[ADMINISTRATIVE ORDER NO. 37, September 30, 1987]

IMPOSING A FINE ON CORAZON B. MARCOS, FORMER CHAIRMAN OF THE TARIFF COMMISSION, EQUIVALENT TO HER THREE (3) MONTHS' SALARY TO BE DEDUCTED FROM WHATEVER RETIREMENT AND OTHER BENEFITS SHE MAY RECEIVE FROM THE GOVERNMENT

This refers to the administrative case filed by Ms. Herminia J. Tayco, Special Assistant to the Chairman of the Tariff Commission, against Ms. Corazon B. Marcos, then Acting (later regular) Chairman of the said Commission, for "grave abuse of authority, oppression and conduct unbecoming" of an official arising from respondent's refusal to pay the former's salaries as such Special Assistant, notwithstanding the decisions of the Civil Service Commission (CSC), and the Office of the President, and, as updated by complainant's subsequent letters and as later particularized, from respondent's continued refusal to pay said salaries despite the decisions/orders of the Office of the President, the CSC, the National Economic and Development Authority (NEDA), the Budget Commission, Commission on Audit (COA), and the Minister of Justice, all upholding the validity of such complainant's appointment and directing the payment of her salaries.

The complaint, dated December 26, 1974, was filed with the NEDA to which the Tariff Commission was attached. NEDA indorsed it to this Office on April 12, 1976. On February 22, 1977, this Office required the respondent to submit her answer to the complaint within seventy-two (72) hours. No compliance with this order is shown by the record of the case.

On January 17, 1983, this Office required the complainant to "make statement of particulars and/or specifications of the charges" to enable it "to arrive at an intelligent decision or take appropriate action on the case." The record is bare on complainant's compliance with this order.

In 1986, this Office received letters from the complainant, dated March 12, April 7, 16, and 23, 1986, all expressing her relentless pursuit of the case. Likewise, this Office received a communication from the new Chairman of the Tariff Commission, Chula J. Alarcon, dated April 28, 1986, seeking information on the status of the case in order that the Commission could act on the application of the respondent who resigned as Chairman of the Commission, effective April 16, 1986, "for administrative clearance as a requirement for her retirement benefits x x x."

In view thereof, and considering that the complainant and the respondent have not yet complied with the aforesaid orders of February 22, 1977 and January 17, 1983, respectively, this Office, on June 25, 1986, directed the complainant to submit verified specifications of her charges and the respondent to file a verified answer thereto.

Briefly, complainant's charges, as particularized, are based on respondent's refusal to pay her salaries as Special Assistant to the Chairman of the Tariff Commission, notwithstanding the decision of this Office confirming the authority of Tariff Commission Chairman Razon T. Haresco to issue her appointment as such Special Assistant and the decisions Of the CSC upholding the validity of her said appointment and dismissing the protest of Rosalia A. Saldaña against her appointment; on respondent's continued refusal to pay her said salaries, to act on her GSIS loan and on her request for payment of her MEDICARE premiums, despite the directives of the NEDA and this Office for payment of her salaries as such Special Assistant; on respondent's subsequent act of revoking her appointment and considering her position as vacant; on respondent's act of proposing for the abolition of her item after failing to invalidate her appointment; on respondent's act of withholding from Chairman Haresco the directives of the Budget Commissioner and this Office directing the payment of her salaries, and of disclaiming knowledge of such directives and refusing to act on her salary vouchers; on respondent's determined effort to cause the nullification of her appointment, notwithstanding decisions of appropriate government agencies upholding its validity; on respondent's act of requesting General Fabian C. Ver for a thorough and immediate investigation of all officials and employees who caused the issuance of her appointment and payment of her salaries; on respondent's act of requesting her recall and questioning her services from February 17, 1975 (the effective date stated in Special Order No. 9 terminating her detail) although said Order No. 9 was issued only on March 11, 1975 and she received it only on March 17, 1975; on respondent's act of issuing Office Order No. 6-A dated February 17, 1975 or while she was still on detail at the Development Management Staff (Malacañang), assigning her to the Office of the Executive Director and requiring her to use the bundy clock although personnel of lower rank were not required to do the same; and on respondent's act of questioning the directive of Chairman Manuel L. Alba directing the Cashier of the Tariff Commission to pay her accumulated salaries. All these acts of the respondent, so complainant asserts, show harassment, oppression, and vindictiveness on the part of the respondent, done in wanton disregard of her rights and in gross and evident bad faith utilizing the powers of her office and her affinity with then President Marcos, with clear malice and obvious intent to cause damage and prejudice to her. To further support her charges, complainant submitted a copy of the decision of the then Court of First Instance of Quezon City (Branch IX) in Civil Case No. Q-20481, ordering respondent to pay moral and exemplary damages, among others.

