

**[ ADMINISTRATIVE ORDER NO. 101, December 02, 1993 ]**

**DISMISSING FROM THE SERVICE, WITH FORFEITURE OF HIS LEAVE CREDITS AND RETIREMENT BENEFITS, AQUILINO T. LARIN, ASSISTANT COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, AND HIS DISQUALIFICATION FOR REAPPOINTMENT IN THE GOVERNMENT SERVICE, FOR GRAVE MISCONDUCT**

This pertains to the administrative charge against Assistant Commissioner Aquilino T. LARIN of the Bureau of Internal Revenue, for grave misconduct by virtue of a Memorandum signed by Acting Secretary Leung of the Department of Finance, on the basis of a Decision handed down by the Hon. Sandiganbayan convicting LARIN, et al. in Criminal Case Nos. 14208 and 14209.

Acting on the aforecited Memorandum, the Senior Deputy Executive Secretary, by authority of the President, issued Memorandum Order No. 164 creating a Committee to investigate the administrative complaint against him, Assistant Commissioner of the Bureau of Internal Revenue, with powers to summon witnesses, take testimony or evidence relevant to the investigation, conduct the investigation in the most expeditious manner, terminate the same as soon as practicable and thereafter submit its report and recommendation to the President not later than Ninety (90) days from issuance of the Order (25 August 1993).

On 17 September 1993, the Chairman of the Investigation Committee directed LARIN to file his position paper on the aforementioned charge and failing which he shall be considered to have waived his right to be heard.

In his Position Paper submitted on 30 September 1993, LARIN refused "to comment on the merits of the issues involved" allegedly in deference to the "sub-judice" doctrine. He instead argued that any administrative complaint against him is already allegedly barred based on the following:

- (a) While the Administrative Code provides for the procedures in administrative cases against non-presidential appointees, no such provisions for presidential appointees in the Career Executive Service exist;
- (b) Under Republic Act 6770 (Ombudsman Law) only the Ombudsman has jurisdiction to investigate cases cognizable by the Sandiganbayan. In the instant case, the Ombudsman has already taken cognizance of and assumed jurisdiction over the "administrative and criminal charges" against him.
- (c) Res judicata and double, if not multiple, jeopardy;
- (d) Redundant, oppressive, plain persecution of his person and violative of his human rights.

This Office agrees with the findings of the Committee, with respect to the procedural matters, as follows:

“(1) LARIN’s claim that the instant Administrative Complaint is already barred because of the absence of procedures for Administrative Cases against presidential appointees, deserves scant consideration.

1.1. While it is true that Book V of the Administrative Code of 1987, Title I, Sub-title A, Chapter 7, Sec. 48 only provides for the procedures in Administrative Cases against non-presidential appointees, the lack of parallel provisions for presidential appointees does not preclude the President, as Administrative head of government and under his Constitutional powers of appointment of heads of executive departments, bureaus and offices, independently of statutory authority, in exercising disciplinary powers over executive officers or officials, especially those whose term of office is not fixed by law (Sinco, Phil. Political Law, p. 243).

1.2. Moreover, the President’s power to remove is considered as an adjunct of or incident to the power of appointment (Mechem, Public Office and Offices, Sec. 445).

(2) Contrary to LARIN’s assertion that only the Ombudsman should take cognizance of his case, such authority is not exclusive but is concurrent with other appropriate government agencies, as in the case of the Office of the President regarding the administrative aspect thereof.

(3) LARIN’s reliance on res judicata and double jeopardy is misplaced and unavailing.

3.1. For res judicata to apply, the following elements must concur: (a) final judgment or Order; (b) court that rendered judgment must have jurisdiction over the subject matter and the parties; (c) judgment must be based on the merits (d) identity of parties, subject matter and cause of action between the two (2) cases.

3.2. Thus, it has been held that “generally, judgment in a criminal case cannot be invoked as res judicata in a civil action or administrative proceedings because under this situation, the identity of parties and subject matter does not obtain since the petitioners/complainants in the civil case or administrative complaint are not parties in the criminal case and the subject matter in the criminal case – the guilt or innocence of the accused is different from that of the civil action or administrative proceedings (vide, Perez v. Mendoza, 75 SCRA 485, Ocampo v. Jerkin, 14 Phil. 661 and Dionisio v. Alvendia, 102 Phil. 443)

3.3 As regards double jeopardy, the scope of the guarantee of double or second jeopardy for the same offense includes only immunity from second prosecution when the court having jurisdiction had acquitted/convicted the accused of the same offense (Kepner vs. US, 11 Phil. 669), but not immunity for/from a civil action or an administrative complaint against said accused.”