

G.R. No. 225301 – THE DEPARTMENT OF TRADE AND INDUSTRY, represented by its SECRETARY, the UNDERSECRETARY OF THE CONSUMER PROTECTION GROUP, MEMBERS OF THE SPECIAL INVESTIGATION COMMITTEE, and the DIRECTOR OF LEGAL SERVICE, petitioners, versus **DANILO B. ENRIQUEZ**, respondent.

Promulgated:

June 2, 2020

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CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

The petition should be dismissed for lack of merit. Though I do not agree with certain pronouncements of the lower court, it reached the correct decision consistent with the rule in *Baculi v. Office of the President*¹ (*Baculi*).

Disciplinary authority over presidential appointees belongs concurrently to the Office of the President (OP) and the Office of the Ombudsman (OMB). Thus, the conduct of the formal investigation of a presidential appointee contemplated under Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Executive Order No. 292 or the Administrative Code of 1987 (Administrative Code), subsequent to the filing of a complaint or Formal Charge is exclusively within the jurisdiction of the OP and OMB.

However, there is no legal impediment to a preliminary investigation by the Secretary of a subordinate short of taking disciplinary action (*e.g.*, placing a presidential appointee under preventive suspension or filing a formal charge, as in this case). This is inherent to the power of supervision and control over a department that a Secretary is given by law.

Sections 6 and 7, Chapter 2, Book IV of the Administrative Code read:

SECTION 6. Authority and Responsibility of the Secretary.— The authority and responsibility for the exercise of the mandate of the

¹ 807 Phil. 52 (2017).



Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.

SECTION 7. Powers and Functions of the Secretary.—The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law.²

Certainly, the Secretary has the power to investigate a subordinate for purposes of determining whether a complaint should be filed or referred to the proper disciplining authority, or to prevent the disruption of the operations of his office.

² Approved on July 25, 1987; emphasis and underscoring supplied.

Without more, this appears to be the extent of the disposition of the court *a quo*.³ This qualification is also confirmed by the fact that the preliminary investigation is still nevertheless allowed to produce effect by the *ponencia* (*i.e.*, referral of findings of the Department of Trade and Industry (DTI) Secretary to the OP or OMB for the conduct of proper proceedings), similar to the case of *Baculi*.

A more precise rule, to my mind, is that the disciplinary jurisdiction of the OP and the OMB over presidential appointees does not negate the power of a Secretary of a department to conduct a preliminary investigation short of taking disciplinary action (*e.g.*, placing a presidential appointee under preventive suspension or filing a formal charge).

As applied to this case, the preliminary investigation conducted within the DTI was authorized by law but the proceedings subsequent to the Formal Charge not brought before the OP or OMB were susceptible to *certiorari* and were correctly nullified by the court *a quo*.

On the Secretary's limited disciplinary jurisdiction and the applicability of Sections 47 to 52 of the Administrative Code.

Section 38(a) of Presidential Decree No. 807 and Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code speak only of the procedures in administrative cases against non-presidential employees. Sections 47 and 51⁴ relating to the disciplinary

³ The dispositive portion of the Regional Trial Court Decision reads:

WHEREFORE:

1. The **instant petition is granted in part.**
2. The *Formal Charge with Preventive Suspension dated May 19, 2016* is **nullified and set aside.**
3. The **Special Investigation Committee is prohibited from hearing and adjudicating** the *Formal Charge with Preventive Suspension dated May 19, 2016.*
4. The [petitioners] are **commanded to restore** [respondent Danilo V. Enriquez (respondent Enriquez)] to his post as **Director of the Fair Trade Enforcement Bureau** of the Department of Trade and Industry, *unless his term of office has already expired and he can no longer resume such post under the present Administration, rollo, p. 38.*

⁴

Book V
TITLE I
Constitutional Commissions
SUBTITLE A
Civil Service Commission
Chapter 7
Discipline

SECTION 47. Disciplinary Jurisdiction.—(1) 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

jurisdiction of Secretaries do not appear operational as regards presidential appointees. By its own rules as contained in the 2017 Revised Rules on Administrative Cases in the Civil Service (2017 RRACS),⁵ the Civil Service Commission (CSC) recognizes that it does not have jurisdiction over presidential appointees. Section 9,⁶ Rule 2 of the 2017 RRACS echoes the provisions of Section 47(2)⁷ of the Administrative Code, also signaling inapplicability to presidential appointees.

