Republic of the Philippines
Supreme Court
Manila

EN BANC

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.

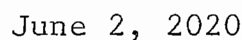
G.R. No. 225301

Present:

PERALTA, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,[*] *and*
GAERLAN, *JJ.*

Promulgated:

June 2, 2020



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DECISION

REYES, J. JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to annul the Decision[2] dated June 27, 2016 of the Regional Trial Court (RTC) of Quezon City, Branch 77, in Civil Case No. R-QZN-16-05101.

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[*] On leave.

[1] *Rollo*, pp. 59-110.

[2] Penned by Acting Presiding Judge Cleto R. Villacorta III; id. at 175-201.

The Facts

Prompted by a news article[3] about corrupt practices in the issuance of importation clearances by an unnamed high-ranking officer of the Department of Trade and Industry (DTI), then DTI Secretary Adrian Cristobal, Jr. (Sec. Cristobal) instructed Consumer Protection Group Undersecretary Victorino Mario Dimagiba (Usec. Dimagiba) to conduct an investigation thereon.[4]

After acting upon said directive, Usec. Dimagiba issued a Memorandum[5] dated April 14, 2016, reporting his initial findings to Sec. Cristobal, finding unauthorized issuances of respondent Danilo B. Enriquez (Enriquez), then Fair Trade and Enforcement Bureau (FTEB) Director, with regard to certain importations. Pursuant to these findings, Usec. Dimagiba opined that there is sufficient basis to file administrative and/or criminal complaints against Enriquez, recommending, thus, that a full-blown investigation on all activities in Enriquez's office be conducted and that the latter be preventively suspended pending investigation.[6]

Thus, Sec. Cristobal issued Department Order (D.O.) No. 16-34[7] dated April 22, 2016, creating a Special Investigation Committee (SIC), mandated to conduct a full investigation on Enriquez. The D.O. also clothed the SIC the authority to issue a preventive suspension order, among others.

Learning about the SIC, Enriquez issued a Memorandum[8] dated May 2, 2016 addressed to Usec. Dimagiba, formally requesting clarification on the "unverified" findings of the preliminary investigation conducted against him and also formally demanding for the immediate release of said findings and/or report, invoking due process, fair play, and the higher interest of justice.

On even date, Enriquez issued another Memorandum,[9] addressed to Sec. Cristobal and the individual members of the SIC, questioning the regularity of the investigation conducted by Usec. Dimagiba, not only on the ground of want of authority, but also because the lack of opportunity to present countervailing evidence or counter-affidavit during said investigation.

On May 5, 2016, Enriquez issued another Memorandum,[10] also

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[3] *Philippine Star*, April 3, 2016, "Curse of the Haciendero Presidents" by Cito Beltran under his column "Ctalk"; id. at 202-203.
[4] Id. at 559-560.
[5] Id. at 206-209.
[6] Id. at 561-563.
[7] Id. at 210-211.
[8] Id. at 212-213.
[9] Id. at 214-216.
[10] Id. at 217-218.

addressed to the SIC individual members, objecting to the proceedings conducted by the latter on the ground that it is the Office of the Ombudsman which has the disciplinary authority over him.

On May 6[11] and 12,[12] 2016, Enriquez issued separate memoranda, reiterating his objections to the validity of D.O. No. 16-34 with regard to the authority of the SIC to conduct investigation upon him and order preventive suspension against him.

On May 12, 2016, the SIC issued a "Show Cause Memorandum,"[13] directing Enriquez to explain in writing, within 48 hours from receipt, why no administrative charges should be filed against him with regard to Usec. Dimagiba's findings.

In response, Enriquez issued a Memorandum[14] dated May 18, 2016, maintaining his objections to the SIC's disciplinary authority over him, being a presidential appointee, holding a career and high-level position with Salary Grade "28."

On May 19, 2016, the SIC issued a Memorandum[15] stating that Enriquez did not give a responsive answer to the "Show Cause Memorandum" and as such, failed to present an explanation why no administrative case should be filed against him. Thus, the SIC found *prima facie* case against Enriquez and formally charged him with Gross Insubordination, Gross Misconduct/Gross Neglect of Duty, Grave Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service, stating therein the specific acts constituting the offenses, as well as the laws, rules and regulations alleged to be violated. Attached with said formal charge were pieces of documentary evidence substantiating the charges. Enriquez was also ordered to file an answer to the formal charge within 72 hours. The SIC further placed Enriquez on preventive suspension for a period of 90 days effective immediately upon receipt of said Memorandum.

On May 23, 2016, Enriquez filed a Protest and Answer *Ex Abudante Cautelam*,[16] specifically denying the charges against him and maintaining his objection to the SIC's authority to conduct investigations and order his preventive suspension.

Enriquez also filed a Petition for *Certiorari*, Prohibition, and *Mandamus* with Very Extreme Urgent Prayer for the Issuance of a *Status Quo Ante* Order and Temporary Restraining Order (TRO) and a Writ of

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[11] Id. at 219-220.
[12] Id. at 221-223.
[13] Id. at 224.
[14] Id. at 226-233.
[15] Id. at 234-237.
[16] Id. at 287-291.

Preliminary Injunction[17] before the RTC against Sec. Cristobal, Usec. Dimagiba, and the members of the SIC (collectively, petitioners).

In the main, Enriquez's petition was grounded upon the lack of disciplinary jurisdiction of Sec. Cristobal, and consequently the SIC as well, over him, being a presidential appointee occupying a high-ranking position with Salary Grade "28." Enriquez averred that it is the Presidential Anti-Graft Commission (PAGC) which has the authority and jurisdiction to investigate, hear, and decide administrative cases against a presidential appointee occupying a director position with Salary Grade "28." Enriquez invoked Executive Order (E.O.) No. 12, as amended by E.O. No. 531 and E.O. Nos. 531-A and 531-B.

Enriquez also argued that the investigation conducted by Usec. Dimagiba, as well as the resulting creation of the SIC and its order of preventive suspension, are acts of oppression and clear abuse of authority, which violated his right to due process.

