

*EN BANC*

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

Promulgated:

June 2, 2020

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**SEPARATE CONCURRING OPINION**

**ZALAMEDA, J.:**

Director Danilo B. Enriquez (Dir. Enriquez), a director of a line bureau and a presidential appointee, claims immunity from administrative disciplinary proceedings instituted against him by the Secretary of the Department of Trade and Industry (DTI Secretary), particularly the creation of a Special Investigation Committee (SIC) and the imposition of preventive suspension. Dir. Enriquez insists that the authority to institute disciplinary proceedings over presidential appointees is limited to: (1) the Office of the President through (a) the Office of the Deputy Executive Secretary of Legal Affairs (ODESLA)<sup>1</sup> or (b) the Presidential Anti-Corruption Commission (PACC)<sup>2</sup>; and (2) the Office of the Ombudsman, based on the Constitution<sup>3</sup> and on Republic Act No. 6770 (RA 6770).

The arguments raised by Dir. Enriquez are misplaced. The *ponencia* correctly ruled that the DTI Secretary validly exercised disciplinary powers over Dir. Enriquez, albeit for different reasons, as herein discussed.

<sup>1</sup> The bases for Dir. Enriquez's assertion are provided by: Executive Order No. 12 (EO 12) dated 16 April 2001; Executive Order No. 531 (EO 531) dated 31 May 2006; Executive Order No. 531-A (EO 531-A) dated 03 August 2006; Executive Order No. 531-B (EO 531-B) dated 13 December 2006; and Executive Order No. 13 (EO 13) dated 15 November 2010.

<sup>2</sup> Executive Order No. 43 (2017).

<sup>3</sup> CONSTITUTION, Art. XI, Sec. 12 and 13.

*The disciplining authority of a Department Secretary does not emanate from the President's power of control*

Contrary to the reasons put forward in the *ponencia*, a department secretary's disciplining authority over a subordinate who is a presidential appointee **finds its basis in law and is tempered by the limits set by the President's power to appoint.** It is not borne out of the President's power of control.

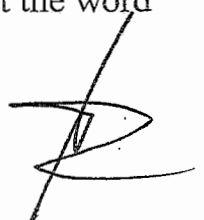
Authority to discipline is an agglomeration of powers which includes the power to remove from office, the power to impose additional penalties, the power to impose penalties short of removal, the power to impose preventive suspension, and the power to conduct an investigation. **While the President exercises the full extent of this authority, a department secretary's authority to discipline excludes the power to remove from office a subordinate who is a presidential appointee. The power to remove can only be exercised by the person with the power to appoint.** The President has the power to appoint and may, consequently, remove his appointee. The department secretary has no such power to appoint and may thus only recommend to the President the removal of a subordinate who is a presidential appointee.

On the other hand, the President exercises the power of control expressed through the acceptance or rejection of the department secretary's recommendation to remove a subordinate who is a presidential appointee. The power of control refers to "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."<sup>4</sup> **Under this definition, the President's power of control does not extend to the authority to discipline, the latter having been derived from the President's constitutional power to appoint.** And the 1987 Constitution supports this conclusion, separately articulating the President's power of control and power to appoint.

Section 17 of Article VII of the 1987 Constitution provides that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." The first sentence refers to the President's power of control, while the second sentence refers to the President's power of supervision.

During the deliberations of the 1986 Constitutional Commission on the proposed text brought about by the departure from the parliamentary form of government in the 1973 Constitution, it was suggested that the word

<sup>4</sup> *Mondano v. Silvosa*, G.R. No. L-7708, 30 May 1955; 97 Phil. 143, 150 (1955).



“control” be replaced with the words “administer” or supervise” in the provision on the President’s powers of control and of supervision. This suggestion was rejected in light of the definitive usage of the word “control” in jurisprudence. A distinction was also made between the power of control and the power of general supervision, underscoring that the President’s power of control refers to the exercise of discretion, and **not of discipline.**

FR. BERNAS. Madam President, this [word “control”] is based on the principle that under a presidential form of government, there is only one executive and it is the President. And the power of control in jurisprudence is acquired very definitely. **It means the authority of a superior to substitute his judgment for the judgment of an inferior. It has reference only to the exercise of judgment. It has nothing to do with discipline but just the exercise of discretion. The discretion of the superior who has the power of control can always be substituted for that exercise of jurisdiction of the inferior.** This is to be distinguished from the power of general supervision which is nothing more than the power to see to it that the inferior follows the law. The power of general supervision does not allow the superior to substitute his judgment. x x x<sup>5</sup> (Emphasis supplied.)

