

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 226

SUSPENDING MR. WILFREDO R. CUYUGAN, FOREIGN SERVICE OFFICER II, FROM THE SERVICE FOR ONE (1) YEAR AND ORDERING THE REFUND OF ₱175,851.62

This refers to the administrative complaint, dated February 8, 1989, filed by Undersecretary of Foreign Affairs Manuel T. Yan against Mr. Wilfredo R. Cuyugan, then a Foreign Service Officer III, for insubordination, neglect of duty and/or refusal to perform official duty.

Records show that on February 5, 1988, Foreign Affairs Secretary Raul S. Manglapus issued Assignment Order No. 11-88 assigning respondent to the Philippine Embassy in Hanoi, Socialist Republic of Vietnam, as Third Secretary and Vice-Consul. Pursuant thereto, Cuyugan assumed office on July 11, 1988 in Hanoi.

After less than two (2) months in his foreign assignment, respondent returned to Manila on September 2, 1988, on an approved leave of absence for twenty (20) working days covering the period from September 2 to September 29, 1988, in order to attend the funeral of an uncle. On the strength of a medical certificate stating that he had acute gastritis, respondent again filed a leave of absence covering the period from October 14 to November 16, 1988, which was approved by the Office of Personnel and Administrative Services (OPAS), Department of Foreign Affairs (DFA).

On November 14, 1988, OPAS Director-General Rosalinda V. Tirona sent a cablegram to the Philippine Embassy in Hanoi informing that respondent is on an approved sick leave of absence up to November 16, 1988, but that he had been instructed to return to his post thereafter considering his absence therefrom for more than two (2) months immediately after he assumed his Hanoi position. On the basis of another medical certificate, dated November 11, 1988, stating that he was still undergoing treatment for chronic gastritis, respondent filed another application for leave of absence for thirty (30) working days, without, however, specifying therein the period covered by his intended leave or indicating the date of its filing. Said leave application does not bear the approval of OPAS.

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In his letter of November 22, 1988, respondent requested Secretary Manglapus that he be recalled from his Hanoi assignment due to personal and medical reasons. In the same letter, he wrote the following: "While waiting for my recall order, may OPAS consider my Leave in order to cover my stay in the H.O. (Home Office)". When the letter reached OPAS, Director-General Rosalinda Tirona enforced thereon the following hand-written note addressed to a certain "Jorge" (presumably then Executive Director Jorge V. Arizabal): "This is unfortunate because of the expenses incurred by the DFA. Cuyugan must be instructed immediately to return to his post. When recalled, it is understood that he may not be posted out until he has completed 2-year residence at the H.O."

Subsequently, Director-General Tirona verbally informed respondent that his request for recall was denied and instructed him to return immediately to his post in Hanoi. This was followed by Director Tirona's memorandum to respondent, dated December 6, 1988, which partly reads:

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"I wish to inform you that the Secretary does not, at this time, view with favor your request as you have been at post only since July 1988. You shall be recalled to Manila or transferred to another foreign post in a more opportune time.

"In the meantime, you are instructed to go back to Hanoi to resume your duties. Failure to comply shall be subject to disciplinary action."

On December 9, 1988, respondent sent a memorandum to Director-General Tirona, expressing his intention to comply with the latter's verbal instructions to proceed immediately to Hanoi. In the same memorandum, however, he requested for a reconsideration of the denial of his request for recall, claiming that he was still undergoing medical treatment for chronic gastritis, and alluded to the letter of the Commission on Appointments of his nomination as Foreign Service Officer II, which may require his physical presence in Manila.

In a letter of January 5, 1989, Secretary Manglapus ordered respondent to return to his post in Hanoi on or before January 15, 1989, with the emphatic warning that failure on his part to comply therewith "will be cause for your dismissal from the service".

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The above instructions notwithstanding, respondent remained unperturbed. Hence, on February 8, 1989, respondent was formally charged by DFA Undersecretary Manuel T. Yan with insubordination, neglect of duty and/or refusal to perform official duty, as defined under Section 36(b) of Presidential Decree No. 807, in relation to Section 1(b) Part B, Title IV of Republic Act No. 708. In the same charge sheet, respondent was directed to answer the aforestated charges within seventy-two (72) hours from receipt thereof and to state whether or not he elects to have a formal investigation of the charges against him and to avail of the services of a counsel.