Hence, Enriquez prayed that D.O. No. 16-34 and all the Memoranda issued by Usec. Dimagiba and the SIC relative to the investigation/s against him, be nullified; that petitioners be ordered to restrain from further continuing with the administrative disciplinary proceedings against him; and that a memorandum be issued stating that petitioners do not have jurisdiction over administrative cases involving presidential appointees and the proper remedy or referral of the case to the appropriate authority.[18]

Petitioners, through the Office of the Solicitor General (OSG), countered that the RTC has no jurisdiction over the petition. Petitioners argued that the petition involves the DTI Secretary's exercise of its *quasi-judicial* function in an administrative disciplinary proceeding. Hence, according to the petitioners, a review thereof is within the jurisdiction of the Court of Appeals (CA) pursuant to Section 4, Rule 65 of the Rules of Court. Petitioners further argued that they have disciplinary jurisdiction over Enriquez, which include the authority to investigate and designate a committee to conduct such investigation, invoking Section 7(5), as well as Section 47(2) and (3), Chapter 2, Book IV and Section 51, Chapter 6, Book V of E.O. No. 292 or the Administrative Code of 1987. Petitioners further averred that due process was observed in the exercise of their disciplinary authority over Enriquez.[19]

In its June 27, 2016 Decision, the RTC ruled in favor of Enriquez as follows:

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[17] Id. at 253-285.
[18] Id. at 284-285.
[19] Id. at 454-493.

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 [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.*

SO ORDERED.[20] (Italics in the original)

Meanwhile, the DTI, through its then newly-appointed Secretary, Ramon M. Lopez, issued D.O. No. 16-63 dated July 4, 2016, which designated Assistant Director Ferdinand L. Manfoste as Officer-In-Charge of the FTEB in concurrent capacity, effectively implying the expiration of Enriquez's term of office.

This Petition was then filed. Petitioners argue, in the main, that the DTI Secretary has disciplinary jurisdiction, which includes the authority to investigate and to designate a committee for such purpose, over subordinates though they may be presidential appointees such as Enriquez. Petitioners also question the RTC's jurisdiction to review the questioned act/s of the DTI Secretary and the SIC through a petition for *certiorari*, prohibition, and *mandamus*. Further, petitioners maintain that, contrary to Enriquez's claim, due process of law was observed in the process of investigation.

In his Comment/Opposition with Leave (Re: Petition for Review on *Certiorari*),[21] Enriquez argues that the expiration of the term of his office has rendered the instant petition moot and academic.

In their Reply,[22] petitioners, through the OSG, argue that Enriquez's separation from service does not render the instant petition moot and academic considering that administrative proceedings or investigations commenced against a public officer is not mooted upon the latter's subsequent separation from service as accessory penalties may still be imposed against erring public officials. Put differently, petitioners posit that Enriquez's separation from service only rendered moot the imposition of the penalty of dismissal, not the administrative proceedings or investigations

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[20] Id. at 201.
[21] Id. at 509-511.
[22] Id. at 524-533.

against him. Hence, according to petitioners, the review of the instant Petition, which is rooted from the petition filed by Enriquez before the RTC, cannot be mooted by the latter's separation from service.

In their Memorandum,[23] thus, petitioners raise the additional issue of whether or not the petition was rendered moot and academic due to Enriquez's separation from office. On the other hand, in his Memorandum, Enriquez argues that his right to due process of law was violated when he was investigated upon by a committee which has no authority to investigate, hear, and decide administrative cases over him, who is a presidential appointee with Salary Grade "28." Enriquez insists that it is the PAGC, not the DTI Secretary or the committee he designated, which has disciplinary authority over him pursuant to E.O. No. 12, as amended.

The Issues

I. Does the Department Secretary have disciplinary jurisdiction over a presidential appointee?

II. Did the RTC err in giving due course to the petition for *certiorari*, prohibition, and *mandamus*?

III. Is the petition rendered moot and academic by the expiration of Enriquez's term of service?

The Court's Ruling

I.

The DTI Secretary has authority to investigate, as well as to designate a committee or an officer for such purpose, a bureau director who is a presidential appointee such as Enriquez.

In ruling against the authority of the DTI Secretary to proceed in the administrative investigation of Enriquez, the RTC reasoned as follows:

> From these legal facts, one can **necessarily infer** two things:
>
> (i) The heads of departments, agencies and other instrumentalities **have no jurisdiction as well** over disciplinary cases against **presidential** appointees. This is **because** in effect their decisions **cannot be appealed** to the **proper** appellate body, which is the Civil Service Commission, and therefore, this scheme of disciplinary procedure **leaves a void** in the appeal process, which as a matter of statutory interpretation is **undesirable**; and
>
> (ii) As a result, the heads of departments, agencies and other

[23] Id. at 558-618.

instrumentalities **must pursue a track other than** Sec. 7(5), Chap. 2, Bk IV, *Administrative Code of 1987* and Sec. 47(2) [and] (3), Chap. 6, Tit. I, Bk V, *Administrative Code of 1987* in *pursuing administrative complaints* against **presidential** appointees. The **appropriate track** is **provided for** by *Executive Order No. 13* and its *allied EOs*.

Further, Sec. 47(2) (3), Chap. 6, Tit. I, Bk V, *Administrative Code of 1987* **must be correlated to** and therefore **restricted by** Sec. 48 which refers to "Procedures in Administrative Cases Against **Non-Presidential** Appointees."

Very clearly, the **provisions cited by** [petitioners] against the administrative discipline of [Enriquez] appear to be **out-of-synch with** his service classification as a **presidential** appointee.

Indeed, **pursuant to his power of control**, the President may **supplant** and **directly assume** and **exercise** the **investigatory functions** of **departments** and agencies within the executive department.

x x x x

The President's power of control under the *Constitution* and the *Administrative Code* is confined only to the executive department.

[Petitioners] **also justified** their assumption of jurisdiction over [Enriquez] by asserting that they or at least the Honorable Secretary are the **alter egos** of the President. The **existence** of *this doctrine* of course is **undeniable.**

But since the **President has already spoken** through **Executive Order No. 13** as quoted above, **[petitioners] should have followed** the prescriptions thereof **instead of** doing things **apart from** and **independent of** EO 13.

