

MALACAÑANG
MANILA
BY THE PRESIDENT OF THE PHILIPPINES

Administrative Order No. 235

DROPPING FROM THE ROLLS OF ATTY. JACOB F. MONTESA, DIRECTOR III, LEGAL SERVICES, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT.

This refers to the case of Atty. Jacob F. Montesa, Director III Legal Services, Department of Interior and Local Government, who is recommended to be dropped from the rolls for his refusal to assume duties at his reassigned post in Davao City.

On July 26, 1994, DILG Secretary issued Department Order No. 94-370, reassigning Atty. Montesa as Director III in Region XI, Davao City. On December 5, 1994, Montesa informed the Secretary that he will re-assume his duty as Chief of Legal Services upon the expiration of his sick leave. The following day, Acting Secretary Alexander P. Aguirre directed him to report to Region XI. Montesa requested for a reconsideration of the order, but the same was denied. On January 20, 1995 he appealed the denial to the Civil Service Commission, which appeal was dismissed on May 23, 1995.

Thereafter, Atty. Montesa filed a motion for reconsideration. On August 22, 1995, the Commission, denying the motion declared that:

“In the absence of grave abuse of discretion tantamount to oppression or harassment, patent error or injustice on the part of the Head of Office, exercising his authority under the law, the Commission may not and cannot ordinarily set aside said reassignment order or declare it null and void. This authority is granted to head of agencies under Sec. 26 (par. 7), Book V of the Administrative Code of 1987 which provides:

(7) Reassignment. An employee may be reassigned from one organizational unit to another in the same agency: Provided, that such reassignment shall not involve a reduction in rank, status or salary.”

The Commission further noted that Montesa failed to prove that the reassignment violated said provision.

IN REPLYING, PLEASE CITE:

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With the denial, the Department, on October 10, 1995, reminded Montesa to report to Region XI, otherwise the office shall be constrained to consider him absent without leave (AWOL) and drop his name from the rolls.

Instead of complying, Atty. Montesa filed a petition for review with the Court of Appeals with a prayer for the issuance of a temporary restraining order. No TRO was issued, however.

On November 9, 1995, Jaime A. Madrino, Region XI Regional Director, informed the DILG Secretary that despite the October 10, 1995 reminder, Atty. Montesa still had not reported for work.

The intransigence and open defiance displayed by Atty. Montesa which greatly prejudiced and compromised public interest, led the DILG Secretary to recommend the dropping of his name from the roster of public servants.

After a careful study of the case, this Office hereby adopts the recommendation.

Civil Service Commission Memorandum Circular No. 12 series of 1994 provides that **an officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from service or dropped from the rolls without prior notice.** He shall, however, be informed of his separation from service not later than five (5) days from its effectivity.

This particular mode of separation is non-disciplinary in nature, thus the ex-parte nature of termination. Further, it does not result to any forfeiture of any benefits on the part of the official or employee, nor in disqualifying him from reemployment in the government (Section 2.6, CSC Memorandum Circular No. 12, s. of 1994).


The circular was issued to promote efficient and effective personnel administration in government and to obviate any prejudice to the service.

This office notes that the order of reassignment was issued on July 26, 1994. Although a public officer affected by the reassignment is granted the remedy of appealing the order on the ground that the movement is due to harassment or coercion, until this is proven however, the order is presumed to be in the interest of the service and notwithstanding the appeal, the decision to detail shall be executory. No such stay of execution or restraining order was issued by any of the three bodies which acted on his appeal. And yet to date, Atty. Montesa still has not reported to his new post.

His actuations more than warrant the imposition of the sanction provided for in Memorandum Circular No. 12, series of 1994.

Wherefore, in view of the foregoing, and upon the recommendation of the Department of Interior and Local Government, for serious neglect of duty and absences without official leave (AWOL), the name of Atty. Jacob F. Montesa, Director III, Legal Services, is dropped from the roster of public servants.

Done in the City of Manila, this 13th day of December, in the year of Our Lord, Nineteen Hundred and Ninety- Five.



By the President:



RUBEN D. TORRES
Executive Secretary