

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 155

SUSPENDING AMBASSADOR ROMEO O. FERNANDEZ FOR ONE (1) YEAR AND SUSTAINING THE ORDER OF THE SECRETARY OF FOREIGN AFFAIRS RECALLING HIM TO THE HOME OFFICE FROM HIS POST AS AMBASSADOR-DESIGNATE TO PERU

This refers to the administrative charges, dated July 15, 1988, filed by the Secretary of Foreign Affairs through the Acting Director General of the Office of Personnel and Administrative Services, against Ambassador Romeo O. Fernandez for "insubordination, dishonesty, and grave misconduct and conduct prejudicial to the best interest of the service."

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Antecedent facts show that, on November 3, 1987, respondent was extended an appointment by the President of the Philippines, as Ambassador Extraordinary and Plenipotentiary to the Republic of Peru upon the recall of Ambassador Ernesto Garrido on September 1, 1987. Pursuant thereto, the Secretary of Foreign Affairs (SFA) issued Assignment Order No. 17-88 and Travel Order No. 88-26, both dated February 15, 1988.

Before respondent could assume his new assignment, the SFA instructed respondent not to proceed to Lima, Peru, on account of an alleged adverse report purportedly submitted by the National Intelligence and Coordinating Agency (NICA) identifying respondent as a probable security risk, in view of his reported intimate association with a Chilean-born Russian national named Tatiana V. Iachina. It appears that the verbal instructions of the SFA are conveyed earlier to the respondent by Undersecretary of Foreign Affairs Manuel T. Yan.

The above instructions notwithstanding, respondent departed for Peru on April 16, 1988. Thereafter, he assumed office as ambassador to Peru and made arrangements with the receiving state (Peru) for the presentation of his credentials.

On April 22, 1988, the Department of Foreign Affairs (DFA), in cable No. L1-02-88-S, directed respondent to return to Manila immediately. Department cable No. L1-03-88-S reiterated the recall order; additionally, respondent was directed not to present his credentials or otherwise to cancel the arrangements for that purpose, if already made.

"The Investigating Committee is fully aware of the previous meritorious service of the respondent who rose from the ranks in the career service until he reached the position of Chief of Mission Class I. He was favorably recommended by Secretary Manglapus to be assigned as Ambassador to Peru and the President signed his letters of credence.

"He openly defied an order of the Secretary not to proceed to Lima, Peru, in view of an adverse information against him and his illicit relations with a Russian citizen. He also refused to return to Manila despite the repeated orders from the Department. It is admitted by the Respondent that Tatiana Iachina was born in Chile. When she became orphaned, she was brought to Russia where she was raised and educated by Russian government authorities."

The same Board went further to recommend:

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"The offenses of insubordination, dishonesty, grave misconduct and conduct prejudicial to the best interest of the service are all grave offenses which call for the imposition of a maximum grave penalty. However, the Board considered his length of service and that it is his first offense as mitigating circumstances. Wherefore, the Board recommends that the proper imposable penalty in this case against respondent is suspension for one year."

From this resolution, respondent appealed to this Office manifesting his non-conformity to the BFA resolution of February 27, 1989. The pertinent portion of his letter-memorandum, dated September 22, 1989, reads:

"It may be noted that the Resolution signed by Manuel T. Yaw (sic) as Acting Chairman does not indicate that this was the handiwork of the Board of Foreign Service Administration. Please note that no signatures of the members present and concurring appear in the documents. It may be noted further that on page 11 of the Resolution the findings is attributed to an Investigating Committee and therefore is not the deliberation of the Board en banc. This committee was chaired by

the Ex-Justice Jorge Coquia, Assistant Secretary for Legal Affairs, with Ambassador Rosalinda Tirona, Ambassador Ernesto Garrido, Assistant Secretary for Legislative Affairs Vicente de Vera and Deputy Civil Service Commissioner Mario Yangco as members. x x x " [Emphasis by itself]

At the outset, it must be stressed that the Resolution of the BFSa is only recommendatory in nature. Regardless of any error committed by the BFSa during the investigation, it does not preclude the President from exercising her administrative disciplinary authority over respondent who is a presidential appointee. On the other hand, the DFA regulations on administrative disciplinary proceedings against DFA personnel, particularly Sections 441 to 450 of the Foreign Service Code of 1983 and Ministry Order No. 12-85, dated June 5, 1985, being departmental regulations are, by their very nature, subject to the superior administrative disciplinary authority of the President over presidential appointees so much so that, whatever defect, it there be any, in the assailed BFSa resolution, it does not diminish nor supplant the disciplinary authority of the President over presidential appointees, as in the instant case.