The **reasonable interpretation** of the President's institution of EO 13 as against presidential appointees is that *pursuant to* the President's *power of control* **he has taken over** through the procedures set forth in the Executive Order **all disciplinary matters involving his appointees**. This is apparent from three perspectives:

(i) the vesting of jurisdiction in the EO 13 body and its predecessors over administrative cases against presidential appointees;

(ii) the **express** recognition of only the Office of the Ombudsman's jurisdiction as being concurrent with the EO 13 body, thus excluding concurrency with the Secretary or any other head of office or agency; and

(iii) the Secretary's lack of jurisdiction over presidential appointees.

Further, [petitioners] **cannot put forward** the alter ego doctrine because the powers they are *erroneously* **invoking** are powers **expressly** provided by the *Administrative Code of 1987* to the Secretary **sua sponte** or as Secretary **qua Secretary**. The cited provisions of the *Administrative*

> *Code* **do not refer to** the powers of control and removal of the President because **these powers** of the President **do not** derive from statute **but from** the **Constitution** and the **President's inherent powers.**
>
> x x x x
>
> The **Executive Orders have the force and effect of law** as both an exercise of the President's power under the *Constitution* and the *Administrative Code of 1987.* As a result, these EOs **cannot be taken lightly** and x x x ***ignored.*** **He is the President** and **the Principal of [petitioners].** [Petitioners] as the President's alter egos **ought not** to *downgrade* and *degrade* his powers as such.[24] (Emphases and italics in the original)

In brief, the court *a quo* ratiocinated that the heads of the departments, agencies and other instrumentalities have no disciplinary jurisdiction over presidential appointees since their decision thereon cannot be appealed to the Civil Service Commission (CSC), thereby leaving a void in the appeal process. Moreover, according to the RTC, the President, pursuant to its power of control over the executive branch, has directly assumed the investigatory functions of the department heads over presidential appointees, through E.O. No. 13 "and its allied E.O.s." The RTC then theorized that such assumption of function, done pursuant to a Constitutional mandate, cannot be ignored by the President's mere alter egos by invocation of the Administrative Code provisions.

The Court cannot subscribe to this interpretation.

Disciplinary Authority of the Department Secretary under the Administrative Code

The administrative structure of our government is laid down in the Administrative Code of 1987. Indeed, pursuant to Section 1, Article VII of the 1987 Constitution, Section 11, Chapter 3, Book II of the Administrative Code provides that the executive power shall be vested in the President of the Philippines. Needless to say, not every task in the executive department can be undertaken by the President and its office. Hence, the Administrative Code provides for the organization and maintenance of several departments as are necessary for the functional distribution of the work of the President.[25] Each department shall have jurisdiction over bureaus, offices, regulatory agencies, and government-owned or -controlled corporations assigned to it by law.[26] The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the

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24 *Rollo*, pp. 448-450.
25 Executive Order No. 292 (1987), Book IV, Chapter 1, Sec. 1.
26 Id. at Sec. 4.

Department.[27]

Section 7, Chapter 2, Title III, Book IV of the Administrative Code further provides for the powers and functions of the Department Secretary, *viz.*:

> SEC. 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. (Emphases supplied)

Corollary, Section 47(2) and (3), Chapter 6, Title I-A, Book V of the Administrative Code provides:

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[27] Id. at Chapter 2, Sec. 6.

SEC. 47. *Disciplinary Jurisdiction.* –

x x x x

(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. (Emphases supplied)

The foregoing provisions of the Administrative Code unambiguously provide for the Department Secretary's disciplinary jurisdiction over officers and employees under him in accordance with law. Clearly, thus, a bureau director, which heads a mere subdivision of a department, is under the Department Secretary's disciplinary supervision. It is important to emphasize that the aforequoted provisions made no distinction between presidential and non-presidential appointees with regard to the Secretary's disciplinary jurisdiction.

Power to Impose Penalty vis-à-vis
Power to Investigate

The distinction between presidential and non-presidential appointees becomes relevant only with respect to the Department Secretary's "power to impose penalties" and "power to investigate."

The Revised Rules on Administrative Cases in the Civil Service (RRACCS),[28] as well as the 2017 Rules on Administrative Cases in the Civil Service (RACCS)[29] which superseded the RRACCS, provide the distinction for the disciplinary jurisdiction of the department heads and secretaries. Said rules provide for the disciplinary powers that the CSC and the department heads and secretaries have over non-presidential appointees.

Section 9 of the RRACCS, the applicable rules during Enriquez's service, provides that the department secretaries have original concurrent

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[28] The Civil Service rules applicable during Enriquez's tenure. Promulgated on November 8, 2011.
[29] Promulgated on July 3, 2017.

jurisdiction with the CSC over cases cognizable by the latter, *viz.*:

> SEC. 9. Jurisdiction of Heads of Agencies. – The Secretaries and heads of agencies, and other instrumentalities, provinces, cities and municipalities shall have original concurrent jurisdiction with the Commission over their respective officers and employees. They shall take cognizance of complaints involving their respective personnel. 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. 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.

Notably, the RRACCS limited the CSC's jurisdiction to those enumerated in the rules. Sections 7 and 8 of the RRACCS provide:

> SEC. 7. *Cases Cognizable by the Civil Service Commission.* – **The Civil Service Commission shall take cognizance of the following cases:**
>
> **A. Disciplinary**
>
> 1. Decisions of Civil Service Commission Regional Offices brought before it on appeal or petition for review;
>
> 2. Decisions of heads of agencies imposing penalties exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary brought before it on appeal;
>
> 3. Complaints brought against Civil Service Commission personnel;
>
> 4. **Complaints against officials who are not presidential appointees;**
>
> 5. Decisions of heads of agencies imposing penalties not exceeding 30 days suspension or fine equivalent thereto but violating due process;
>
> 6. Requests for transfer of venue of hearing on cases being heard by Civil Service Commission Regional Offices;
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> 7. Appeals from the order of preventive suspension; and
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> 8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumeration.
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> B. Non-Disciplinary
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> 1. Decisions of heads of agencies on personnel actions;
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> 2. Decisions of Civil Service Commission Regional Offices;
>
> 3. Requests for favorable recommendation on petition for the removal of administrative penalties or disabilities;

4. Protests against appointments, or other personnel actions, involving non-presidential appointees;
5. Requests for Extension of Service;
6. Reassignment of public health workers and public social workers brought before it on appeal;
7. Request for correction of personal information in the records of the Commission within five (5) years before mandatory retirement; and
8. Such other analogous actions or petitions arising out of or in relation with the foregoing enumeration.

