MALACAÑANG
MANILA

ADMINISTRATIVE ORDER NO. 285

EXONERATING HERMES J. DORADO OF THE DEPARTMENT OF FOREIGN AFFAIRS

This pertains to the administrative case filed by the Department of Foreign Affairs, hereinafter the "Department", against Mr. Hermes J. Dorado for misconduct and conduct prejudicial to the best interest of the service.

Records show that the Italian Chief of Protocol, in his letter dated 28 October 1986 to Ambassador Zaldariaga, requested the waiver of diplomatic immunity on respondent Dorado, who was Second Secretary of the Philippine Embassy at the time. The Italian Chief of Protocol claimed that respondent unduly interfered with the police while the latter was conducting an investigation into the alleged illegal business transaction of DPC Enterprise, as Filipino registered company. The Italian authorities maintained that the DPC Enterprise facilitated the remittance of Filipino contract workers' in violation of Italian currency laws.

Investigation showed that when the Italian police attempted to search the residence at Via Archemide St., the place where DPC was supposed to be conducting its illegal activities, respondent invoked diplomatic immunity. The residence in question was also the home of the DPC representative to Rome, a certain Mr. Danilo Cordova. The claim of respondent that the apartment was registered in his name was disputed by the Italian Foreign Ministry since there was no advise from the Philippine embassy that said apartment was being rented by respondent as a second residence. It was also claimed by the Chief of the Italian Protocol that respondent is aware of the illegal transactions being committed by DPC. The Philippine Embassy, subsequently, received numerous complaints against DPC from Filipino contract workers in Rome who reported that the money which they entrusted to the DPC representative for remittance to the Philippines never reached their beneficiaries. Respondent, for his part, denied all these allegations in his telex to the Board of Foreign Service Administration dated 24 October 1986 and in his letter dated 10 March 1987.

Pending investigation of the case by the Board of Foreign Service Administration (BFSA), respondent was transferred to the Philippine Embassy in Bonn without the issue of waiver of his immunity having been resolved.

On 20 October 1987, the Ad Hoc Committee created to investigate the matter found that a prima facie case existed against respondent but recommended to the Board the dismissal of the charges against respondent for lack of interest on the part of the complainants to pursue the case. However, the Board, in its Resolution dated 10 January 1989, rejected the above recommendation and, instead, took cognizance of the complaint against respondent. The case was then assigned to the Board's investigation Committee No. 1 headed by Assistant Secretary Vicente De Vera.

In the meantime, however, a report from Ambassador Cesar Espiritu of the Philippine Embassy in Bonn was received by the Board regarding the complaint of some Filipinos and German nationals who applied for Certificates of Legal Capacity to contract marriage with said Embassy. It was alleged that respondent had been collecting fees from them for translation in German of the Certificates of Legal Capacity and cost of photocopying of the supporting documents without receipts.

After finding that there exists a prima facie case against respondent, Mr. de Vera, on 16 January 1989, formally charged respondent with misconduct and conduct prejudicial to the best interest of the service pursuant to the provisions of P.D. 807 and R.A. 708.

The only issue in the instant case is whether or not the actuations of respondent in Rome and in Bonn constitute misconduct within the purview of par. 4, Section 36b of P.D. 807 in relation to Part B, Section 1(b), Title IV of R.A. 708, as amended

Misconduct has been defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It implies a wrongful intention and not a mere error of judgment (in re: Impeachment of Horrilleno, 43 Phil. 214).

In addition to the high demand for high physical, mental and moral qualifications, foreign service officers are further required to observe a standard of personal and official conduct. These norms are provided in Section 464, Book III of the Foreign Service Code of 1983. Pertinent to the present case is the norm set forth in Section 464 (k) which provides:

> "Engaging in Business and Allied Transactions. - - No officer or employee including members of their families in the post, shall engage in business in his own name or through the agency or any other person in the country to which he is accredited or residing.

Neither shall they act as attorney, merchant, broker, factor or agent while holding office. Nor shall he permit the use of his name for business reference.

Officers and employees shall not have any remunerative investment in the country to which they are accredited, excepting investments acquired previous to knowledge or assignment. This prohibition shall apply to the owning of real estate, bonds, shares, stocks, and mortgages,"

On the basis of the foregoing, respondent's relationship, if any, with DPC may be assessed accordingly.

From the evidence adduced, the extent of respondent's participation in the activities of DPC does not sufficiently establish his alleged financial or business interest in DPC. Neither was there proof presented that he was acting as an agent of DPC.

Respondent's acts in connection with DPC consist only of the following: first, the remittance scheme proposed by DPC which was welcomed by the Philippine Ambassador to Rome because of the tremendous benefit it would give to the Filipino community, was assigned to the Respondent for a study on the matter and its possible operation in conformity with Italian regulation; second, respondent accompanied the DPC representative to the Italian Finance Ministry to obtain information on the mechanics of establishing such a remittance scheme to the Filipino communities in Naples and Florence was undertaken by him with the consent of the Ambassador; and, fourth, some transactions were made in his presence, but, remittance payments were not made through the respondent but through the DPC representatives. Affidavits were executed by some seven members of the Filipino Community who availed of the remittance scheme. The affiants alleged irregularities therein but did not impute any responsibility to, much less accuse, respondent of any offense.

With respect to the assertion that respondent violated office rules and regulations when he rented an apartment on Via Archimede St. without any official or formal authority, it is difficult to make any pronouncement on the matter since the records do not indicate nor cite the particular office rule or regulation supposed to have been violated by respondent.

Suffice it to state here, however, that respondent did conform with Italian protocol practice with respect with the lease of living quarters by accredited diplomats. Respondent registered the lease with the Internal Police

of Italy as required. He also informed said officials that he was a diplomatic officer of the Philippine Embassy, and apprised Charge d' Affaires Victor Garcia III that he was renting the apartment on Via Archemide. None of these actions indicate willful violations of rules but rather adherence thereto by the respondent.

The accusations against the respondent arising from the operation of a xerox machine in Bonn and the allegations of various complainants applying for legal capacity to marry that they were charged unreasonable fees for translation and photocopying services apparently arose from a misunderstanding. It was amply explained by the respondent that the complainant were being charged for the costs of the photocopying documents and not for translation since the certificates were issued in both English and German. Receipts have also been duly issued by the respondent. Moreover, complainants, have desisted from pursuing the charges apparently because of a loss of interest or for having been satisfied by the clarification made by the respondent. Respondent's actions under these circumstances cannot be considered as the conduct punishable under applicable laws, rules and regulations.

WHEREFORE, in view of the foregoing, Hermes J. Dorado is hereby EXONERATED from the instant charges.

DONE in the City of Manila this 2nd of June in the year of Our Lord, nineteen hundred and ninety-two.

Corazon G. Aquino

By the President:

FRANKLIN M. DRILON
Executive Secretary