

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**FIDENCIO Y. BEJA, SR.,
*Petitioner,***

-versus-

**G.R. No. 97149
March 31, 1992**

**COURT OF APPEALS, HONORABLE
REINERIO O. REYES, IN HIS
CAPACITY AS SECRETARY OF THE
DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS;
COMMODORE ROGELIO A. DAYAN, IN
HIS CAPACITY AS GENERAL
MANAGER OF THE PHILIPPINE
PORTS AUTHORITY; DEPARTMENT
OF TRANSPORTATION AND
COMMUNICATIONS,
ADMINISTRATIVE ACTION BOARD;
AND JUSTICE ONOFRE A. VILLALUZ,
IN HIS CAPACITY AS CHAIRMAN OF
THE ADMINISTRATIVE ACTION
BOARD, DOTC,**

Respondents.

X-----X

DECISION

ROMERO, J.:

The Instant-Petition for *Certiorari* questions the jurisdiction of the Secretary of the Department of Transportation and Communications (DOTC) and/or its Administrative Action Board (AAB) over administrative cases involving personnel below the rank of Assistant General Manager of the Philippine Ports Authority (PPA), an agency attached to the said Department.

Petitioner Fidencio Y. Beja, Sr.^[1] was first employed by the PPA as arrastre supervisor in 1975. He became Assistant Port Operations Officer in 1976 and Port Operations Officer in 1977. In February 1988, as a result of the reorganization of the PPA, he was appointed Terminal Supervisor.

On October 21, 1988, the PPA General Manager, Rogelio A. Dayan, filed Administrative Case No. 11-04-88 against petitioner Beja and Hernando G. Villaluz for grave dishonesty, grave misconduct, willful violation of reasonable office rules and regulations and conduct prejudicial to the best interest of the service. Beja and Villaluz allegedly erroneously assessed storage fees resulting in the loss of P38,150.77 on the part of the PPA. Consequently, they were preventively suspended for the charges. After a preliminary investigation conducted by the district attorney for Region X, Administrative Case No. 11-04-88 was “considered closed for lack of merit.”

On December 13, 1988, another charge sheet, docketed as Administrative Case No. 12-01-88, was filed against Beja by the PPA general manager also for dishonesty, grave misconduct, violation of reasonable office rules and regulations, conduct prejudicial to the best interest of the service and for being notoriously undesirable. The charge consisted of six (6) different specifications of administrative offenses including fraud against the PPA in the total amount of P218,000.00. Beja was also placed under preventive suspension pursuant to Sec. 41 of P.D. No. 807.

The case was redocketed as Administrative Case No. PPA-AAB-1-049-89 and thereafter, the PPA general manager indorsed it to the AAB for “appropriate action.” At the scheduled hearing, Beja asked for

continuance on the ground that he needed time to study the charges against him. The AAB proceeded to hear the case and gave Beja an opportunity to present evidence. However, on February 20, 1989, Beja filed a petition for *certiorari* with preliminary injunction before the Regional Trial Court of Misamis Oriental.^[2] Two days later, he filed with the AAB a manifestation and motion to suspend the hearing of Administrative Case No. PPA-AAB-1-049-89 on account of the tendency of the *certiorari* proceeding before the court. AAB denied the motion and continued with the hearing of the administrative case. Thereafter, Beja moved for the dismissal of the *certiorari* case below and proceeded to file before this Court a petition for *certiorari* with preliminary injunction and/or temporary restraining order. The case was docketed as G.R. No. 87352 captioned “Fidencio Y. Beja vs. Hon. Reinerio O. Reyes, etc., al.” In the en banc resolution of March 30, 1989, this Court referred the case to the Court of Appeals for “appropriate action.”^[3] G.R. No. 87352 was redocketed in the Court of Appeals as CA-G.R. SP No. 17270.

Meanwhile, a decision was rendered by the AAB in Administrative Case No. PPA-AAB-049-89. Its dispositive portion reads:

“WHEREFORE, judgment is hereby rendered, adjudging the following, namely:

- a) That respondents Geronimo Beja, Jr. and Hernando Villaluz are exonerated from the charge against them;
- b) That respondent Fidencio Y. Beja be dismissed from the service;
- c) That his leave credits and retirement benefits are declared forfeited;
- d) That he be disqualified from re-employment in the government service;
- e) That his eligibility is recommended to be cancelled.

Pasig, Metro Manila, February 28, 1989.”

On December 10, 1990, after appropriate proceedings, the Court of Appeals also rendered a Decision^[4] in CA-G.R. SP No. 17270 dismissing the petition for *certiorari* for lack of merit. Hence, Beja elevated the case back to this Court through an “appeal by *certiorari* with preliminary injunction and/or temporary restraining order.”