The power to appoint, on the other hand, is articulated in Section 16, Article VII of the 1987 Constitution, which reads:

Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

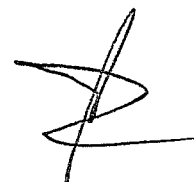
The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress.

The cases of *Ang-Angco v. Castillo*<sup>6</sup> (*Ang-Angco*) and *Villaluz v. Zaldivar*<sup>7</sup> (*Villaluz*) distinguished the President’s power of control from the President’s power to appoint. First, the President’s power of control does not include the power to remove. Second, the President’s power to remove is inherent in the power to appoint. Both *Ang-Angco* and *Villaluz* state that the removal of an inferior officer cannot be construed to come within the

<sup>5</sup> II Record, CONSTITUTIONAL COMMISSION 408 (29 July 1986).

<sup>6</sup> G.R. No. L-17169, 30 November 30, 1963; 118 Phil. 1468, 1481 (1963).

<sup>7</sup> G.R. No. L-22754, 31 December 1965; 112 Phil. 1091, 1097 (1965).



meaning of control over a specific policy of government. After all, the government is in the business of governing a country, and not the removal of its civil servants.

In the 1963 case of *Ang-Angco*, We declared that the power of control of the President applies to the acts, and not the person, of his subordinate. This empowers the President to set aside the judgment or action taken by a subordinate in the performance of his duties. Subsequently, the 1965 case of *Villaluz* adopted Our ruling in *Ang-Angco* in declaring that the President has the disciplining authority over presidential appointees in the civil service. Presidential appointees in the executive department are also referred to as civil service employees in the non-competitive or unclassified service of the government.

*The disciplinary authority of a Department Secretary over presidential appointees is based in law*

Given the principle in *Ang-Angco* and *Villaluz* that “the power to remove is inherent in the power to appoint,” what then is the basis for the department secretary’s disciplinary authority, or the authority to conduct an investigation and impose preventive suspension on a subordinate who is a presidential appointee?

The Administrative Code of 1987 enumerates the officials who are presidential appointees, which includes Directors and Assistant Directors of Bureaus, Regional and Assistant Regional Directors, Department Service Chiefs, and their Equivalents.<sup>8</sup> It also vests upon the President the power to appoint the head of a bureau, such as Dir. Enriquez, as in this case.

Under the same Code, a department secretary is given disciplinary powers over officers and employees in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation.<sup>9</sup> Section 7(5) includes the power to investigate, and the power to designate a committee or officer to investigate, in the disciplining powers of a department secretary. Meanwhile, Section 7(7) explicitly states that the department secretary has the power to “[e]xercise jurisdiction over all bureaus, offices, agencies and corporations under the Department x x x.”

Neither Section 7(5), which refers to disciplining powers, nor Section 7(7), which refers to the power of control, mentions or distinguishes between presidential appointees and non-presidential

<sup>8</sup> Executive Order No. 292 (1987), Book IV, Chapter 10, Sec. 47.

<sup>9</sup> Executive Order No. 292 (1987), Book IV, Chapter 2, Sec. 7(5).



**appointees.** This means that a department secretary need not distinguish between presidential and non-presidential appointees in the exercise of disciplining powers, as well as the power of control. It is only in Section 7(6) of the Administrative Code of 1987, which pertains to the power to appoint, where a distinction between presidential appointees and non-presidential appointees finds support.

**The scope of the disciplining authority of a department secretary should also be examined along with the disciplining authority of the Civil Service Commission (CSC).** Sections 47, 48, and 51<sup>10</sup> of the Administrative Code of 1987 provide for the disciplining powers of a department secretary if the case falls under the disciplining jurisdiction of the CSC. Specifically, these provisions lay down a department secretary's powers to: investigate (Sec. 47); decide matters involving disciplinary action against officers and employees (Sec. 47); delegate the power to investigate to subordinates (Sec. 47); initiate administrative proceedings against subordinates through a sworn written complaint (Sec. 48); and to issue preventive suspension pending an investigation of a subordinate if the charges against the subordinate 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 (Sec. 51).

