself to the jurisdiction of the body, and (c) it granted writs of certiorari in favor of respondents who, on the other hand, failed to exhaust available and adequate remedies.[5]

The issue of the jurisdiction of the Secretary of the DOTC and/or the AAB over administrative cases involving personnel below the rank of Assistant General Manager of the PPA has been raised and settled in *Beja, Sr. v. Court of Appeals*.<sup>[6]</sup> The Court, after discussing the nature of an attached agency and its relationship with the Department to which it is attached, held:

"Hence, the inescapable conclusion is that with respect to the management of personnel, an attached agency is, to a certain extent, free from Departmental interference and control. This is more explicitly shown by P.D. No. 857 which provides:

"SEC. 8. Management and Staff.

a) The President shall, upon the recommendation of the Board, appoint the General Manager and the Assistant General Managers.

b) All other officials and employees of the Authority shall be selected and appointed on the basis of merit and fitness based on a comprehensive and progressive merit system to be established by the Authority immediately upon its organization and consistent with Civil Service rules and regulations. The recruitment transfer promotion, and dismissal of all personnel of the Authority, including temporary workers, shall be governed by such merit system.

c) The General Manager shall, subject to the approval of the Board, determine the staffing pattern and the number of personnel of the Authority, define their duties and responsibilities, and fix their salaries and emoluments. For professional and technical positions, the General Manager shall recommend salaries and emoluments that are comparable to those of similar positions in other government-owned corporations, the provisions of existing rules and regulations on wage and position classification notwithstanding.

d) The General Manager shall, subject to the approval by the Board, appoint and remove personnel below the rank of Assistant General Manager.

x x x x x x x x.'

(Underscoring supplied.)

Although the foregoing section does not expressly provide for a mechanism for an administrative investigation of personnel, by vesting the power to remove erring employees on the General Manager, with the approval of the PPA Board of Directors, the law impliedly grants said officials the power to investigate its personnel below the rank of Assistant (General) Manager who may be charged with an administrative offense. During such investigation, the PPA General Manager, as earlier stated, may subject the employee concerned to preventive suspension. The investigation should be conducted in accordance with the procedure set out in Sec. 38 of P.D. No. 807. Only after gathering sufficient facts may the PPA General Manager impose the proper penalty in accordance with law. It is the latter action which requires the approval of the PPA Board of Directors.

From an adverse decision of the PPA General Manager and the Board of Directors, the employee concerned may elevate the matter to the Department Head or Secretary. Otherwise, he may appeal directly to the Civil Service Commission. The permissive recourse to the Department Secretary is sanctioned by the Civil Service

Law (P.D. 807) under the following provisions:

'SEC. 37. Disciplinary Jurisdiction. -

(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. The decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. 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 and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head.

x x x x x x x x.'

(Underscoring supplied.)

It is, therefore, clear that the transmittal of the complaint by the PPA General Manager to the AAB was premature. The PPA General Manager should have first conducted an investigation, made the proper recommendation for the imposable penalty and sought its approval by the PPA Board of Directors. It was discretionary on the part of the herein petitioner to elevate the case to the then DOTC Secretary Reyes. Only then could the AAB take jurisdiction of the case."

Petitioners' contention, therefore, that the DOTC Secretary, acting as alter ego of the President, has jurisdiction over PPA personnel like the private respondents herein, is correct only to a certain extent. The DOTC Secretary's jurisdiction is circumscribed by the aforequoted provisions of the PPA Charter and the Civil Service Law which give him only appellate jurisdiction over disciplinary matters involving personnel below that of Assistant General Manager. He does not have the power to initiate proceedings against a subordinate official of the PPA; otherwise, we shall witness the absurd spectacle of the DOTC Secretary acting as complainant-initiator of an administrative case which later falls upon him to review.

What is prescribed by the law and the Beja case is that all complaints against a PPA official or employee below the rank of Assistant General Manager shall be filed before the PPA General Manager by the proper officials, such as the PPA police or any aggrieved party. The aggrieved party should not, however, be one and the same official upon whose lap the complaint he has filed may eventually fall on appeal. *Nemo potest esse simul actor judex*. No man can be at once a litigant and judge. Unless, of course, in an exceptional case, such official inhibits himself or expresses his willingness at the outset to waive his right to review the case on appeal.

