

MALACANANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 289

SUSPENDING SUPERINTENDENT LEONORA O. BASALO OF THE DIVISION OF DUMAGUETE CITY FOR ONE (1) YEAR

This refers to the motu proprio administrative complaint, dated June 18, 1991, filed by the Secretary of Education, Culture and Sports against Superintendent Leonora O. Basalo for grave misconduct and conduct prejudicial to the best interest of the service, allegedly committed as follows:

"That on or around February 22, 1991, R and E Manufacturing delivered 1,200 pcs. of elementary school desks worth P435,000.00 to the Division of Dumaguete City, in accordance with the Requisition and Issue Voucher Unnumbered dated December 28, 1990, and despite noticeable defects in quality standards of the desks delivered, which defects were confirmed by a COA Inspection Report, you still accepted the same and effected payment thereof, to the damage and prejudice of the government."

Antecedent facts show that Secretary Cariño constituted a committee composed of Attys. Marcelo M. Bacalso, Nuevas T. Montes and Generoso Capuyan to conduct a formal hearing on the complaint and submit their findings and recommendations thereon.

In her answer to the complaint, dated September 16, 1991, Supt. Basalo alleged among others that:

"1. The subject desks were accepted and subsequently paid upon the certification on Item I on the face of Voucher No. 91-201 by Supply Officer Alfredo C. Katada that he 'RECEIVED SUPPLIES AND PROPERTY STATED ABOVE IN GOOD CONDITION AS PER PURCHASE ORDER AND INVOICE' which is corroborated by his certification, attached as Annex I hereof, dated February 25, 1991, and appended to the said voucher which is to the effect that 'he accepted each and any article delivered/ service rendered by R and E Manufacturing,

listed in the attached Invoice No. 7102 dated February 22, 1991 which has been inspected and was/were found to be in accordance with the specification stipulated under Order No. Unnumbered dated December 28, 1990';

2. Likewise, the said voucher is supported by the 'Inspection Report' dated February 25, 1991 of the Division Requisition and Awards Committee which states in its 'FINDINGS: RECOMMENDATION' portion that the desks were 'Inspected checked and found correct.' x x x"

During the formal hearing, several witnesses were presented for the complainant, including:

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- a) Victoria Pascualado, Clerk I at the DECS Dumaguete City, who testified that in the morning of February 23, 1991, respondent supervised the assembling of the desks in question; that on February 25, 1991 at about 1:15 P.M., upon request of respondent, she went with Felicidad Olarte, Sales Manager of R and E Manufacturing, to PNB Dumaguete City to encash the checks for payment of the 1,200 elementary school desks.
 - b) Dr. Caridad C. Labe, Education Supervisor I, DECS Dumaguete City, alleged that on February 25, 1991 at about 1:00 P.M., respondent inquired whether she knew someone at PNB Dumaguete City who could vouch for her (Basalo) and Olarte, and when she said 'yes' she has an Auntie there, respondent requested her to go with them to PNB; that at PNB, they were told to stay until 1:30 P.M., to wait for the bank teller for more cash; that she was then instructed by Basalo to go to the airport to check-in their (Basalo and Olarte) tickets.
 - c) Sergio T. Somido, Education Supervisor I, Dumaguete City, and designated as Chairman of the Division's Pre-Qualification, Bidding, Awards Committee, testified that on February 23, 1991 (Saturday) respondent

and Olarte supervised the assembling of the desks; that on February 25, 1991, he and Alfredo Katada, Supply Officer of the Division Office, inspected the desks and found that there were no plans and specifications for the desks at that time; that after the inspection, they reported to Basalo that the desks were not smooth and were not varnished, but respondent said that the price of the desk was only P363.00 hence commensurate to the quality; that since the inspection was not based on any specifications, he was hesitant to sign the inspection report, but due to the assurance of Basalo that she would take full responsibility, he issued the inspection report; that at that time, respondent Basalo had already signed the voucher, check and the inspection report based on quality, usability and general appearance; that after receiving the Plans and Specifications for the desks on June 11, 1991, he submitted a reinspection report that the desks did not conform with the Plans and Specifications; that the usual procedure is for the PBAC Chairman to sign the voucher first but in this case, the respondent signed before he did.

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- d) Alfredo Katada, Supply Officer, Dumaguete City Division, testified that on or about February 14, 1991, prior to the delivery of the desks, respondent verbally instructed him and Ms. Carmelita Tan Pastor, Fiscal Clerk of respondent's office to prepare the voucher and all supporting papers for P435,600.00 (payment for the desks) "because these papers will be handcarried by Ms. Olarte, Sales Manager of R & E Manufacturing, to Cebu City for signature of the Regional Director; that on February 25, 1991, Basalo instructed him (Katada) and Ms. Tan Pastor to pay the supplier immediately because she (Basalo) was leaving for Manila on that same day;

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that after inspecting the desks together with Mr. Somido, he (Katada) reported the poor quality of the desks to respondent but respondent explained that "the price of each desk is only P363.00, so it is worth the price"; that he signed the necessary papers because of Basalo's assurance that she would take full responsibility, and besides respondent had already signed the said papers.