We find the pleadings filed in this case to be sufficient bases for arriving at a decision and hence, the filing of memoranda has been dispensed with.

In his petition, Beja assails the Court of Appeals for having “decided questions of substance in a way probably not in accord with law or with the applicable decisions” of this Court.^[5] Specifically, Beja contends that the Court, of Appeals failed to declare that: (a) he was denied due process; (b) the PPA general manager has no power to issue a preventive suspension order without the necessary approval of the PPA board of directors; (c) the PPA general manager has no power to refer the administrative case filed against him to the DOTC-AAB, and (d) the DOTC Secretary, the Chairman of the DOTC-AAB and DOTC-AAB itself as an adjudicatory body, have no jurisdiction to try the administrative case against him. Simply put, Beja challenges the legality of the preventive suspension and the jurisdiction of the DOTC Secretary and/or the AAB to initiate and hear administrative cases against PPA personnel below the rank of Assistant General Manager.

Petitioner anchors his contention that the PPA general manager cannot subject him to a preventive suspension on the following provision of Sec. 8, Art. V of Presidential Decree No. 857 reorganizing the PPA:

“(d) The General Manager shall, subject to the approval of the Board, appoint and remove personnel below the rank of Assistant General Manager.” (Emphasis supplied.)

Petitioner contends that under this provision, the PPA Board of Directors and not the PPA General Manager is the “proper disciplining authority.”^[6]

As correctly observed by the Solicitor General, the petitioner erroneously equates “preventive suspension” as a remedial measure with “suspension” as a penalty for administrative dereliction. The imposition of preventive suspension on a government employee charged with an administrative offense is subject to the following provision of the Civil Service Law, P.D. No. 807:

“Sec. 41. 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.”

Imposed during the tendency of an administrative investigation, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated.^[7] Thus, preventive suspension is distinct from the administrative penalty of removal from office such as the one mentioned in Sec. 8(d) of P.D. No. 857. While the former may be imposed on a respondent during the investigation of the charges against him, the latter is the penalty which may only be meted upon him at the termination of the investigation or the final disposition of the case.

The PPA general manager is the disciplining authority who may, by himself and without the approval of the PPA Board of Directors, subject a respondent in an administrative case to preventive suspension. His disciplinary powers are sanctioned, not only by Sec. 8 of P.D. No. 857 aforequoted, but also by Sec. 37 of P.D. No. 807 granting heads of agencies the “jurisdiction to investigate and decide matters involving disciplinary actions against officers and employees” in the PPA.

Parenthetically, the period of preventive suspension is limited. It may be lifted even if the disciplining authority has not finally decided the administrative case provided the ninety-day period from the

effectivity of the preventive suspension has been exhausted. The employee concerned may then be reinstated.^[8] However, the said ninety-day period may be interrupted. Section 42 of P.D. No. 807 also mandates that any fault, negligence or petition of a suspended employee may not be considered in the computation of the said period. Thus, when a suspended employee obtains from a court of justice a restraining order or a preliminary injunction inhibiting proceedings in an administrative case, the lifespan of such court order should be excluded in the reckoning of the permissible period of the preventive suspension.^[9]

With respect to the issue of whether or not the DOTC Secretary and/or the AAB may initiate and hear administrative cases against PPA personnel below the rank of Assistant General Manager, the Court qualifiedly rules in favor of petitioner.

The PPA was created through P.D. No. 505 dated July 11, 1974. Under that law, the corporate powers of the PPA were vested in a governing Board of Directors known as the Philippine Port Authority Council. Sec. 5(i) of the same decree gave the Council the power “to appoint, discipline and remove, and determine the composition of the technical staff of the Authority and other personnel.”

On December 23, 1975, P.D. No. 505 was substituted by P.D. No. 857. Sec. 4(a) thereof created the Philippine Ports Authority which would be “attached” to the then Department of Public Works, Transportation and Communication. When Executive Order No. 125 dated January 30, 1987 reorganizing the Ministry of Transportation and Communications was issued, the PPA retained its “attached” status.^[10] Even Executive Order No. 292 or the Administrative Code of 1987 classified the PPA as an agency “attached” to the Department of Transportation and Communications (DOTC). Sec. 24 of Book IV, Title XV, Chapter 6 of the same Code provides that the agencies attached to the DOTC “shall continue to operate and function in accordance with the respective charters or laws creating them, except when they conflict with this Code.