In this regard, I believe that Sections 6 and 7(5), Chapter 2, Book IV of the Administrative Code are sufficient legal bases for the Secretary's exercise of the power to investigate and designate a committee or officer to conduct such investigation, without further reliance on the non-exclusive

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.

(2) The Secretaries and heads of 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. Their 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 Secretary concerned.

(3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

SECTION 51. Preventive Suspension.—The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

Rule 2

JURISDICTION AND VENUE OF ACTIONS

Section 7. Cases Cognizable by the Commission. The Civil Service Commission shall take cognizance of the following cases:

A. **Disciplinary**

x x x x

3. Complaints against officials who are not presidential appointees or elective officials;

Section 9. Jurisdiction of Disciplining Authorities. The disciplining authorities of agencies and local government units shall have original concurrent jurisdiction with the Commission over their respective officials and employees. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary subject to Section 7(A)(5) of these Rules. In case the decision rendered by a bureau or office 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 dismissal from the service, in which case the same shall be executory only after confirmation by the Secretary concerned.

⁷ See supra note 4.

language of Section 47(2), Chapter 7, A, Subtitle A, Title I, Book V of the Administrative Code.

Insofar as presidential appointees coming under the direct disciplinary jurisdiction of the OP and OMB, the provisions of Sections 46 to 52 of the Administrative Code relating to the “disciplining authority” and “proper disciplining authority” must be read to pertain to the OP and OMB. Thus, for presidential appointees, the power to impose disciplinary penalties in Section 46,⁸ resort to summary proceedings under Section 50,⁹ and placing the employee under preventive suspension under Section 51¹⁰ do not pertain to the Department Secretary, but to the OP and OMB.

While I agree that preventive suspension is not a penalty, the power to impose it must be interpreted to pertain to the OP or OMB as proper disciplining authority — as necessitated by consistency.

That said, there is nothing that prevents the Secretary from imposing preventive suspension, conducting the investigation subsequent to the institution of a formal complaint, and imposing disciplinary penalties with the express conformity of or prior approval from the OP. As between a unilateral exercise of full disciplinary jurisdiction over a presidential appointee that flies in the face of the President’s direct disciplinary jurisdiction, obtaining the express conformity or prior approval of the OP prior to the taking of disciplinary action is not an unreasonable requirement for a Secretary who is an *alter ego*.

This limited disciplinary jurisdiction is the most reasonable interpretation that gives effect to the Secretary’s power of supervision and

⁸ SECTION 46. Discipline: General Provisions.—x x x

x x x x

(d) In meting out punishment, the same penalties shall be imposed for similar offenses and only one penalty shall be imposed in each case. The disciplining authority may impose the penalty of removal from the service, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months’ salary, or reprimand.

⁹ SECTION 50. Summary Proceedings.—No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

- (1) When the charge is serious and the evidence of guilt is strong;
- (2) When the respondent is a recidivist or has been repeatedly charged and there is reasonable ground to believe that he is guilty of the present charge; and
- (3) When the respondent is notoriously undesirable.

Resort to summary proceedings by the disciplining authority shall be done with utmost objectivity and impartiality to the end that no injustice is committed: Provided, That removal or dismissal except those by the President, himself or upon his order, may be appealed to the Commission.

¹⁰ SECTION 51. Preventive Suspension.—The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

control over his department while respecting the direct disciplinary jurisdiction of the President over his appointees. This is also consistent with *Baculi*.¹¹

On the doctrine of qualified political agency.

Relatedly, while the doctrine of qualified political agency may justify a Secretary's exercise of disciplinary jurisdiction over a subordinate presidential appointee, this limited disciplinary jurisdiction must be short of taking disciplinary action (*i.e.*, the imposition of penalties). To my mind, this limitation is justified by:

Effect of subsequent executive issuances.