Moreover, the fact that the PPA is a government agency "attached" to the DOTC extensively affects the extent of whatever control and supervision the said Department's Secretary may exercise. In Beja, the Court said:

"Attachment of an agency to a Department is one of the three administrative relationships mentioned in Book IV, Chapter 7 of the Administrative Code of 1987, the other two being supervision and control, and administrative supervision. 'Attachment' is defined in Sec. 38 thereof as follows:

'(3) Attachment. -- (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. The coordination shall be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;

x x x x x x x x.'

An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the 'lateral relationship' between the Department and the attached agency. The attachment is merely for 'policy and program coordination.' With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department's administrative supervision is free from Departmental interference with respect to appointments and other personnel actions "in accordance with the decentralization of personnel functions' under the Administrative Code of 1987. Moreover, the Administrative Code explicitly provides that Chapter 8 of Book VI on supervision and control shall not apply to chartered institutions attached to a Department." (Underscoring supplied.)

Thus, while PPA personnel are, as mandated by P.D. 868, "embraced in the Civil Service," the DOTC may not "act directly whenever a specific function is entrusted by law or regulation to a subordinate." [7]

It should be noted that in AAB-031-88, the complaint against Bungubung was erroneously filed directly with the AAB and it was no less than DOTC Secretary Reyes who, upon the recommendation of the AAB, denied Bungubung's motion to dismiss. The PPA General Manager also erroneously indorsed to the AAB Adm. Case No. 11-01-88, the complaint he himself filed against Bungubung, without having conducted an investigation and recommending the appropriate penalty as required by the facts found at said investigation.

With regard to Adm. Case No. AAB-006-88 against Dinopol, it was filed with the AAB by Secretary Reyes himself while the other case against Dinopol, Adm. Case No. 016-88, was filed by the PPA General Manager directly with the AAB without said PPA official's appropriate investigation and corresponding recommendation. Under these circumstances, the absurd situation mentioned above could ensue: the DOTC Secretary deciding on appeal his own complaint. On the other hand, in Adm. Case No. 016-88, the PPA General Manager abdicated his duty of conducting an investigation and submitting his recommendation, as demanded by his factual findings.

Filing a case directly with the AAB may be a shortcut to accomplish the laudable purpose of A. O. No. 25. However, whatever advantage may accrue therefrom in terms of time element, may be offset by the denial of the right to a fair and unbiased proceeding insofar as the personnel complained against is concerned. At the very least, he should be afforded the opportunity of confronting the charges against him in the forum where the law requires that they should be ventilated. If at all, this procedure may deprive the DOTC Secretary of control and supervision over personnel of the PPA below the rank of Assistant General Manager but only at the initial stage of an administrative proceeding. Should the defendant employee be dissatisfied with the ruling of the PPA General Manager, he can always elevate his case to the DOTC Secretary wherein the AAB will play a pivotal role or, at his option, go directly to the Civil Service Commission. Hence, the Court of Appeals is less than accurate in its sweeping statement that the DOTC Secretary, as alter ego of the President, has completely lost control and supervision over disciplinary matters involving the PPA employees concerned. In fact, in the administrative

hierarchy set up under both the PPA Charter and the Civil Service Law, the DOTC Secretary has the ultimate say before recourse to the courts may be made.

The Court, however, agrees with the Court of Appeals' ratiocination in arriving at the conclusion that Sec. 8, Art. V of the PPA Charter should prevail over Sec. 37(b) of the Civil Service Law, considering that where a later special law on a particular subject is repugnant to, or inconsistent with, a prior general law on the same subject, a partial repeal of the latter will be implied to the extent of the inconsistency, or an exception grafted upon the general law.[8] Since, in a sense, the two laws are in *pari materia*, both should be construed as to harmonize with each other. *Interpretare et concordare legibus est optimus interpretandi*. Every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[9]

For the assumption is that whenever the legislature enacts a law, it has in mind the previous statutes relating to the same subject matter, and in the absence of any express repeal or amendment, the new statute is deemed enacted in accordance with the legislative policy embodied in those prior statutes.[10]

Applying the foregoing rules on statutory construction, the DOTC Secretary has not entirely relinquished his power of control and supervision over an attached agency, such as the PPA. The PPA Charter merely defined and, to a certain extent, delimited such power which, under the Civil Service Law is of general application.