SEC. 8. *Cases Cognizable by Regional Offices.* – Except as otherwise directed by the Commission, the Civil Service Commission Regional Offices shall take cognizance of the following cases:

A. Disciplinary

1. Cases initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and/or the persons complained of are rank-and-file employees of agencies, local or national, within said geographical areas;
2. Complaints involving Civil Service Regional Office personnel who are appointees of said office; and
3. Petitions to place respondent under preventive suspension.

B. Non-Disciplinary

1. Disapproval/Recall of Approval/Invalidation of appointments brought before it on appeal;
2. Decisions of heads of agencies, except those of the department secretaries and bureau heads within their geographical boundaries relative to protests and other personnel actions and other non-disciplinary actions brought before it on appeal;
3. Requests for accreditation of services; and
4. Requests for correction of personal information in the records of the Commission not falling under Section 7(B) Item 7 of this Rules. (Emphases supplied)

Relatedly, Section 48 of the Administrative Code provides for the manner of initiation of cases within the disciplinary jurisdiction of the CSC:

SEC. 48. *Procedure in Administrative Cases **Against** Non-Presidential Appointees.* – x x x

(1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person. (Emphasis supplied)

It is also noteworthy that RRACCS, as well as the RACCS, define a "disciplining authority" to be the person or body "**duly authorized to impose the penalty**" provided for by law or rules.[30] Hence, read in conjunction with the relevant provisions of the Administrative Code above-quoted, the disciplinary authority, *i.e.*, the power to impose penalty, of the CSC and department secretaries are limited to non-presidential appointees.

For presidential appointees, the power to impose penalty resides with the President pursuant to his power of control under the Constitution[31] and the Administrative Code.[32] Likewise, the Ombudsman, under the Constitution[33] and Republic Act (R.A.) No. 6770,[34] was given such power to impose penalties. Certainly, concomitant to such disciplinary authority is the power to investigate and to designate a committee or officer to conduct such investigation pursuant to Section 7(5), Chapter 2, Title III, Book IV of the Administrative Code above-cited, as well as the relevant provisions of R.A. No. 6770. In fine, the power to impose penalty necessarily includes the power to investigate. Contrarily, the power to investigate does not necessarily include the power to impose penalty.

While the power to impose penalty remains with the President or the Ombudsman, the power to investigate, as well as to designate a committee or officer to investigate, and thereafter to report its findings and make recommendations, may be delegated to and exercised by subordinates or a special commission or committee specifically created for such purpose. Stated more specifically, while it is the President as the Chief Executive, or the Ombudsman as mandated by law, who has the authority to impose penalty upon erring presidential appointees, it does not preclude said disciplining authorities from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to them the facts, on the basis of which the President or the Ombudsman, as the case may be, make their decision. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law.[35]

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30 RRACCS, Sec. 4(h) and RACCS, Section 4(j).
31 CONSTITUTION, Art. VII, Sec. 17.
32 Executive Order. No. 292 (1987), Book III, Title I, Chapter 1, Sec. 1.
33 CONSTITUTION, Art. XI, Sec. 13.
34 Republic Act No. 6770 (1989), Sec. 25.
35 *See American Tobacco Company v. Director of Patents*, 160-A Phil. 439, 446 (1975).

Such delegation of the power to investigate presidential appointees is precisely what was accomplished when E.O. No. 292 or the Administrative Code was signed into law by then revolutionary government President Corazon C. Aquino using her transitory powers, as well as when E.O. Nos. 151, 268, 12, as amended, 13, and 43 were issued by the respective subsequent Chief Executives.

As above-stated, the Administrative Code expressly provides for the Department Secretary's power to investigate and to designate a committee or officer for such purpose. In the same vein, in 1994, President Fidel V. Ramos issued E.O. No. 151,[36] creating the Presidential Commission Against Graft and Corruption (PCAGC), which was specifically tasked to investigate presidential appointees charged with graft and corruption. PCAGC was then abolished and repealed under President Joseph Ejercito Estrada's administration in 2000, through E.O. No. 268,[37] which created the National Anti-Corruption Commission (NACC) and given the powers of an investigating body over charges of graft and corrupt practices against presidential and non-presidential appointees alike. The NACC, however, was never activated. Hence, E.O. No. 12,[38] as amended, under President Gloria Macapagal-Arroyo, abolished both PCAGC and NACC, and created the Presidential Anti-Graft Commission (PAGC), which likewise has the authority to investigate or hear administrative cases or complaints against all presidential appointees. In 2010, under President Benigno Simeon C. Aquino III's administration, the PAGC was abolished and its investigative, adjudicatory, and recommendatory functions were transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) through E.O. No. 13.[39]

At present, President Rodrigo R. Duterte issued E.O. No. 43[40] in 2017, creating the Presidential Anti-Corruption Commission (PACC) "to directly assist the President in investigating and/or hearing administrative cases primarily involving graft and corruption against all presidential appointees classified as Salary Grade '26' and higher."[41] The powers, duties, and functions of the ODESLA were effectively transferred to PACC. PACC also has the authority to recommend to the President the issuance of an order of preventive suspension under the circumstances provided in E.O. No. 43.[42]

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36 CREATING A PRESIDENTIAL COMMISSION TO INVESTIGATE ADMINISTRATIVE COMPLAINTS INVOLVING GRAFT AND CORRUPTION. Signed on January 11, 1994.

37 CREATING THE NATIONAL ANTI-CORRUPTION COMMISSION AND ABOLISHING THE PRESIDENTIAL COMMISSION AGAINST GRAFT AND CORRUPTION CREATED UNDER EXECUTIVE ORDER 151, S. 1994, AS AMENDED. Signed on July 18, 2000.

38 CREATING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES, AND FUNCTIONS AND FOR OTHER PURPOSES. Signed on April 16, 2001.

39 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. Signed on November 15, 2010.

40 CREATING THE PRESIDENTIAL ANTI-CORRUPTION COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES. Signed on October 4, 2017.