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This brings to the fore the core issue of whether or not respondent is administratively liable for "insubordination, dishonesty, and grave misconduct and conduct prejudicial to the best interest of the service."

After going over the records of the case, I concur with the BFSa finding respondent guilty of insubordination, dishonesty and conduct prejudicial to the best interest of the service.

On the charge of insubordination, the evidence incontrovertibly shows that respondent failed to return to the Philippines, despite the recall order of April 22, 1988, prompting the SFA to dispatch several cables reiterating his recall order. This fact alone constitutes insubordination, as respondent's conduct evinced a willful disregard of an express direction and refusal to obey reasonable orders of his superior. Unless countermanded by the President, the order of recall made by the SFA stands. In the instant case, I find the recall order of April 22, 1988, valid and effective. Respondent's contention that the recall order has no basis is not well taken. While it may be true that what prompted the SFA to issue the recall was the alleged NICA report tagging respondent as a possible security risk, which allegation is bereft of factual basis, nevertheless, respondent's defiance of the series of recall orders of the SFA constitutes insubordination.

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With regard to the charge of dishonesty, I find respondent guilty thereof. In Administrative Order No. 122, we have had occasion to define dishonesty in this wise:

"Respondent herself accepts the definition of 'dishonesty' in former Civil Service Commissioner Abelardo Subido's Disciplinary Rules and Procedures in the Philippines Civil Service (1976 Ed., pp. 41-42) 'as absence of integrity; a disposition to betray, cheat, deceive or defraud; bad faith.' (Citing Arca vs. Lepanto Consolidated Mining Company, CA G.R. 17679-R, Nov. 24, 1956, citing 27 C.J.S. 47.) For indeed, 'dishonesty' means 'a disposition to lie, cheat or defraud; untrustworthiness; lack of integrity' (State ex. rel. Neal v. Civil Service Commission, 72 N.E. ed 769, 71, 147 Ohio St. 430) and 'signifies an intentional violation of the truth' (Godfrey vs. Godfrey v. Godfrey, 106 N. W. 814, 819, 127 Wis. 47, 7 Ano. Cas. 176); and is synonymous to 'fraud' (Ex parte Drayton, 153 F. 986, 991), so that 'whatever is dishonest is fraudulent in foro conscientiae' (Idem.). Its meaning -

extends beyond acts which would be criminal and is not restricted to such conduct as imports a criminal offense; and it has been specifically defined as an absence of integrity, a disposition to betray, cheat, deceive, defraud, or deceive; bad faith, course of conduct generally characterized as lacking in principle, a disposition to defraud, deceive or betray; faithlessness, want of integrity in principle, or of fairness and straightforwardness; fraud. It may consist in an intentional violation of the truth, or any violation of the truth, or any deviation from probity.' (27 C.J.S. Dishonesty, p. 312)"

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The facts on the record are clear. Respondent, in the passport application of his daughter, Maria Romina Fernandez, made it appear that the child's mother was Liza L. Fernandez, a statement contradicted both by Birth Certificate D13 I-M 10 No. 010124 and the Application for Immigrant Visa (September 11, 1987). Respondent, being the personal representative of our country, ought to be more discreet in the conduct of his public as well as private affairs.

Finally, respondent's public criticisms against the DFA aired through the media show outbursts of passion not befitting an ambassador. His actuations are covered by Administrative Order No. 46, dated September 15, 1937, "Prescribing Rules Regarding The Practice Of Officials And Employees Of The Government To Discuss Or Clarify All Differences Of Opinion On Public Matters In Press", which is hereby quoted in full for the information and guidance of all concerned:

"In view of the frequency in which controversies touching upon particular phases of governmental activity have been carried on through the public press by contending officials of the Government, or between an official of the Government on the one hand and a private individual on the other; and since this practice is unseemly, distasteful, and may even, at times, be definitely harmful to the service; and because further, the publicizing by two governmental officials of conflicting opinions or real or fancied mutual grievances cannot fail to give the impression that the Government is devoid of order and organization, and that its members are lacking in that sense of restraint and decorum so essential to the effective discharge of public duty;

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"NOW, THEREFORE, I, MANUEL L. QUEZON, President of the Philippines, by virtue of the powers in me vested by law, do hereby direct the following rules to be followed:

(1) Controversies between officials or employees of the Government shall be submitted to the respective authorities empowered by law to take cognizance thereof, and the decisions of such authorities shall be faithfully observed by the contending parties.

(2) If and when news or statements contrary to facts are published in the press, or when criticisms are made, founded on false or incorrect information, the Head of the Department or his duly authorized representative may issue a statement giving the facts as they actually are and as supported by the official files, but in no case, except with the express authority from the Office of the President of the Philippines, shall such statement contain argumentative matter or controversial discussion.