Attachment of an agency to a Department is one of the three administrative relationships mentioned in Book IV, Chapter 7 of the Administrative Code of 1987, the other two being supervision and

control and administrative supervision. "Attachment" is defined in Sec. 38 thereof as follows:

"(3) Attachment. — (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or coordination. The coordination shall be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency;

(b) Matters of day-to-day administration or all those pertaining to internal operations shall be left to the discretion or judgment of the executive officer of the agency or corporation. In the event that the Secretary and the head of the board or the attached agency or corporation strongly disagree on the interpretation and application of policies, and the Secretary is unable to resolve the disagreement, he shall bring the matter to the President for resolution and direction;

(c) Government-owned or controlled corporations attached to a department shall submit to the Secretary concerned their audited financial statements within sixty (60) days after the close of the fiscal year; and

(d) Pending submission of the required financial statements, the corporation shall continue to operate on the basis of the preceding year's budget until the financial statements shall have been submitted. Should any government-owned or controlled corporation incur an operation deficit at the close of its fiscal year, it shall be subject to administrative supervision of the department; and the corporation's operating and capital budget shall be subject to the department's examination, review, modification and approval." (Emphasis supplied.)

An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the “lateral relationship” between the Department and the attached agency. The attachment is merely for “policy and program coordination.” With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department’s administrative supervision is free from Departmental interference with respect to appointments and other personnel actions “in accordance with the decentralization of personnel functions” under the Administrative Code of 1987.^[11] Moreover, the Administrative Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.^[12]

Hence, the inescapable conclusion is that with respect to the management of personnel, an attached agency is, to a certain extent, free from Departmental interference and control. This is more explicitly shown by P.D. No. 857 which provides:

“SEC. 8. Management and Staff . — a) The President shall, upon the recommendation of the Board, appoint the General Manager and the Assistant General Managers.

b) All other officials and employees of the Authority shall be selected and appointed on the basis of merit and fitness based on a comprehensive and progressive merit system to be established by the Authority immediately upon its organization and consistent with Civil Service rules and regulations. The recruitment, transfer, promotion, and dismissal of all personnel of the Authority, including temporary workers, shall be governed by such merit system.

c) The General Manager shall, subject to the approval of the Board, determine the staffing pattern and the number of personnel of the Authority, define their duties and responsibilities, and fix their salaries and emoluments. For professional and technical positions, the General Manager shall recommend salaries and emoluments that are comparable to

those of similar positions in other government-owned corporations, the provisions of existing rules and regulations on wage and position classification notwithstanding.

d) The General Manager shall, subject to the approval by the Board, appoint and remove personnel below the rank of Assistant General Manager.

x x x” (Emphasis supplied.)

Although the foregoing section does not expressly provide for a mechanism for an administrative investigation of personnel, by vesting the power to remove erring employees on the General Manager, with the approval of the PPA Board of Directors, the law impliedly grants said officials the power to investigate its personnel below the rank of Assistant Manager who may be charged with an administrative offense. During such investigation, the PPA General Manager, as earlier stated, may subject the employee concerned to preventive suspension. The investigation should be conducted in accordance with the procedure set out in Sec. 38 of P.D. No. 807.^[13] Only after gathering sufficient facts may the PPA General Manager impose the proper penalty in accordance with law. It is the latter action which requires the approval of the PPA Board of Directors.^[14]

From an adverse decision of the PPA General Manager and the Board of Directors, the employee concerned may elevate the matter to the Department Head or Secretary. Otherwise, he may appeal directly to the Civil Service Commission. The permissive recourse to the Department Secretary is sanctioned by the Civil Service Law (P.D. No. 807) under the following provisions:

“SEC. 37. Disciplinary Jurisdiction. — (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days’ salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of

officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.”

(b) The heads of departments, 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. The 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 department head.

“x x x” (Emphasis supplied.)

It is, therefore, clear that the transmittal of the complaint by the PPA General Manager to the AAB was premature. The PPA General Manager should have first conducted an investigation, made the proper recommendation for the imposable penalty and sought its approval by the PPA Board of Directors. It was discretionary on the part of the herein petitioner to elevate the case to the then DOTC Secretary Reyes. Only then could the AAB take jurisdiction of the case.

The AAB, which was created during the tenure of Secretary Reyes under Office Order No. 88-318 dated July 1, 1988, was designed to act, decide and recommend to him “all cases of administrative malfeasance, irregularities, grafts and acts of corruption in the Department.” Composed of a Chairman and two (2) members, the AAB came into being pursuant to Administrative Order No. 25 issued by the President on May 25, 1987.^[15] Its special nature as a quasi-judicial administrative body notwithstanding, the AAB is not exempt from the observance of due process in its proceedings. 16 We are not satisfied that it did so in this case the respondents protestation that

petitioner waived his right to be heard notwithstanding. It should be observed that petitioner was precisely questioning the AAB's jurisdiction when it sought judicial recourse.