Petitioners' claim that the private respondents are estopped from challenging the jurisdiction of the AAB as they actively participated in the proceedings therein deserves scant consideration. While it is true that a party may be estopped from raising the question of jurisdiction on appeal,[11] such estoppel may be invoked successfully only if the party failed to raise such question in the early stages of the proceedings. The records show that Bungubung did not wait for the rendition of an AAB decision before he questioned its jurisdiction. After filing his answer, he filed a motion to dismiss on the issue of jurisdiction and even went to the extent of elevating the issue to this Court. For his part, Dinopol also filed a motion to dismiss the case against him and, upon its denial, filed a motion for reconsideration.[12] In the absence of proof of laches on the part of the private respondents, the doctrine enunciated in *Tijam v. Sibonghanoy*[13] upon which petitioners rely, is inapplicable. As correctly pointed out by counsel for respondent Dinopol, it has been clearly held in *People v. Eduarte*[14] that the ruling in the *Tijam* case is but an exception to the general rule that the lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal.

Neither is the doctrine of exhaustion of administrative remedies applicable in this case. Besides the fact that the AAB was patently without jurisdiction to act on the administrative complaints filed against respondents Dinopol and Bungubung, the instant petition raises only questions of law, one of the exceptions to the general rule on exhaustion of administrative remedies. Most enlightening is the following portion of the decision in *Quisumbing v. Gumban*:[15]

"x x x. The doctrine of exhaustion of administrative remedies is not a hard and fast rule. It has been repeatedly held that the principle requiring previous exhaustion of administrative remedies is not applicable where the question in dispute is purely legal one: where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; 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; where there are circumstances indicating the urgency of judicial intervention; or where the respondent has acted in disregard of due process. The rule does not apply where insistence on its observance would result in nullification of the claim being asserted; and when the rule does not provide a plain, speedy and adequate remedy." (Underscoring supplied.)

WHEREFORE, the petition for review on certiorari is hereby DENIED. The decisions of the Administrative Action Board in AAB--006-88 and AAB-016-88 against Cristeto E. Dinopol are hereby declared NULL AND VOID and, together with the cases against Leopoldo F. Bungubung, AAB-031-88 and Adm. Case No. 11-01-88,

they shall be REMANDED to the General Manager of the Philippine Ports Authority for immediate reinvestigation.

**SO ORDERED.**

Bidin, Davide, Jr., and Melo, JJ., concur.

Gutierrez, Jr., J., on official leave.

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[1] Presided by Judge Armie E. Elma.

[2] 191 SCRA 563. The Court found that there were still 38 days remaining of Bungbung's preventive suspension. On the other hand, the Court found that having been in suspension for 103 days in AAB-006-88, Dinopol's preventive suspension therein had run out. However, there were still 11 days remaining of Dinopol's preventive suspension in AAB-016-88.

[3] Rollo, p. 89. Penned by Justice Abelardo M. Dayrit, the decision was concurred in by Justices Nathanael P. de Pano, Jr. and Celso D. Magsino.

[4] Sec. 37(b), P.D. 807.

[5] Petition, p. 14; Rollo, p. 20.

[6] G.R. No. 971490, March 31, 1992.

[7] This is part of the definition of "supervision and control" under Sec. 38(1) of the Administrative Code of 1987.

[8] National Power Corporation v. Presiding Judge, RTC, Br. XXV, G.R. No. 72477, October 16, 1990, 190 SCRA 477; Lagman v. City of Manila, G.R. No. 233050, June 30, 1966, 17 SCRA 579.

[9] Agpalo, R.E., Statutory Construction, p. 192.

[10] Ibid.

[11] See: Bañaga v. Commission on the Settlement of Land Problems, G.R. No. 66386, January 30, 1990, 181 SCRA 599.

[12] Respondents' Comment, p. 14, Rollo, p. 126; Dinopol's Memorandum, p. 16, Rollo, p. 217.

[13] L-21450, April 15, 1968, 23 SCRA 29. Petitioners claim the applicability of the doctrine enunciated in this case that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.

[14] G.R. No. 88232, February 26, 1990, 182 of SCRA 750.

[15] G. R. No. 85156, February 5, 1991, 193 SCRA 520, pp. 523-524.

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