In his Answer, dated April 19, 1989, respondent denied the charges of insubordination and refusal to perform official duty, and alleged, among others, that: (a) he never received the December 6, 1988 memorandum of Director-General Tirona instructing him to go back to his post in Hanoi; hence, as far as he is concerned, there was no order or instruction for him to follow; (b) he asked for reconsideration of Secretary Manglapus' letter of January 5, 1989, on the ground that his physical presence might be required by the Commission on Appointments, which was then deliberating on his nomination as Foreign Service Officer II, but said motion for reconsideration was not acted upon by the department; (c) he also requested reconsideration of Director-General Tirona's verbal instructions for him to return to Hanoi, but the same was similarly not acted upon; (d) the supervening events and circumstances since his arrival from Hanoi were beyond his control and, therefore, his ensuing conduct does not constitute resistance, much less defiance; (e) his continued presence in Manila was apparently sanctioned by Director-General Tirona, as shown in her telex No. HN-10-89, dated January 16, 1989, which reads: "x x x CUYUGAN AND OTHER FSO NOMINEES REQUIRED BY C/A TO BE PRESENT AT ITS FOREIGN RELATIONS COMMITTEE HEARING IN CONNECTION WITH THEIR PROMOTIONS"; and (f) his questioned actuation does not fall under the definition of "neglect of duty" and "refusal to perform official duty", as enunciated in the case of Nera vs. Garcia, et al. (G.R. No. L-13169, January 30, 1960).

Acting on the administrative charges, the Board of Foreign Service Administration (BFSA) referred the same for investigation and report to its Investigation Committee, Division II. On October 16, 1989, Cuyugan, thru counsel, filed with the Investigating Committee a "MOTION TO DISMISS ON DEMURER TO EVIDENCE", which motion was, however, denied for lack of merit on November 21, 1989.

After due hearing, or on December 26, 1989, the Investigating Committee found respondent not guilty as charged for lack of evidence to support the same. However, Investigating Committee member Lourdes Morales, who abstained from the Investigating Committee's findings, took a different view and, in her Memorandum for the Chairman of the Investigating Committee, dated January 22, 1990, stated, inter alia, thus:

"Acceptance of this finding and recommendation, in the undersigned's view, would put into serious question the Department's authority and capability to enforce its decisions, instructions, rules and regulations. The discipline which the Department seeks to instill in its junior officers would, furthermore, be seriously eroded. Another Cuyugan case would not be far-fetched.

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"It should be noted that Secretary Manglapus' letter to Mr. Cuyugan of 15 January 1989 [should be January 5, 1989] directed him to return to post or face dismissal from the service."

On April 19, 1990, the BFSa issued a resolution the pertinent portions of which are quoted below:

"There cannot be a clearer case of insubordination, neglect of duty and/or refusal to perform official duty. The instruction for Mr. Cuyugan to return to his post occurred a number of times.

"Mr. Cuyugan claims that he had never received the letter of 6 December 1988 of Director-General Tirona and that, therefore, as far as he was concerned, there was no order of instruction for him to follow. It is unbelievable that the content of the 6 December 1988 letter had not reached Mr. Cuyugan and his 'unavailability' to receive the same appeared to have been deliberate for the following reasons:

- "1. Executive Director Arizabal's Memorandum to Director-General Tirona dated 4 January 1989 stated that he went consistently to Room 316 and informed Mr. Cuyugan's friends of the 6 December Memorandum. He further stated that when Mr. Cuyugan was finally found, he told him of the Memorandum ordering him to return to Hanoi, 'he never came to collect the Memo.'";
- "2. In Director-General Tirona's note on her 6 December 1988 Memorandum, she asked, 'why was this not served? I saw Mr. Cuyugan at the second floor today';
- "3. Mr. Cuyugan was in frequent communication with Executive Director Arizabal. Mr. Cuyugan's own statement has it that in fact he had two letters received by Executive Director Arizabal on 12 December 1988 and 14 December 1988. He further stated that he spoke to Executive Director Arizabal on several occasions - 6 December, 12 December, 14 December, 19 December and 27 December 1988. He admitted to being in touch all the time and being always with Executive Director Arizabal;
- "4. Mr. Cuyugan was always in DFA premises. He has made statements to the effect that he had all the time made it a point to report to office religiously, to OPAS in particular; that he was all the time logging in at OPAS logbook; that he was doing work and assisting in the Office of Asst. Secretary Israel Bocobo; that he even signed communications for Asst. Secretary Bocobo whenever the latter was abroad; and

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"5. Mr. Cuyugan was 'available' to receive all the communications sent to him by the Commission on Appointments relative to his nomination as FSO II.

"In any case, it is indicated that there was awareness on the part of Mr. Cuyugan of an order for him to return to post. Mr. Cuyugan's request for recall of 22 November was verbally denied by Director-General Tirona, along with a verbal instruction for him to return to his post.

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x x x

x x x

"While the intervening events, such as the Commission on Appointments' confirmation proceedings, were so directed and managed to make it conveniently appear that the failure of Mr. Cuyugan to return to his post was justified, they do not detract from the established fact that an order to return to post existed and compliance was demanded of the respondent, refusal of which is a grave offense.

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"On the part of the Department, the Office has done its part in reminding and directing Mr. Cuyugan to report to his Official Station for a number of times, as embodied in a Cablegram dated November 14, 1988; Transmittal letter dated November 17, 1988; Memorandum dated December 6, 1988; and letter dated January 5, 1989. It is thus clear that Mr. Cuyugan was sufficiently notified of the Report to Work Order of the Director General and the Secretary of the Department of Foreign Affairs.

"The continuous defiance by Mr. Wilfredo R. Cuyugan of the Report to Work Order necessarily constitutes insubordination, neglect of duty and/or refusal to perform official duty.

"This act of defiance to said order consequently also constitutes unauthorized absences and conduct prejudicial to the best interest of the service. This is because of the fact that his services are urgently needed by the Philippine Embassy in Hanoi, and that his mere absence thereto is directly interrupting the flow of service in that post."

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The same Board went further as to recommend:

"In view of the nature of the act of defiance to the Report to Work Order which properly constitutes four (4) grave offenses namely: insubordination, neglect of duty and/or refusal to perform official duty, unauthorized absences and conduct prejudicial to the best interest of the service and in view of the sensitivity of the position of Mr. Wilfredo R. Cuyugan as Third Secretary and Vice-Consul, it is hereby recommended that the penalty of dismissal from the service be imposed on him without prejudice to his receiving separation benefits. It is also recommended that Mr. Cuyugan shall be made to refund the amount of One Hundred Seventy Five Thousand Eight Hundred Fifty One Pesos and 62/100 (P175,851.62) representing the amount of salaries and allowances he collected during the period of his unauthorized absences, x x x.

"The abovementioned amount shall constitute a lien on the separation benefits x x x".

Concurring in the findings and recommendation of the BFSA, Secretary Manglapus, in his Memorandum for me, dated May 22, 1990, likewise recommended that respondent be dismissed from the service without prejudice to receiving separation benefits that may be due him.

On May 28, 1990, respondent was notified by the BFSA of its Resolution, dated April 19, 1990.

On September 11, 1990, this Office, thru then Executive Secretary Catalino Macaraig, Jr., referred the entire records of Administrative Case No. 89-01 to the Secretary of Foreign Affairs for re-evaluation of BFSA's recommendation in the light of previous similar personnel disciplinary proceedings involving Presidential appointees, specifically the cases of former Counsellor Julius G. Maloles and Ambassador Romeo O. Fernandez; and the pronouncement in Aguino v. GSIS, (22 SCRA 415) that:

"x x x the consequences of dismissal or involuntary separation from service are governed by the laws applicable. The offices or entities where service was rendered are powerless to affect such consequences, which are not dependent upon the discretion of the officials heading the particular office or entity. It follows that the resolution

considering [respondent] Aquino resigned, insofar as it provides that it shall be deemed 'without prejudice to whatever retirement benefits he may be entitled' can not preserve for him such benefits if under the law he has no right thereto x x x" (at pp. 419-420).