Concededly, the Revised Rules on Administrative Cases in the Civil Service (RRACCS),<sup>11</sup> which were applicable during Dir. Enriquez's tenure, specifically enumerated the cases under the jurisdiction of the CSC. The RRACCS limited the CSC's jurisdiction to those specifically enumerated in the Rules<sup>12</sup> and made a distinction between presidential and non-presidential

<sup>10</sup> All under Book V, Title I (Constitutional Commission), Chapter 6 (Right to Self-Organization), Subtitle A (Civil Service Commission).

<sup>11</sup> The RRACCS have since been superseded by the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) promulgated on 03 July 2017.

<sup>12</sup> Sections 7, 8, and 9 of the RRACCS provide:

**Section 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;
7. Appeals from the order of preventive suspension; and
8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumeration.

x x x



appointees, whereas the Administrative Code of 1987 made no such distinction when it outlined a department secretary's authority to discipline. **Thus, the RRACCS should be harmonized and read in conjunction with the said Code.**

*A Department Secretary's authority to discipline necessarily includes the power to investigate and to create an investigating committee, and the power to preventively suspend*

Jurisprudence asserts that the disciplining authority of a department secretary includes the investigation of subordinates who are presidential appointees and the creation of a committee to undertake the same.

In *Department of Health v. Camposano, et al.*<sup>13</sup> (*Camposano*), the Court explicitly recognized that the Administrative Code vested department secretaries with the power to investigate matters involving disciplinary actions involving officers, including presidential appointees.

Meanwhile, in *Office of the President v. Cataquiz*<sup>14</sup> (*Cataquiz*), the Secretary of the Department of Environment and Natural Resources formed an investigating team to conduct an inquiry into the allegations against the general manager of the Laguna Lake Development Authority, who is a presidential appointee. The validity of the institution of the investigating team by the department secretary was not even raised as an issue in *Cataquiz*. Similarly, in *Dr. Melendres v. Presidential Anti-Graft Commission, et al.*<sup>15</sup> (*Melendres*), the Secretary of the Department of Health ordered the creation of a fact-finding committee to look into the charges against the Executive Director of the Lung Center of the Philippines, who

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Section 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.

x x x

Section 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. x x x (Emphases supplied).

<sup>13</sup> G.R. No. 157684, 27 April 2005; 496 Phil. 886, 903 (2005).

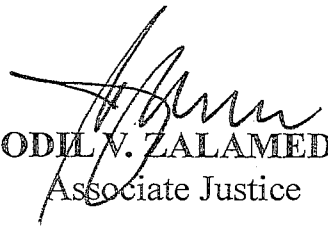
<sup>14</sup> G.R. No. 183445, 14 September 2011; 673 Phil. 318, 350 (2011).

<sup>15</sup> G.R. No. 163859, 15 August 2012; 692 Phil. 546, 565 (2012).


was a presidential appointee. The validity of the creation of the fact-finding committee by the department secretary was not also raised as an issue.

On the other hand, a demarcation must be made between the power to impose penalties and the power to impose preventive suspension. A department secretary can only recommend the imposition of penalties against presidential appointees to either the Office of the President<sup>16</sup> or the Office of the Ombudsman.<sup>17</sup> This, does not mean, however, that a department secretary is precluded from imposing preventive suspension against a presidential appointee under investigation. To emphasize, preventive suspension is not a penalty but a measure intended to enable the investigating authority to investigate the charges against the subordinate and to prevent the latter from intimidating, or in any way influencing, the witnesses.<sup>18</sup>

From all the foregoing, it is undeniable that the exercise by the DTI Secretary of his disciplining authority over his subordinate, Dir. Enriquez, a presidential appointee, is well-founded in both law and jurisprudence. Thus, I vote to grant the Petition. Nonetheless, **I stand resolute that the DTI Secretary's authority to discipline, contrary to the reasons put forward in the *ponencia*, is not derived from the President's power of control. Rather, such authority springs from the law, the exercise thereof is limited and tempered by the President's power to appoint.**

  
RODIL V. ZALAMEDA  
Associate Justice

CERTIFIED TRUE COPY

  
EDGAR O. ARICHETA  
Clerk of Court En Banc  
Supreme Court

<sup>16</sup> 1987 CONSTITUTION, Art. VII, Sec. 17. See also Executive Order No. 292 (1987), Book III, Title I, Chapter I, Sec. 1.

<sup>17</sup> Republic Act No. 6770 (1989), Sec. 25.

<sup>18</sup> See *The Board of Trustees of the Government Service Insurance System, et al., v. Velasco, et al.*, 656 Phil. 385, 400-401 (2011).