The doctrine of qualified political agency must be consistent with the President deciding to directly investigate and take cognizance of complaints and administrative cases against presidential appointees. For suspected graft and corrupt practices as is involved in this case, the OP had issued Executive Orders (EO) creating the Presidential Anti-Graft Commission,¹² transferring its powers, duties and functions to Office of the Deputy Executive Secretary for Legal Affairs,¹³ and under the current administration, the Presidential Anti-Corruption Commission¹⁴ for that specific purpose.

Viewed in this light, the holding in *Baculi* followed by the court *a quo* has sound basis. Executive issuances and those of other national government agencies affirm the contemporaneous construction that the direct disciplinary jurisdiction over presidential appointees belongs to the OP and OMB. Hence, only the investigation can be done by the Secretary. The

¹¹ Note that in *Baculi*, the petitioner did not question the Department of Agrarian Reform Secretary's act of placing him under preventive suspension; hence, no ruling was made relative thereto.

¹² EO No. 12 (2001), entitled CREATING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES.

¹³ EO No. 13 (2010), entitled ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE, ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT.

¹⁴ EO No. 43 (2017), entitled CREATING THE PRESIDENTIAL ANTI-CORRUPTION COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES, as amended by EO No. 73 (2018). One of the amendments introduced by EO No. 73 reads:

SECTION 1. x x x

"Section 5. Jurisdiction, Powers and Functions. –

x x x x

(f) x x x

x x x x

The preceding paragraphs notwithstanding, nothing shall prevent the President, in the interest of the service, from directly investigating and/or hearing an administrative case against any presidential appointee or authorizing other offices under the Office of the President to do the same, as well as from assuming jurisdiction at any stage of the proceedings over cases being investigated by the Commission."

procedure envisioned in Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code, subsequent to the filing of a Formal Charge is within the jurisdiction of the OP and OMB.

These issuances, issued under the ordinance power of the President relating to constitutional or statutory powers (*i.e.*, the sharing of disciplinary jurisdiction with heads of offices)¹⁵ may be read as a continuing decision of the President to directly take cognizance of complaints and cases against presidential appointees, limiting the applicability of qualified political agency with respect to the exercise of disciplinary jurisdiction over presidential appointees. In this class of cases, EOs, while not repealing laws, may validly modify them.

Hence, the general proposition that an EO cannot repeal a law does not hold true in this case.

Baculi v. Office of the President.

In *Baculi*, the doctrine of qualified political agency for purposes of imposing disciplinary penalties (*i.e.*, dismissal) was accorded, not to the Department Secretary but to the Deputy Executive Secretary, thus:

And, secondly, it was of no moment to the validity and efficacy of the dismissal that only Acting Deputy Executive Secretary for Legal Affairs Gaité had signed and issued the order of dismissal. In so doing, Acting Deputy Executive Secretary Gaité neither exceeded his authority, nor usurped the power of the President. Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural to expect the President to personally exercise and discharge all such powers and functions. Somehow, the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet, conformably to the doctrine of qualified political agency. Accordingly, we have expressly recognized the extensive range of authority vested in the Executive Secretary or the Deputy Executive Secretary as an official who ordinarily acts for and in behalf of the President. As such, the decisions or orders emanating from the Office of the Executive Secretary are attributable to the Executive Secretary even if they have been signed only by any of the Deputy Executive Secretaries.¹⁶

¹⁵

BOOK III
Office of the President
TITLE I
Powers of the President
CHAPTER 2
Ordinance Power

SECTION 2. Executive Orders.—Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

¹⁶ Supra note 1, at 66-68.

Need for a workable rule.

For the same reason above, the *alter ego* or qualified political agency doctrine must defer to the final action of the President with respect to disciplinary action (*i.e.*, imposition of penalties). It may indeed lead to unnecessary embarrassment to the Executive Department if the President is constrained to reinstate a presidential appointee removed or suspended by the Secretary in his capacity as *alter ego* in the face of the executive issuances already signaling the President's decision to directly exercise disciplinary jurisdiction over these persons he personally appointed. It is much more workable for the limited disciplinary jurisdiction to be recognized as in *Baculi* and for the Secretary to recommend and leave the taking of disciplinary action to the President as the appointing power.

