

MALACAÑANG
MANILA

ADMINISTRATIVE ORDER NO. 38

DISMISSING TEODORO P. DUKA, PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD), DEPARTMENT OF AGRARIAN REFORM, FROM THE SERVICE WITH PREJUDICE TO RE-EMPLOYMENT IN THE GOVERNMENT SERVICE.

This refers to the administrative case filed by the Department of Agrarian Reform (DAR) against Atty. Teodoro P. Duka, Provincial Agrarian Reform Adjudicator (PARAD), DAR, Region VI, for "Grave Misconduct, Gross Insubordination, Gross Ignorance of the Law, Inefficiency and Incompetence in the Performance of Official Duties, Inefficiency and Incompetence in the Performance of Official Duties, Frequent Unauthorized Absences, Refusal to Perform Official Duty, Absence without Leave and Conduct Grossly Prejudicial to the Best Interest of the Service".

Antecedent facts show that, in the Formal Charge of May 20, 1992, signed by Secretary Renato B. Padilla, Officer-in-Charge (OIC), DAR, Atty. Duka was required to answer the above-mentioned charges committed as follows:

"As Trial Attorney, you were re-assigned in Kalibo, Aklan, on May 5, 1975, under Team Leader Oscar Reloj. But you reported for duty only once, on August 19, 1975, and thereafter you failed to report to your place of assignment;

Absence, without authorized leave, from the month of May 1986 to August 1986, wherein Regional Director Dinsay issued a Memorandum directing you to explain, within 72 hours, such absence without leave;

Failure to observe office rules and regulations and the Civil Service Law by not submitting the required Daily Time Records (DTRs) and the New Performance Appraisal Forms (NPAS);

The issuance of a Regional Special Order, dated September 5, 1984, without authority;

Failure to comply with the directive of the Secretary, as embodied in a Memorandum dated September 25, 1991, temporarily assigning you to

the DAR Regional Office, Region VI, as your new place of assignment;

Failure to file any application for leave after your authorized vacation leave expired on December 27, 1991, likewise, there is no record of any authorized leave for the period November 8, to 29, 1991;

Issuance of the Orders, dated 23 and 24 April 1992, in Case No. 001 to Case No. VI-159-NO-91, entitled, "Guillermo Gomez, Plaintiff, vs. Eriberto Igaras, Defendant," declaring therein the Memorandum, dated February 12, 1991, of Regional Director Maraya as null and void for being contrary to law and the DARAB rules, ordering PARO Arsenal to issue the clearance for your property accountabilities, and to prepare the voucher for your RATA, without proper authority and which are contrary to law and jurisprudence;

Inspite of the pendency of a Motion for Reconsideration, dated 29 April 1992, filed by PARO Arsenal, you issued a Warrant of Arrest on 30 April 1992, without proper authority and which is contrary to law;

Failure to comply with the instruction of DARAB Executive Director Samson for you to return all Negros Occidental DARAB Cases to RARAD Baril's Office;

Failure to comply with Special Order No. 45, s. of 1991, issued by the Secretary assigning all PARAD's to their respective Regional Offices to constitute a pool of adjudicators reporting directly to the PARADs who shall have the flexibility of assigning them to provinces with the most number of cases."

In the same charge sheet, Duka was preventively suspended and was required to answer under oath the charges in writing within seventy-two (72) hours from receipt thereof. Duka received a copy of the charge sheet on May 26, 1992, as evidenced by the Sheriff's return of service, dated June 1, 1992.

On June 4, 1992, Duka filed his Answer contending that Secretary Padilla is without legal authority to have him investigated; that the formal charge is a complete nullity because it contravenes the due process clause of the Constitution and the rulings of the Supreme Court.

/s/

On June 18, 1992, Duka filed with the Court of Appeals a petition for prohibition, mandamus and damages, with a prayer for a preliminary injunctive relief. The petition, docketed as CA-G.R. SP No. 28055, impleaded Secretary Padilla and Negros Occidental Provincial Agrarian Reform Officer (PARO) Alexis Arsenal as respondents. The Court of Appeals per its resolution, dated June 23, 1992, directed respondents to file their answers.

Meanwhile, the administrative case was set for formal investigation on June 27, 28, 29, 30, 1992, at the PARO Office, Bacolod City. On the first day of the scheduled hearing, Duka filed a "motion to resolve pending incidents and to suspend hearing until termination of CA-G.R. SP No. 28055."