41 Executive Order No. 43 (2017), Sec. 5.

42 Id. at Sec. 6.

Notably, its investigative and adjudicatory authority over said class of employees is concurrent with the Ombudsman.[43]

In sum, it bears stressing that the disciplinary jurisdiction of the department secretary over presidential appointees is limited. As above-stated, the power to investigate does not include the power to impose penalty. It has long been settled that the power to decide on such disciplinary matters and impose penalty upon said category of officers remains with the appointing authority.

As held in *Baculi v. Office of the President*,[44] while the Administrative Code has vested the Department Secretary with the authority to investigate matters involving a presidential appointee, Section 38 of Presidential Decree (P.D.) No. 807[45] or the Civil Service Decree of the Philippines, which was exactly echoed in Section 48, Chapter 7, Title I-A, Book V of the Administrative Code, has drawn a definite distinction between subordinate officers or employees who are presidential appointees and those who are non-presidential appointees with regard to the authority to decide on the disciplinary matter. Said provisions speak of the procedure in administrative cases *against non-presidential appointees* before the CSC as the latter has no disciplinary authority over presidential appointees. The Court explained that this is so because substantial distinctions set presidential appointees apart from non-presidential appointees. One of such distinctions is that presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested.[46]

The principle finds basis in the Constitutional grant of power upon the President to appoint such officials as provided in the Constitution and laws.[47] Full discretion is, therefore, given to the President to remove his appointees. Unless otherwise provided by the Constitution, such concomitant power of the appointing authority to remove cannot be attenuated by allowing even his alter ego to discipline and worse, to remove the former's appointee, lest the executive department would be put into a precarious situation where the very person particularly chosen by the President will be removed by his own subordinate without his prior express conformity. Thus, even the doctrine of qualified political agency cannot be used to grant the department heads the power to impose penalty upon erring subordinates who are presidential appointees without prior approval of the President.

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43 Id.

44 807 Phil. 52 (2017).

45 PROVIDING FOR THE ORGANIZATION OF THE CIVIL SERVICE COMMISSION IN ACCORDANCE WITH PROVISIONS OF THE CONSTITUTION, PRESCRIBING ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES. Enacted on October 6, 1975.

46 *Baculi v. Office of the President*, supra note 44, at 64.

47 CONSTITUTION, Art. VII, Sec. 16; Executive Order No. 292 (1987), Book III, Title I, Chapter 5, Sec. 16.

This doctrine of qualified political agency or the alter ego doctrine was introduced in our jurisdiction in the landmark case of *Villena v. The Secretary of Interior*.[48] The Court explained that said doctrine essentially postulates that the heads of the various executive departments are the alter egos of the President and, as such, the actions taken by them in the performance of their official duties are deemed the acts of the President unless the latter disapproves such acts.[49] In said case, the Secretary of Interior investigated then Makati City Mayor Jose D. Villena (Mayor Villena) and found him guilty of bribery, extortion, and abuse of authority. Upon such finding, the Secretary of Interior recommended to the President the suspension from office of Mayor Villena. Upon approval by the President of such recommendation, the Secretary of Interior implemented the suspension. Mayor Villena then questioned his suspension, arguing that the Secretary of Interior had no authority to suspend him from office considering that there was no law granting such power to the Secretary of Interior. According to Mayor Villena it was solely the President who was empowered to discipline local government officials. The Court in said case disagreed with the mayor and upheld his suspension, ruling that the alter ego doctrine justified the suspension ordered by the Secretary of Interior. As can be readily gleaned from this case, even with the doctrine of qualified political agency, the Court upheld the Secretary of Interior's act of imposing penalty considering that the President had already approved the Secretary's recommendation to suspend the mayor. In fine, prior conformity of the President was still necessarily secured.

In *Spouses Constantino v. Hon. Cuisia*,[50] while the Court upheld the Secretary of Finance's act of executing a debt-relief contract by virtue of the doctrine of qualified political doctrine, among others, the Court included in its disquisition an important qualification, *i.e.*, the Secretary of Finance or any designated alter ego of the President is still bound to secure the latter's prior consent to or subsequent ratification of his acts.

Precisely, this explains the necessity of forwarding the Department Secretary's findings and recommendation to the President with regard to administrative cases against presidential appointees. Granting the Department Secretary the power to impose penalty without the President's prior express conformity would result to a circuitous situation wherein the removal or any action effected by the Department Secretary may later on be countermanded by the President at any time.

Then again, to be clear, this does not prevent the Department Secretary from conducting investigations and forwarding their findings and recommendations to the President for approval. In the alternative, their

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[48] 67 Phil. 451 (1939).

[49] *Atty. Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, 705 Phil. 331, 347-348 (2013).

[50] 509 Phil. 486 (2005).

findings may also be forwarded to the PACC for further investigation and recommendation to the President, or to the Ombudsman in applicable cases.

At this juncture, it is imperative to note that the present case merely involves the DTI Secretary's act of ordering the conduct of an initial investigation on the issues raised against Enriquez; creating and authorizing the SIC to conduct a full investigation thereon; and, of filing a formal charge against Enriquez upon its finding of a *prima facie* case against the latter. There is no imposition of penalty, much less order of dismissal, from the DTI Secretary involved in this case. Hence, as Sec. Cristobal merely exercised his power to investigate and designate an officer and/or committee to investigate his subordinate pursuant to the Administrative Code, his actions, as well as the resulting report from such investigation should be validly sustained absent any finding of irregularity in the conduct thereof.

E.O. No. 151 and the subsequent E.O.s vis-à-vis the Administrative Code

Inasmuch as such power to investigate was given to the aforesaid Commissions, the power given to the Department Secretary to investigate and to designate a committee or officer to investigate a subordinate, who may be a presidential or non-presidential appointee, cannot likewise be denied.[51] The investigative and recommendatory authority of the fact-finding Commissions under the above-cited executive orders are by no means exclusive and, thus, can be shared with any officer or agency likewise tasked to investigate and recommend findings and conclusions.

Therefore, in the absence of a law or legal justification prohibiting the Department Secretary to conduct its own investigation on its subordinates, such power of the Department Secretary to investigate, even a presidential appointee, under the Administrative Code, should then be upheld.

Furthermore, E.O. No. 151 and the subsequent E.O.s above-cited, or "E.O. No. 13 and its allied E.O.s" as referred to by the RTC in its assailed Decision, could not have repealed the Administrative Code, contrary to the RTC's conclusion.