On mootness and referral of findings to the OP.

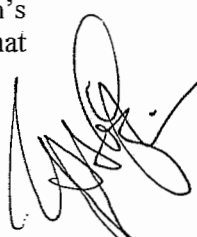
The decision holds that the petition is not mooted by the expiration of respondent Enriquez's term upon the appointment of another person to his position. I recognize the merit of SAJ Perlas-Bernabe's position that the Formal Charge filed by the investigating committee signifies the institution of the complaint conformably with *Baculi*, and that cessation from office "is not a way out to evade administrative liability when facing administrative sanction. [It] does not preclude the finding of any administrative liability to which he or she shall still be answerable."¹⁷

While I agree that the issues raised in this case remain justiciable despite respondent Enriquez's separation, my position is that for presidential appointees, administrative jurisdiction may only be had by the timely filing of a Formal Charge before the OP or the OMB during the incumbency of the said appointee. This is not inconsistent with the jurisprudence¹⁸ dealing with either dismissed or resigned officials. The Formal Charge herein was not brought to the OP or OMB during the respondent's tenure; hence, no complaint was timely instituted before the proper disciplining authority. There is no valid pending or subsisting administrative complaint that could be the avenue to find administrative liability at this stage. This is in stark contrast with the fact pattern in *Baculi*: the Department of Agrarian Reform Secretary forwarded his findings and recommendations to the OP while the

¹⁷ Separate Concurring Opinion of SAJ Perlas-Bernabe, p. 3.

¹⁸ *Office of the Court Administrator v. Judge Hamoy*, 489 Phil. 296, 301 (2005), deals with a judge who "was dismissed from service with forfeiture of retirement benefits except accrued leave credits after he was found guilty of gross inefficiency, dereliction of duty and violation of the Code of Judicial Conduct." The Court held that his dismissal did not preclude the imposition of fine charged against his accrued leave benefits.

On the other hand, in *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169 (2011), deals with "Andutan [who] was forced to resign more than a year before the Ombudsman filed the administrative case against him," *id.* at 185. The CA annulled and set aside the OMB decision, because, among other reasons, "the administrative case was filed after Andutan's forced resignation," *id.* at 175. On *certiorari*, the Court agreed with the CA, holding that "Andutan is no longer the proper subject of an administrative complaint," *id.* at 189.



petitioner was still in office; the OP, in turn, dismissed the petitioner therein from the service.

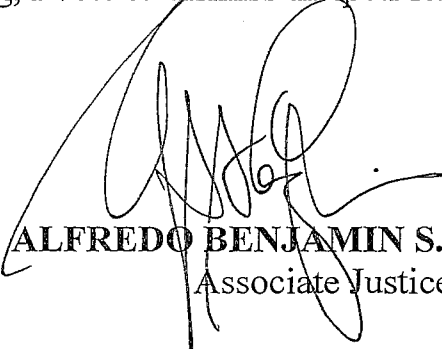
Hence, I do not believe that there is basis to refer the SIC's findings to the OP for imposition of administrative penalties, if any.

Conclusion

In fine, I maintain that the extent of disciplinary jurisdiction of a Department Secretary over a subordinate-presidential appointee includes the power to investigate, and designate a committee or officer to conduct such investigation, BUT does not include the power to unilaterally place the presidential appointee under preventive suspension and to unilaterally impose disciplinary penalties. Given the state of the law and executive issuances on the matter, there is no pressing need to deviate from or abandon *Baculi*.

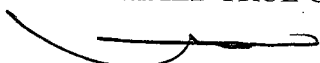
Moreover, separate from the issue of whether the DTI Secretary has disciplinary jurisdiction over a subordinate presidential appointee, I believe that DTI's failure to bring the Formal Charge before the proper disciplining authority (*i.e.*, OP or OMB) prior to the respondent's separation from office means no disciplinary jurisdiction can be had over him at this stage. It also forecloses the continuation of proceedings with a view of finding administrative liability on the part of respondent Enriquez.

On the basis of the foregoing, I vote to dismiss the petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court