Respondent, in her answer, interposed the defense of good faith and honesty in her belief on the nullity of complainant's appointment and that she was just overzealous in protecting the people's money.

After the submission of the above-required pleadings, this Office created a Committee under Memorandum Order No. II, dated September 25, 1986, to investigate the charges of the complainant against the respondent.

During the November 6, 1986 hearing, respondent presented a Motion to Dismiss, dated October 29, 1986, anchored on the grounds (a) that the case has been rendered moot and academic by the acceptance by the President of respondent's resignation, effective April 16, 1986; and (b) that this Office has lost jurisdiction over the person of the respondent. The Committee, however, deferred the resolution

of said motion until the reception of evidence, and allowed the complainant to file a written opposition thereto, which she did, and required the parties to submit their evidence, in addition to those already filed with this Office. The additional evidence being all documentary, the parties agreed to submit them together with their respective position papers/memoranda, after which the case shall be deemed submitted for decision.

The Report of the Committee, insofar as pertinent, reads as follows:

> "Respondent, in seeking the dismissal of the case based on the acceptance by the President of her resignation as Chairman of the Tariff Commission effective April 16, 1986 which, according to her, rendered the case moot and academic and deprives this Office of jurisdiction over the person relies upon the case of Diamalon vs. Quintillan (Adm. Case No. 116, August 29, 1969 SCRA 347) wherein the Supreme Court ruled that an administrative proceeding against a judge may be dismissed after the judge's resignation has been accepted by the President during the pendency of the case, because an administrative proceeding is predicated on the holding by the respondent of an office or position in the Government (at p. 350). This ruling, however, was explained and modified, if not superseded, by the subsequent cases of Perez vs. Abiera (Adm. Case No. 223-J, June II, 1975, 64 SCRA 302); Pesole vs. Rodriguez (Adm. Case No. 755-MJ, January 31, 1978, 81 SCRA 208); and People vs. Valenzuela (L-63950-60, April 19, 1985, 135, SCRA 712).
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> "In explaining the Quintillan ruling and in disposing Judge Abiera's theory of mootness and lack of jurisdiction similar to that of respondent's in this case, the Supreme Court said:
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> > '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 public officials innocent of the charges or declares 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 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? x x x. If innocent, respondent official merits vindication of his name and integrity

> as he 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." (Perez vs. Abiera, supra, at pp. 306-307; Pesole vs. Rodriguez, supra, at p. 211; People vs. Valenzuela, at p. 718; Underscoring supplied.)

"Thus, notwithstanding the retirement of Judge Abiera shortly after the filing of the administrative case against him, the Supreme Court required him to answer the complaint and the case investigated and finding him guilty of serious misconduct in office, imposed upon him a fine equivalent to three (3) months salary, deductible from whatever retirement benefits he is entitled to and will receive from the government. (Perez vs. Abiera, supra, at pp. 109-110). Likewise, an administrative case against a municipal judge was pursued and investigated notwithstanding his compulsory retirement (Rañeses vs. Tomines, Adm. Matter No. 518-MJ, May 28, 1974, 57 SCRA 94; Daily Papa vs. Aimora, Adm. Matter No". 543-MC & 1525-MJ, Dec. 19, 1981, 110 SCRA 376) and even after the death of the respondent official (Hermosa vs. Paraiso, Adm. Case No. P-189, February 14, 1975, 62 SCRA 361), if only to determine if his heirs are entitled to retirement benefits on account of such death which are deemed forfeited in the event that his guilt is established at the investigation. (Ibid, at p. 362.)