WHEREFORE, the Decision of the Court of Appeals is **AFFIRMED** insofar as it upholds the power of the PPA General Manager to subject petitioner to preventive suspension and **REVERSED** insofar as it validates the jurisdiction of the DOTC and/or the AAB to act on Administrative Case No. PPA-AAB-1-049-89 and rules that due process has been accorded the petitioner.

The AAB decision in said case is hereby declared **NULL** and **VOID** and the case is **REMANDED** to the PPA whose General Manager shall conduct with dispatch its reinvestigation.

The preventive suspension of petitioner shall continue unless after a determination of its duration, it is found that he had served the total of ninety (90) days in which case he shall be reinstated immediately.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr. and Nocon, J.J., concur.

Feliciano, J., is on leave.

Padilla and Bellosilo, J.J., took no part.

[1] Petitioner was referred to as "Fidencio Y. Beja" in the proceedings below. He appears as "Fidencio Y. Beja, Sr." for the first time in this forum.

[2] Case No. 89-053.

[3] Two other cases involving substantially the same issues were likewise referred by the Court to the Court of Appeals G.R. Nos. 86468-69 (Leopoldo F. Bungabung vs. Hon. Reinerio O. Reyes, et al.) and G.R. No. 86646 (Reinerio O. Reyes, et al. vs. Cristeto O. Dinopol, et al.).

[4] Penned by Justice Venancio D. Aldecoa, Jr. and concurred in by Justices Fidel P. Purisima and Abelardo M. Dayrit.

[5] Petition, p. 3; Rollo, p. 4.

[6] Petition, pp. 13-14; Rollo, pp. 14-15.

[7] *Bautista vs. Peralta*, L-21967, September 29, 1968, 18 SCRA 223, 225-226.

[8] Sec. 42, P.D. No. 807.

[9] *Orbos vs. Bungubung*, G.R. No. 92358, November 21, 1990, 191 SCRA 563.

[10] Sec. 18 (a).

[11] Sec. 38 (2), par. (b).

[12] Sec. 39 (2).

[13] “SEC. 38. Procedure in Administrative Cases Against Non-Presidential Appointees. — (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn written complaint of any other persons.

(b) In the case of a complaint filed by any other persons, the complainant shall submit sworn statements covering his testimony and those of his witnesses together with his documentary evidence. If on the basis of such papers a prima facie case is found not to exist, the disciplining authority shall dismiss the case. If a prima facie case exists, he shall notify the respondent in writing, of the charges against the latter, to which shall be attached copies of the complaint, sworn statements and other documents submitted, and the respondent shall be allowed not less than seventy-two hours after receipt of the complaint to answer the charges in writing under oath, together with supporting sworn statements and documents, in which he shall indicate whether or not he elects a formal investigation if his answer is not considered satisfactory. If the answer is found satisfactory, the disciplining authority shall dismiss the case.

(c) Although a respondent does not request a formal investigation, one shall nevertheless be conducted when from the allegations, of the complaint and the answer of the respondent, including the supporting documents, the merits of the case cannot be decided judiciously without conducting such an investigation.

(d) The investigation shall be held not earlier than five days nor later than ten days from the date of receipt of respondent’s answer by the disciplining authority, and shall be finished within thirty days from the filing of the charges, unless the period is extended by the Commission in meritorious cases. The decision shall be rendered by the disciplining authority within thirty days from the termination of the investigation or submission of the report of the investigator, which report shall be submitted within fifteen days from the conclusion of the investigation.

(e) The direct evidence for the complainant and the respondent shall consist of the sworn statement and documents submitted in support of the complaint or answer, as the case may be, without prejudice to the presentation of additional evidence deemed necessary but was unavailable at the time of the filing of the complaint, or answer, upon which the cross-examination, by respondent and the complainant, respectively, shall be based. Following cross-examination, there may be redirect and recross-examination.

(f) Either party may avail himself of the services of counsel and may require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of subpoena or subpoena duces tecum.

(g) The investigation shall be conducted only for the purpose of ascertaining the truth and without necessarily adhering to technical rules applicable in judicial proceedings. It shall be conducted by the disciplining authority concerned or his authorized representative.

The phrase ‘any other party’ shall be understood to be a complainant other than those referred to in subsection (a) hereof.”

[14] Under the last paragraph of Sec. 36 of P.D. No. 807, the disciplining authority may impose the penalty of removal from the service, transfer, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months’ salary, or reprimand.

[15] Respondents Comment, p. 1; Rollo, p. 85.

[16] Lupo vs. Administrative Action Board, G.R. No. 89687, September 26, 1990, 190 SCRA 69.