Foremost, an executive order cannot repeal a law. Ordinarily, since both the Administrative Code and E.O. No. 13 and "its allied E.O.s" are all presidential issuances, one may repeal or otherwise alter, modify or amend the other, depending on which comes later. The intricacy of this case, however, is owed to the fact that E.O. No. 292 or the Administrative Code was signed into law by President Corazon C. Aquino, not merely as an executive act, but in the exercise of her transitory legislative powers under

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[51] *See Hon. Joson v. Executive Secretary Torres*, 352 Phil. 888, 914 (1998).

the Freedom Constitution. Section 6, Article XVIII of the 1987 Constitution states that "[t]he incumbent President shall continue to exercise legislative powers until the first Congress convened." The Administrative Code was signed into law on July 25, 1987, or two days before the first Congress convened on July 27, 1987. Hence, having been issued by the President in the exercise of her extraordinary power of legislation during the transition from the authoritarian regime to the revolutionary government, the Administrative Code is not merely an executive order which has the force and effect of law, but is actually a law.[52]

Moreover, basic is the principle in statutory construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim "*interpretare et concordare leges legibus est optimus interpretandi modus.*"[53]

A careful perusal of the invoked executive orders clearly reveals no incongruity with the Administrative Code. As discussed above, the creation and reorganization of the investigative and recommendatory Commissions/Office through said executive orders, do not indicate any intention to totally remove the Department Secretary's power to investigate over his subordinates who are presidential appointees. None of the executive orders provides for an express exclusionary provision that removes such power to investigate from the Department Secretary as provided under the Administrative Code. Thus, said executive orders neither supersede nor conflict with the Administrative Code which allows the Department Secretary to investigate his subordinates, may they be presidential appointees or non-presidential appointees. It is, therefore, flawed to argue and conclude that said executive orders granted the investigative Commissions the exclusive jurisdiction to investigate presidential appointees.

The Unavailability of Appeal from the Department Secretary's Exercise of its Investigative and Recommendatory Function

The fact that no appeal can be made to the CSC from the findings of the Department Secretary and/or the committee which was designated to conduct the investigation on a presidential appointee, cannot be validly used as a ground to divest the Department Secretary of his statutory authority to exercise such power to investigate, contrary to the RTC's conclusion.

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[52] *See Philippine Association of Service Exporters, Inc. (PASEI). v. Hon. Torres,* 296-A Phil. 427, 432 (1993).

[53] "To interpret and harmonize laws is the best method of interpretation." *Civil Service Commission v. Court of Appeals*, 696 Phil. 230, 259 (2012).

Indeed, as discussed above, the CSC has no disciplinary authority over presidential appointees. Hence, it has neither original nor appellate jurisdiction over disciplinary cases against presidential appointees. Contrary, however, to the court *a quo*'s interpretation, such "void in the appeal process" is the logical consequence of the principle that an appeal may be taken only from a judgment or final order unless otherwise provided by law or executive order. A final judgment or order is one that finally disposes of a case, leaving nothing more to do for the proper authority vested by law to finally decide on the matter.[54]

In the exercise of the Department Secretary's power to investigate presidential appointees, no element of finality characterizes his findings and report considering that from the nature of such power delegated to him, his findings and report are merely recommendatory for the President's consideration. Hence, an appeal is naturally not an available remedy from the Department Secretary's findings and recommendation.

Nevertheless, there is no logical, much less legal and jurisprudential basis, to conclude that such unavailability of appeal from the findings and recommendations of the Department Secretary is a ground to divest the latter of the investigative and recommendatory authority granted to him by law over presidential appointees.

The President's Power of Control vis-à-vis the Department Secretary's Power to Investigate and Recommend

Once again contrary to the RTC's ruling, to uphold the authority of the Department Secretary to investigate his subordinate who may be a presidential appointee is not to undermine the President's power of control as the Chief Executive. Since the Department Secretary's exercise of disciplinary power is merely investigative and recommendatory, the President retains the power to alter or modify, or even nullify or set aside the former's findings and recommendation, and to substitute his judgment to that of the former. This is precisely the concept of the power of control in administrative law. This is likewise in consonance with the doctrine of qualified political agency as explained above.

Effect of Divesting the Department Secretary of the Power to Investigate Presidential Appointees

The RTC's conclusion that the power to investigate presidential appointees was removed from the Department Secretary and directly assumed by the President through its power of control not only lacks legal

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[54] *See Spouses Mendiola v. Court of Appeals*, 691 Phil. 244, 261 (2012).

basis, but also practical consideration. No benefit can be had if we rule for the removal of the power to investigate presidential appointees from the Department Secretary because, at any rate, the President may still delegate such power to the Department Secretary, being his subordinate, to assist him in the investigative function. We must keep in mind that the grant of administrative power over the executive department to the President is surely always grounded upon the consideration of fixing a uniform standard of administrative efficiency to enable him to discharge his duties as Chief Executive effectively.[55]

The Power to Investigate Includes the Power to Preventively Suspend

The power of the Department Secretary to investigate his subordinates being established, such power necessarily includes the authority to impose preventive suspension.

Preventive suspension is authorized under the Administrative Code, *viz.*:

> SEC. 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.[56]

Inasmuch as the Department Secretary was given the power to investigate his subordinates by authority of the President, his power to impose preventive suspension also by authority of the President, cannot likewise be denied. It is well to point out that preventive suspension pending investigation is not punitive in nature. In the early case of *Nera v. Garcia*,[57] the Court explained that suspension is a preliminary step in an administrative investigation. The need for the preventive suspension may arise from several causes, such as the danger of tampering or destruction of evidence in the possession of the person being investigated and the intimidation of witnesses, among others. Thus, to enable an effective and unhampered investigation, and to foreclose any threat to the success of the same, the authority conducting the same should be given the discretion to decide when the person facing administrative charges should be preventively suspended.[58]

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55 *See Review Center Association of the Philippines v. Executive Secretary Ermita,* 602 Phil. 342, 366 (2009), citing *Ople v. Torres*, 354 Phil. 948 (1998).

56 Executive Order No. 292 (1987), Book V, Chapter 4, Sec. 51.

57 106 Phil. 1031 (1960).

58 *Dra. Buenaseda v. Secretary Flavier*, 297 Phil. 719, 727-728 (1993).