On the other hand, respondent Basalo averred that, contrary to Katada and Somido's allegations, the inspection report was already signed by them (Katada and Somido) when placed on her table. She also denied that she said she will take full responsibility. Respondent also presented Carmelita Tan Pastor as witness, who testified that Basalo never had the custody of checkbooks and that the check signed by Director Gomez was cancelled because the bank did not honor Gomez's signature.

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The chairman of the investigating panel found respondent guilty as charged and recommended her dismissal from the service; the two members found respondent guilty of simple misconduct and recommended 1-year suspension as penalty therefor.

In a letter of December 13, 1991, Secretary Cariño, finding respondent guilty as charged, recommended to me her dismissal from the service.

In reply to Secretary Cariño's recommendation, respondent's counsel alleged violation of due process for failure to comply with the Memorandum issued by then Executive Secretary Catalino Macaraig, dated August 17, 1990, and prayed that the recommendation of Secretary Cariño be denied, the findings of the investigating panel declared null and void and respondent be reinstated.

At the outset, it must be stressed that the findings of Secretary Cariño is only recommendatory in nature (Cuyegkeng vs. Cruz, 108 Phil. 1147), because the President has administrative disciplinary authority over respondent, who is a presidential appointee.

This brings to the fore the core issue of whether or not respondent is administratively liable for grave misconduct and conduct prejudicial to the service for having accepted the delivery of 1,200 pieces of elementary school desks and effected payment therefor, despite noticeable defects in their quality.

After going over the records of the case, I concur with the findings of the Department of Education, Culture and Sports (DECS), but differ as to the gravity of the offense committed and the penalty to be imposed.

It was established during the hearing that the delivery of and payment for the school desks were completed in February 1991, but the plans and specifications thereof were received only on June 11, 1991. Apparently, the recipient Division of Dumaguete City had no guidelines to use in the acceptance or non-acceptance of the desks and, for this, the DECS committed an error.

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PBAC Chairman Somido and Supply Officer Katada submitted their inspection report to respondent Basalo to the effect that the desks were not smooth and unvarnished. But instead of taking guidance therefrom, respondent preferred to offer an excuse for the poor quality of the desks, that the price of P363.00 per unit is commensurate to its quality.

Respondent's actuations did not hew with the best interest of the service. While she showed unusual concern for the immediate payment of the desks, coinciding as it were with her flight to Manila and that of the Sales Manager of R and E Manufacturing, she casually brushed aside the finding of her technical men about the poor quality of the desks.

Prudence dictates that respondent should have reported to the DECS about the poor quality of the desks before even accepting their delivery, much less paying for them. That she is fully responsible for the acceptance of and payment for the questioned delivery of school desks is beyond doubt.

Anent the claim of violation of due process for failure to follow the Memorandum of August 17, 1990, issued by then Executive Secretary Macaraig, suffice to say that said memorandum was superseded by the Memorandum of August 7, 1991,

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issued by Executive Secretary Franklin M. Drilon, which changed the procedure in the investigation of administrative cases against presidential appointees in the DECS.

In the instant case, respondent cannot be said to have been denied due process. In her answer of September 16, 1991, respondent waived her right to a formal investigation, but still a formal hearing was conducted by the investigating panel wherein she participated.

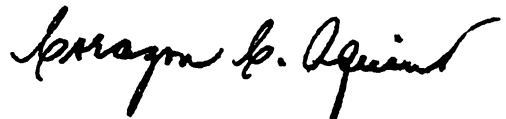
Well-settled is the rule that procedural due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. (Var-Orient Shipping Co. Inc. vs. Achacoso, No. L-81805, May 31, 1988, 161 SCRA 732). Where a party was given the opportunity to be heard, either through oral arguments or pleadings, there can be no denial of procedural due process. Due process is not semper et ubique judicial process. (Yap Say vs. Intermediate Appellate Court, No. L-73451, March 28, 1988, 159 SCRA 325.)

I however disagree with Secretary Cariño's finding that respondent is guilty of grave misconduct and conduct prejudicial to the best interest of the service with a corresponding penalty of dismissal from the service.

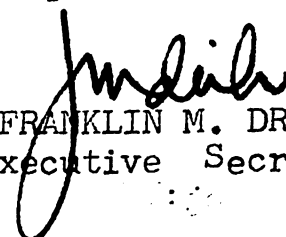
I consider the offense committed as simple misconduct and conduct prejudicial to the best interest of the service which deserves the penalty of suspension for one (1) year.

WHEREFORE, respondent Superintendent Leonora O. Basalo is hereby found guilty of simple misconduct and conduct prejudicial to the best interest of the service. Accordingly, she is hereby meted the penalty of suspension from office for one (1) year without pay, effective upon notice hereof.

DONE in the City of Manila, this 4th day of June, , in the year of Our Lord, nineteen hundred and ninety-two.



By the President:



FRANKLIN M. DRILON
Executive Secretary