However, in his reply of October 15, 1990, Secretary Raul S. Manglapus, citing the cases of Cathay Pacific Airways, Ltd. vs. Romillo, Jr., No. L-64276, August 12, 1986 and Prudential Bank vs. Castro, Adm. Case No. 2756, June 27, 1988, affirmed the amended Resolution of the BFSAs and stating further that:

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"In later decisions, the Supreme Court dismissed some judges for cause with forfeiture of retirement and pay benefits. Upon motion for reconsideration on ground of humanitarian consideration the Supreme Court reconsidered the decisions by allowing the dismissed judges to all vacation and sick leave benefits x x x.

"In accordance with the aforesaid rulings the Board of Foreign Service Administration amended its Resolution reiterating the dismissal of Wilfredo Cuyugan with forfeiture of all retirement benefits and pay. He may, however, enjoy vacation and sick leave benefits he had earned during his entire government service, copy of which is hereto attached. Wilfredo Cuyugan is further ordered to refund with the Department of Foreign Affairs the amount of P175,851.62 he had collected during his unauthorized absences and resolution x x x."

After going over the records of the case, I concur with the BFSAs' finding that respondent is guilty of insubordination, neglect of duty and/or refusal to perform official duty, unauthorized absences and conduct prejudicial to the best interest of the service.

Anent the charge of insubordination, the evidence incontrovertibly shows that respondent failed to heed the "Return-to-Work Order" directing him to return to his post in Hanoi, despite several admonitions from the OPAS and

from no less than Secretary Manglapus himself. This fact alone constitutes insubordination, as respondent's continued defiance evinced a willful disregard of an express direction and refusal to obey reasonable orders of his superiors. No doubt, his attitude does not speak well of the conduct expected of a person of his stature, rank and standing.

Necessarily, respondent's continued defiance as such resulted in the commission of similarly grave offenses namely, neglect of duty and/or refusal to perform official duty, unauthorized absences and conduct prejudicial to the best interest of the service. Indeed, his long absence unnecessarily disturbed the smooth flow of service and the effective performance of embassy functions attendant to his position.

I do not agree, however, with the recommendation of the Secretary of Foreign Affairs that the penalty for the offenses committed by Mr. Cuyugan be dismissal from the service with forfeiture of all retirement benefits and pay, plus refund of the amount of P175,851.62 he had collected during his unauthorized absences, without prejudice to the enjoyment of vacation and sick leave benefits he had earned during his entire government service. I find suspension from office for one year without pay, plus refund of the amount he had collected during his unauthorized absences, the proper penalty, consistent with Administrative Order No. 155, series of 1990, "Suspending Ambassador Romeo O. Fernandez For One (1) year and Sustaining The Order of the Secretary of Foreign Affairs Recalling Him to the Home Office From His Post as Ambassador-Designate To Peru" for having been found guilty of insubordination, dishonesty, and grave misconduct and conduct prejudicial to the best interest of the service, offenses no less graver than those committed by Mr. Cuyugan. Be it noted that in Fernandez, the penalty imposed was the penalty recommended.

Wherefore, and as recommended by the Secretary of Foreign Affairs, respondent WILFREDO R. CUYUGAN is hereby found GUILTY of insubordination, neglect of duty and/or refusal to perform official duty, unauthorized absences and conduct prejudicial to the best interest of the service. Accordingly, he is hereby SUSPENDED from office for one (1) year without pay and ORDERED to refund the amount of One Hundred Seventy-Five Thousand Eight Hundred Fifty-One and 62/100 Pesos (P175,851.62) he had collected during his unauthorized absences.

Done in the City of Manila, this 25th day of June in the year of Our Lord, nineteen hundred and ninety-one.

Ermano B. Aquino

By the President:

[Signature]
OSCAR M. ORBOS

Executive Secretary

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