Due process of law was observed in the conduct of the investigation on Enriquez.

The pronouncement of the Court in the case of *Vivo v. Philippine Amusement and Gaming Corporation* [59] on this matter is on point, *viz.*:

> The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* elaborates on the well-established meaning of due process in administrative proceedings in this wise:
>
>> x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek reconsideration of the action or ruling complained of. (Citations omitted)

As can be gleaned from the factual backdrop of this case, petitioners complied with the requirements of administrative due process even prior to the actual institution of administrative proceedings against Enriquez. Foremost, while prompted by a news article, petitioners' initiative to conduct a formal investigation against Enriquez was based on its own initial investigation and not on mere allegations and blind news reports. More importantly, several notices were sent to Enriquez apprising him of the issues against him, and directing him to submit an explanation in writing. Enriquez, in turn, had actively responded to said notices, albeit he consistently questioned petitioners' authority. Enriquez was likewise informed of the formal charge, as well as the order of preventive suspension against him. He was again directed to answer the charge, to which Enriquez responded by denying the charges against him, but maintaining his objection to petitioners' authority to conduct investigations and order his preventive suspension.

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[59] 721 Phil. 34, 39-40 (2013).

Clearly, Enriquez could not dispute the observance of his right to due process by petitioners as herein set forth.

II.

The RTC erred in giving due course to the petition for *certiorari*, prohibition, and *mandamus*.

The RTC has no jurisdiction over the petition for certiorari, prohibition, and mandamus filed against the questioned acts of the DTI Secretary and the SIC.

The assailed RTC Decision, as well as the present petition, dealt with the issue of which between the RTC and the CA has jurisdiction over the petition for *certiorari*, prohibition, and *mandamus* filed against the DTI Secretary and the SIC under Section 4, Rule 65 of the Rules of Court. Said provision states:

> SEC. 4. *When and where to file the petition.* – x x x
>
> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

The RTC ruled that since decisions and actions of Department Secretaries and heads of agencies and instrumentalities are appealable to the CSC, not to the CA, it concluded that jurisdiction over a petition for *certiorari*, prohibition, and *mandamus* against said officers is with the RTC, not with the CA, pursuant to the first sentence of the provision above-cited. On the other hand, petitioners argue that jurisdiction over said petition against decisions and actions of a *quasi*-judicial agency performing *quasi*-judicial function, such as the DTI, is with the CA pursuant to the last sentence of the provision above-cited.

We agree with petitioners' assertion that the RTC erred in giving due course to Enriquez's petition for *certiorari*, prohibition, and *mandamus*, albeit for a different reason.

Petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court have long been used as remedies to keep lower courts within the confines of their granted jurisdictions. The 1987 Constitution, however, introduced the "expanded" scope of judicial power. Thus, Section 1, Article VIII thereof provides:

> SEC. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which legally demandable and enforceable, **and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.** (Emphasis supplied)

In *Francisco, Jr. v. The House of Representatives*,[60] the Court recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government'." Further distinctions between the traditional *certiorari* petitions under Rule 65 of the Rules of Court and that under the expanded jurisdiction were exhaustively discussed by the Court *En Banc* in the case of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health.*[61]

One of the material distinctions is the cited ground. A *certiorari* petition under Rule 65 of the Rules of Court speaks of *lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction*, while the remedy under the court's expanded jurisdiction expressly mentions only *grave abuse of discretion amounting to lack or excess of jurisdiction*. The distinction is apparently not legally significant as to what remedy should be resorted to, traditional or expanded, when the case involves an action with grave abuse of discretion. When, however, lack of jurisdiction is involved, no consideration is made as to how the government entity exercised its function. Indeed, no discretion is allowed in areas outside of an agency's granted authority.[62]

Certainly, before a court could take cognizance of a case filed before it, it should primarily determine the ground on which its jurisdiction is being invoked. It is, thus, imperative to look into the ground upon which the petition is based. In this case, Enriquez alleged lack of jurisdiction on the part of the DTI Secretary and the SIC over him in filing the *certiorari* petition. Thus, the traditional *certiorari* mode under Rule 65 of the Rules of Court should be Enriquez's remedy.

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[60] 460 Phil. 830 (2003).

[61] 802 Phil. 116 (2016).

[62] Id. at 143.

However, another distinction between the traditional *certiorari* petition under Rule 65 of the Rules of Court and *certiorari* pursuant to the expanded jurisdiction under Section 1(2), Article VIII of the Constitution is equally relevant in this case. Aside from the cited ground, another critical question comes up and that is, under what capacity did the respondent-agency act?

In order that a special civil action for *certiorari* under Rule 65 may be invoked, the petition must be directed against any tribunal, board, or officer *exercising judicial or quasi-judicial functions*, which acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no plain, speedy, and adequate remedy in the ordinary course of law.[63]

Similarly, a petition for prohibition may be filed by an aggrieved person against a tribunal, corporation, board, officer or person, *exercising judicial, quasi-judicial, or ministerial functions*, which were done without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is likewise no plain, speedy, and adequate remedy in the ordinary course of law, praying that judgment be rendered commanding the respondent to desist from further proceedings in the subject action or matter, or otherwise, for the grant of such incidental reliefs as law and justice may require.[64]

A petition for *mandamus*, on the other hand, is a remedy available only when a tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no plain, speedy and adequate remedy in the ordinary course of law.[65] The main objective of *mandamus* is to compel the performance of a ministerial duty on the part of the respondent.[66]

In other instances, the petition must be filed based on the court's expanded jurisdiction.[67]

It is important, thus, to determine the nature of the questioned act/s to determine the available and proper remedy under the law.

It bears stressing that what is being assailed in this case is the Department Secretary's exercise of his power to investigate a subordinate. The Department Secretary's limited disciplinary authority being assailed

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[63] RULES OF COURT, Rule 65, Sec. 1.
[64] Id. at Sec. 2.
[65] Id. at Sec. 3.
[66] *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 110 (2013).
[67] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health*, supra note 61, at 142.

herein involves a function which is not judicial, *quasi*-judicial, nor ministerial in nature for his act to be the proper subject of *certiorari*, prohibition, or *mandamus*. He is not clothed with power to adjudicate and impose a penalty with regard to administrative disciplinary actions against subordinates who are presidential appointees as above-discussed. His function is merely investigative and recommendatory, which is purely executive or administrative.

Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. In the performance of a *quasi*-judicial, and of course judicial, acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.

Neither is there a ministerial duty involved in this case which may be compelled to be done through *mandamus*. While Enriquez was temporarily excluded from his office pending investigation, the remedy of *mandamus* is not available to compel the investigating officer or committee to lift the order of preventive suspension as the same is authorized by law pending investigation, unless such suspension exceeded the period of 90 days for non-presidential employees, or the period of suspension for presidential employees became unreasonable as the circumstances of the case may warrant.[68]

Hence, the petition for *certiorari*, prohibition, and *mandamus* was not proper, whether it be filed before the RTC or the CA.

III.

This Petition is not rendered moot and academic by the termination of Enriquez's service.

Having established the DTI Secretary's investigative and recommendatory disciplinary authority over Enriquez, we cannot subscribe to the latter's argument that the petition should be dismissed for becoming moot and academic due to his separation from service.

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in

[68] *Baculi v. Office of the President*, supra note 44, at 71.

passing upon the merits of the case.[69] The instant case is not mooted by Enriquez's separation from service considering that the administrative case against him before the DTI is not mooted by such cessation of service. It must be pointed out that prior to the termination of his term of office, a formal charge for Gross Insubordination, Gross Misconduct/Gross Neglect of Duty, Grave Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service had already been filed after a determination of a *prima facie* case against him upon the conclusion of SIC's preliminary investigation. The disquisition of the Office of the President in Administrative Order (A.O.) No. 67, Series of 2003[70] is relevant to the issue and instructive:

> **While it is generally conceded that an administrative proceeding is predicated on the holding of an office or position in the government** (*Dianalon vs. [Quintillan]*, Adm. Case No. 116, August 29, 1969, 29 SCRA 347), **the rule is qualified and, therefore, recognized to admit an exception**, as amplified by the Supreme Court, in this wise:
>
> > "It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or against any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he

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[69] *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169, 186 (2011), citing *Pagano v. Nazarro, Jr.*, 560 Phil. 96, 105 (2007).

[70] *Imposing the Penalty of Fine Equivalent to Six Months Salary on Atty. Fidel H. Borres, Jr., Provincial Agrarian Reform Adjudicator, Agusan del Norte.* <http://www.officialgazette.gov.ph/2003/03/31/administrative-order-no-67-s-2003/> (visited June 1, 2020)

> leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation." *People vs. Valenzuela*, 135 SCRA 712, citing *Perez vs. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302)

Stated somewhat differently, **the severance of official ties with the government of a public official or employee constitutes a bar to the subsequent filing of an administrative case against him for an act or acts committed during his incumbency.** **A sesu contrario, once an administrative charge is initiated against such respondent, his compulsory or optional retirement, resignation or separation from the service during the pendency thereof does not nullify or moot the proceedings, which should continue to its logical conclusion. And if so closed or terminated for that reason alone, it may be reopened by the Office of the President on its own motion, if respondent is a presidential appointee, or at the instance of the department head concerned, if non-presidential appointee.** This is the pith and core of the clarificatory opinion of the Secretary of Justice (Opinion No. 30 dated Feb. 17, 1978) vis-à-vis the query of whether the retirement, resignation or separation from public office of an employee would divest the department head, or the head of any concerned agency of the government, of jurisdiction to act upon an administrative case filed against the employee during his tenure of employment, to wit:

> The Department of Justice has taken the position, as early as 1962, that the attainment of the age of compulsory retirement by a respondent does not ipso facto close the pending administrative proceedings against him. Although the highest penalty in an administrative case is that of dismissal or separation from the service, which is already accomplished by the respondent's compulsory retirement, the proceedings may still continue for purposes of determining whether or not the respondent is guilty with the end in view of imposing penalties incident to dismissal for cause. The Department has even sustained the view, in the case of Undersecretary Tambokon, that the administrative case, if already closed or terminated, may be reopened by the Office of the President motu propio or at the instance of the Department Secretary. (Emphases supplied, underscoring in the original)

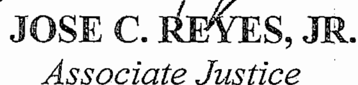
As the administrative case against Enriquez survives the cessation of his tenure, this Court is still well-within its jurisdiction to resolve the legal issues raised before it.

Conclusion

Public office is a public trust and public officers and employees must, at all times, be accountable to the people.[71] Hence, the State must be vigilant to preserve the inviolability of public office. Every initiative to cleanse the roster of public employees and officials must be upheld so long as said efforts are exercised within the bounds of law. In this case, pursuant to the foregoing legal considerations, it is established that the Department Secretary's exercise of the power to investigate and to designate a committee or officer for such purpose, a subordinate, whether the latter be a non-presidential or presidential appointee, is well-founded in law and jurisprudence.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision of the Regional Trial Court of Quezon City, Branch 77, in Civil Case No. R-QZN-16-05101 is hereby **REVERSED and SET ASIDE**. Accordingly, the Department of Trade and Industry is **ORDERED** to proceed with dispatch with its investigation on Danilo B. Enriquez's administrative case. Thereafter, the Secretary of the Department of Trade and Industry may forward his findings and recommendations to the Office of the President for the imposition of the proper penalties, as may be warranted.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

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[71] *Office of the Ombudsman and the Fact-Finding Investigation of the Bureau (FFIB), Office of the Ombudsman for the Military and other Law Enforcement Offices (MOLEO) v. PS/Supt. Espina*, 807 Phil. 529, 546 (2017).

Please see separate Concurring Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion and dissenting opinion

MARVIC M.V. F. LEONEN
Associate Justice

See Concurring & Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

Pls. see Concurring and Dissenting Opinion.

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

with separate Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

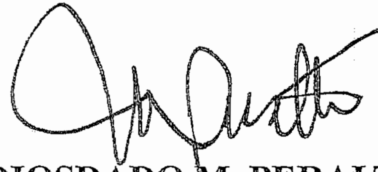
(ON LEAVE)

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL GAERLAN
Associate Justice

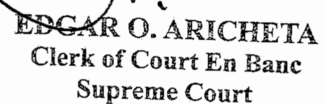
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court