> "Indeed-
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> 'the cessation from office of a respondent judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.' (Perez vs. Abiera, supra, at p. 308; Underscoring supplied.)

But before we examine the facts of this case to determine if circumstances warranting its dismissal exist, we must first dispose of respondent's theory of double jeopardy invoked by respondent in her motion to dismiss, albeit the opening paragraph of said motion indicates that the same is based only on two (2) grounds, namely: (a) mootness, and (b) jurisdiction.

"Respondent's theory of double jeopardy proceeds from her characterization of her resignation as 'forced resignation' and is, therefore, a penalty within the meaning of CSC Memorandum Circular No. 8, series of 1970, prescribing guidelines in the application of penalties in administrative cases and other matters relative thereto. She argues that, since such penalty of 'forced resignation' was imposed by the acceptance of her resignation by the President without imposing therein any condition adversely affecting her right to enjoy benefits, she should be allowed to enjoy retirement and other benefits due her under existing laws, because 'forced resignation' as a penalty under MC No. 8, supra, may or may not contain condition with respect to the enjoyment of benefits or reinstatement or reemployment.

"The urgency of the need to dispose of this case expeditiously was precisely precipitated by respondent's application for retirement benefits. If the acceptance by the President of her resignation was in fact an imposition of the penalty of 'forced resignation' as respondent now contends, there would be no legal basis for the payment of retirement benefits to her, for, contrary to her allegation, the very CSC MC No. 8 invoked by her mandates the forfeiture of her retirement benefits as. Clause 111(2) thereof reads as follows:

> '2. The penalty of forced resignation shall carry with it that of forereiture of leave credits and retirement benefits, and the disqualification for employment in the government service for a period of one year. However, where the resignation contains conditions or disqualification regarding reemployment in a class of position, the respondent shall be disqualified for reemployment in such position. '(Underscoring supplied.)'

This must however be read in relation to the provision invoked by respondent, namely Clause VII (1, 2), MC No. 8, supra, providing that 'the penalty of forced-resignation' carries with it the forefeiture of leave credits and retirement benefits and disqualification for employment in the government service unless otherwise provided therein. So that, in the absence of such qualification, the penalty of 'forced resignation' shall be deemed to include forefeiture of retirement benefits, among others.

"Clause III (2) and Clause VII (.2.) may be restated thus: the penalty of 'forced resignation' carries with it the forefeiture of leave credits and retirement benefits and disqualification for employment in the government service unless otherwise provided therein. So that, in the absence of such qualification, the penalty of 'forced resignation' shall be deemed to include forefeiture of retirement benefits, among others.

"As admitted by respondent, the President's acceptance of her resignation does not contain a condition that she shall enjoy retirement benefits. Hence, the same shall be deemed to carry with it the forefeiture of her retirement benefits.

"This is so because 'forced resignation' is the same as 'considered resigned' as explicitly admitted by respondent when she invoked Opinion No. 50, series of 1977, of the Minister of Justice relative to the cases of officers and employees 'purged' or 'considered resigned' in September 1975 whose petitions for reinstatement or for reconsideration of the acceptance of their resignations were then pending before the Appeals Committee created under Administrative Order No. 370, series of 1975, as shown by the portion of the opinion quoted in respondent's motion to dismiss. And the penalty of 'considered resigned' has been construed by no less than the Supreme Court as dismissal for cause with forefeiture of retirement benefits (Aquino vs. General Manager, GSIS, L-24859, January 31, 1968, 22 SCRA 415). It was in recognition of the disabilities inherent in the penalty of 'forced resignation' or 'considered resigned' that then President Ferdinand E. Marcos, in order to remove such disabilities issued