In a memorandum dated July 27, 1992, the DAR informed Duka that his motion shall be considered as submitted for resolution and pending resolution thereof, the investigation shall proceed as scheduled. Duka was served a copy of the memorandum per sheriff return of service dated May 4, 1992.

The events that transpired during the hearing was stated in the DAR Order, dated September 25, 1992, to wit:

"During the hearing, Atty. Quirino S. Infante, Counsel for the [DAR] presented [several witnesses]. On the other hand, the Respondent, in spite of due notice, failed to attend the hearings/investigations conducted.

The pertinent portions of the hearing/investigation may be outlined as follows:

- A. Counsel for DAR presented witnesses and documentary evidence. ARDA Toledo testified on the veracity of the documentary evidence presented and submitted as part of the records on filed at the DAR Regional Office, Region VI, Iloilo City. The documentary evidence are as follows:
1. Certified xerox copy of the telegram dated August 19, 1975 from Team Leader Oscar Reloj to Director Biadora with the information that the Respondent reported to duty only on August 19, 1975 (Exhibit 'MM');
 2. Certified xerox copy of the telegram dated September 4, 1975 from Director Biadora to the Respondent regarding the telegram report of Team Leader Reloj

that he reported only one day in Kalibo (Exhibit 'NN');

3. Certified xerox copy of the telegram dated September 5, 1975 from Director Biadora to Mr. Jose Bando, Cashier of DAR District Office of Roxas City to suspend payment of Respondent's salary (Exhibit 'OO');
4. Certified xerox copy of the telegram dated September 9, 1975 from Team Leader Oscar Reloj to Director Biadora, with the information that the Respondent [sic] has not reported to duty after the expiration of his leave since August 25, 1975. (Exhibit 'V');

x x x

6. Certified xerox copy of the letter dated October 6, 1975 from District Officer Tadeo C. Andrada to the Regional Director, DAR, Region VI, Iloilo, with the information that Respondent has not reported to Kalibo, Aklan, his official station per Special Order No. 46, dated May 5, 1975 (Exhibit 'QQ');

x x x

9. Certified xerox copy of the telegram dated June 4, 1986 from Teodolfo V. Abiera, District Office, Bacolod City, to the Respondent regarding the latter's failure to report for duty the whole month of May 1986 up to the present (meaning up to June 4, 1986 the date of the telegram) Exhibit 'TT');

x x x

10. Certified xerox copy of a Memorandum dated August 19, 1986 from Director Frank P. Dinsay, DAR Region VI, to the Respondent, whereby he was directed to explain within 72 hours from receipt hereof why he failed to report for duty since May 1986 (Exhibit 'W');

x x x

14. Certified xerox copy of the Memorandum dated September 23, 1991 from Director

Antonio Maraya, DAR Region VI, Iloilo City, to inhibit the Respondent from handling DARAB cases in Negros Occidental in view of the highly reliable intelligence reports and feedback to the effect that there is a danger on the life and limb of the Respondent (Exhibit 'RR');

15. Certified xerox copy of the Radiogram dated September 24, 1991 from then Secretary Benjamin T. Leong to RARAD Hilario Baril, DAR Region VI, Iloilo City, to withdraw from the Respondent any and all cases in Negros Occidental (Exhibit 'LL');
16. Certified xerox copy of the Memorandum dated September 25, 1991 from Secretary Leong to the Respondent, hereby directing the latter to inhibit himself from handling cases within the territorial jurisdiction of the Province of Negros Occidental and to transfer all pending cases for adjudication to Atty. Baril, RARAD. The Respondent was also directed to submit the status of cases handled/action/decisions taken therein. He was temporarily assigned to the Regional Office under the direct supervision of Regional Director Maraya (Exhibit 'SS');
17. Certified xerox copy of the Memorandum dated February 12, 1992 from Director Antonio Maraya to the Respondent, reminding him (DUKA) of his unauthorized absences from January 2, 1992 up to this date (meaning up to February 12, 1992, the date of Memorandum) and the directive of the Secretary temporarily assigning him to the Regional Office under the direct supervision of Regional Director Maraya (Exhibit 'Z');

B. On the allegations that the issuance of Orders dated 23 and 24 April 1992, in the case of Guillermo Gomez vs. Eriberto Igbaras, declaring the Memorandum dated February 12, 1991, of Regional Director Maraya as null and void and on the illegal issuance of warrant of arrest against PARO Arsenal of Provincial Agrarian Reform Office, Bacolod City PARO Arsenal testified before the investigators,

and in support of his oral testimony, the following documentary evidences were submitted:

1. Certified xerox copy of the Order dated April 23, 1992 issued by the Respondent in the case, entitled, 'Guillermo Gomez vs. Eriberto Igaras', declaring the Memorandum dated February 12, 1992 of Regional Director Maraya, DAR, Region VI, Iloilo City, as null and void for being contrary to law and the DARAB rules, and ordering PARO Arsenal to issue clearance for his property accountabilities within thirty (30) days from receipt of this Order (Exhibit 'B');
2. Certified xerox copy of the Order dated April 24, 1992 issued by the Respondent wherein PARO Arsenal was ordered to prepare the necessary voucher for the payment of his (DUKA) RATA and the failure or refusal to comply with the order will constrain this Adjudicator to issue corresponding warrant of arrest and to cause his detention at the City jail of Bacolod City until he has fully complied with this order (Exhibit 'H');

x x x

4. Certified xerox copy of the Warrant of Arrest dated April 30, 1992 at Bacolod City, addressed "TO ANY OFFICER OF THE LAW", to arrest and detain PARO Arsenal until he shall have deposited with the Acting Clerk of Court, Office of the PARAD, DAR, Bacolod City, the cash amount of Nine Thousand Six Hundred (P9,600.00) Pesos and if he refused to deliver said amount, PARO Arsenal must be detained at the nearest city or government jail until further orders (Exhibit 'C');

x x x

- C. Atty. Gil Alegario, PARAD, Mr. Marcelino Vasquez, PARAD Clerk of Court designate, and Ms. Fevic Gargantiel, PARAD Clerk, testified that the Respondent continued to adjudicate DARAB cases after he was assigned by the Secretary on September 25, 1991 to the DAR

Regional Office, Region VI, Iloilo City, and ordered to inhibit himself to handle cases in the Province of Negros Occidental. (Exhibit 'S', 'T') and after he was preventively suspended by OIC-Secretary Renato B. Padilla in the Formal Charge dated May 20, 1992. In support of the said oral testimonies, the following documentary evidence were presented and submitted:

- a) CASE No. 366, NEG - x x x
- b) PARAD CASE NO. VI-51-NO-91
- x x x
- c) PARAD Case No. VI-75-NO-92
- x x x
- d) PARAD CASE NO. VI-80-NO-92
- x x x
- e) PARAD Case No. VI-38-NO-91
- x x x
- f) DARAB Case No. 001 to VI-159-NO-91
- x x x
- g) DARAB CASE NOS. VI-38-NO-91;
VI-81-NO-91; VI-III-NO-91
- x x x

In a letter to DAR Secretary Ernesto D. Garilao, dated August 10, 1992, Duka alleged that he has never seen a copy of the complaint; that the hearing was conducted in a "Kangaroo-style"; and that the hearing was never conducted.

On the basis of the evidence presented during the investigation, the DAR found Duka guilty of the charges and recommended his dismissal from the service with forfeiture of retirement benefits and with prejudice to re-employment in the government service.

The issues in this case are:

1. whether or not Secretary Padilla had the legal authority to file administrative charges against Duka;
2. whether or not the formal charge and the proceedings therein violate the due process clause; and
3. whether or not Duka is guilty of the charges levelled against him.

On the first issue, I confirm the action of Secretary Padilla in initiating the herein administrative action. Respondent, being a presidential appointee, is under the administrative disciplinary authority of the President. For his appreciation, "[T]he multi-farious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." (Villena vs. The Secretary of the Interior, 67 Phil. 451, 463).

The second issue is anchored principally on the ground of lack of due process. The records disclose that respondent was served a copy of the formal charge, dated May 20, 1992; he filed his answer thereto; he was notified of the scheduled hearings by telegram; he filed a motion, dated July 27, 1992; he was served a copy of the DAR Memorandum of July 27, 1992, directing continuation of the formal hearing; and he wrote a letter to DAR Secretary Ernesto D. Garilao, dated August 10, 1992, assailing the complaint and the proceedings therein.

These facts show that respondent was given notice and opportunity to be heard, the minimum requirement of due process.

The Supreme Court in the Llora Motors, Inc. vs. Drilon, ruled that: "[t]he Court had held in the past that a formal or trial-type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand." (179 SCRA 175, 180.) "The standards of due process in judicial as well as administrative proceedings have long been established. In its bare minimum due process of law simply means giving notice and opportunity to be heard before judgment is rendered." (Wenphil Corporation vs. NLRC, 170 SCRA 69, 75.)

In a memorandum of September 25, 1991 (Exhibit "SS"), then DAR Secretary Benjamin T. Leong directed respondent to inhibit himself from handling cases within the territorial jurisdiction of Negros Occidental; to transfer all pending cases for adjudication to Atty. Hilario Baril, Regional Agrarian Reform Adjudicator; and to submit a status report of the cases handled by him as well as decision/actions taken thereon, with an advice of his temporary assignment to the DAR Regional Office, Region VI, under the direct supervision of Regional Director Antonio Maraya.

/s/

Records disclose that respondent did not report to the regional office as directed. Instead, he filed an application for leave until December 27, 1991. In a memorandum of February 12, 1992, Director Maraya reminded respondent of the DAR Secretary's memorandum, dated September 25, 1991, and of the absences without leave incurred by the latter since January 2, 1992. Moreover, Department of Agrarian Reform Adjudication Board (DARAB) employees testified during the hearing that respondent continued to adjudicate DARAB cases even after he was assigned by Secretary Leong to the DAR Regional Office, Region VI, Iloilo City, and notwithstanding the directive that he inhibit himself from handling DARAB cases. Respondent's conduct aforementioned constitutes gross misconduct and insubordination.

On April 23, 1992, in an agrarian case entitled "Guillermo Gomez vs. Eriberto Igaras", respondent issued an Order (Exh. "B"), declaring the memorandum of Regional Director Maraya dated February 12, 1992 as null and void; directing PARO Arsenal to issue him (respondent) a clearance of all property accountabilities; and ordering the Acting DARAB Clerk of Court to submit the status of cases pursuant to the DAR Secretary's Memorandum dated September 25, 1991. The following day, April 24, 1992, respondent issued another Order (Exh. "H"), directing PARO Arsenal to prepare the necessary voucher for the payment of his (respondent's) representation and transportation allowance (RATA) for the months of January to April 1992. Thereafter, on April 30, 1992, respondent issued a warrant of arrest (Exh. "C") commanding any officer of the law to arrest and detain PARO Arsenal until Arsenal deposits the amount of Nine Thousand Six Hundred Pesos (P9,600.00) to the Acting DARAB Clerk of Court, representing his (respondent's) RATA for the months of January to April 1992.

The issuance of these orders (Exhs. "B" and "H") and the warrant of arrest (Exh. "C") demonstrates respondent's gross ignorance of the law, inefficiency, and incompetence.

Arsenal's refusal to pay respondent's RATA and to grant him clearance of property accountabilities which were the subject of respondent's order (Exh. "B") issued in connection with Gomez vs. Igaras have absolutely nothing to do with the Gomez case.

The issuance by respondent of a warrant of arrest betrays his lack of knowledge and disregard of the law. Nowhere in the DARAB Rules is a DARAB Adjudicator, like respondent, authorized to issue warrants of arrest. To compound matters, respondent issued the warrant of arrest and the other orders aforementioned as Provincial Agrarian Reform Adjudicator of Negros Occidental when he is supposed to be temporarily assigned to the DAR Regional Office,

Region VI, Iloilo City, pursuant to DAR Secretary Leong's Memorandum of September 25, 1991.

On respondent's frequent unauthorized absences/absence without leave, records is fraught with evidence to support this specifications. Suffice it to cite Exhibits "MM", "NN", "OO", "QQ", and "Z", mentioned in the DAR Order, dated September 25, 1992, supra.

WHEREFORE, premises considered, Atty. Teodoro P. Duka is hereby found guilty of grave misconduct, gross insubordination, gross ignorance of the law, inefficiency and incompetence in the performance of official duties, frequent unauthorized absences, refusal to perform official duty, absence without leave, and conduct grossly prejudicial to the best interest of the service. Accordingly, he is hereby **DISMISSED** from the service with forfeiture of retirement benefits and with prejudice to re-employment in the government service pursuant to Civil Service Memorandum Circular No. 30, series of 1989, and pursuant to Section 8, 9, 17 and 22 of Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws, published on January 15, 1992, effective fifteen (15) days after his receipt of a copy of this Order pursuant to Book VII, Chapter 3, Section 15, of the 1987 Administrative Code.

DONE in the City of Manila, this 24th day of February in the year of Our Lord, Nineteen Hundred and Ninety Three. *14*



By the President:



ANTONIO T. CARPIO
Chief Presidential Legal Counsel