

EIGHTH DIVISION

[CA-G.R. SP NO. 72295, August 10, 2006]

NELSON D. LAVIÑA, PETITIONER, VS. DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

Ambassador Nelson D. Laviña appeals the Order issued on July 29, 2002 by the Office of the President(OP) in OP Case No. 01-J-123 (Administrative Case No. 003-97), which affirmed Administrative Order No.136 dated September 4, 2000 of then Executive Secretary Ronaldo Zamora finding him liable for simple misconduct and imposing the penalty of suspension without pay for 1 month and 1 day, thereby sustaining the recommendation of the Department of Foreign Affairs (DFA) Board of Foreign Service Administration(BFSA) under Memorandum dated May 22, 2000.

In his petition for review, he prays for the following reliefs:

WHEREFORE, Petitioner respectfully prays that this Honorable Court of Appeals order:

1. That the Formal Charge against Petitioner Ambassador Nelson D. Laviña on the remaining Charge No. 1 on alleged deductions be DISMISSED; that the decision of the DFA dated 22 May 2000 in Administrative Case No. 003-97, sustained by Administrative Order No. 136 of 04 September 2000, and affirmed by OP Order dated 29 July 2002 (O.P. Case No. 01-J-123) be reversed;
2. That Petitioner be restored to his former position before his recall as Ambassador Extraordinary and Plenipotentiary (AEP) to the Republic of Kenya; however, since this is no longer feasible or advisable, he be assigned to another post, (as political ambassador, as he is now retired) taking into account his status as a senior ambassador of the service;
3. Petitioner be awarded all remunerations, salaries and allowances that should have accrued to him abroad during the period of his illegal recall from August 1997 up to November 2000 which was the date of his regular recall to Home Office after termination of his official tour of duty, minus whatever amount he had received in Manila during that period of illegal recall;
4. That as part of other reasonable reliefs within the premises, Ms. Virginia Vicente and Ms. Helen Tadifa, Administrative Officer and Finance Officer, respectively, at the Philippine Embassy in Nairobi at the time of their recall, should be reassigned to other posts abroad;

however, since Ms. Tadifa has abandoned the service, she may be considered resigned therefrom.^[1]

The relevant antecedent facts follow.

On January 14, 1997, DFA, through BFSA, requested then President Fidel V. Ramos for authority to investigate the petitioner, then the Ambassador Extraordinary and Plenipotentiary to Kenya, upon the charge made by 3 Kenyan staff members that he had appropriated parts of the salaries for his personal use.^[2] Specifically, the complaint stemmed from the encashment of 2 checks in the names of Peter Musoneye and Juma Kalama, local hires at the ambassadorial residence, the proceeds being misappropriated by the petitioner to his own personal use.

On January 20, 1997, the DFA Secretary was authorized by the Office of the President to investigate the allegations of misconduct committed by the petitioner.

Thus, BFSA constituted a Fact-Finding Team composed of Undersecretary Rosario G. Manalo, Office for Legal Affairs (OLA), Assistant Secretary Franklin M. Ebdalin and Ma. Theresa B. Dizon, FSO IV, to conduct the investigation in Nairobi, Kenya from April 20 to April 30, 1997 pursuant to the authority granted by the Office of the President.^[3]

In a Memorandum dated June 24, 1997, the DFA Secretary transmitted to the Office of the President the findings of the Fact-Finding Team, wherein the Team recommended, with the concurrence of the DFA Secretary, that the petitioner be administratively charged with conduct unbecoming of an Ambassador, as follows:^[4]

1. Illegally deducting a portion from the salaries of three Kenyan local hires of the Philippine Embassy, Nairobi, and using the deducted amount for his personal use;
2. For purchasing and keeping in his possession raw elephant tusks which is prohibited under Kenyan law;
3. For allowing the involvement of members of the Filipino community in the internal concerns of the Embassy;
4. For endorsing to an International Organization communications signed by an Embassy staff member containing defamatory statements against some members of the Filipino community as well as transmitting to that organization internal communications of the Department of Foreign Affairs;
5. For attesting to affidavits of Ms. Helen Tadifa, Finance Officer, containing defamatory statements against members of the Filipino community;
6. For improperly undertaking representational activities such as non-holding of an Embassy Celebration of the Philippines National Day for members of the Diplomatic Corps in 1996 despite the release of US \$1,000 for this purpose, and instead allowing the said fund to be used as reimbursement for silverware dishes purchased by his spouse, Mrs. Estelita Laviña;

7. For compromising the security of the Embassy premises and communications by allowing the access of non-Embassy personnel to secured areas of the Embassy as well as to internal communications;
8. For charging to the Embassy funds expenses for personal telephone calls and fax communications, reasoning that his position as Ambassador entitles him to such a privilege; and
9. For mismanagement of the Embassy's operation particularly in fiscal-related matters.^[5]

On July 17, 1997, pursuant to Board Resolution No. 97-21, BFSA created a Special Investigation Committee (SIC) to hear the charges against the petitioner. The SIC was constituted by former DFA Undersecretary Leonides T. Caday as Chairman and by Assistant Secretaries Jose Fernandez, Victor Garcia III, Marcellana Desales and Luz Palacios as members. The hearings commenced on October 10, 1997 with the petitioner opting for a formal hearing on his case. The petitioner submitted his formal memorandum after the hearing.

On April 15, 1999, BFSA issued Resolution No. 99-07 affirming the following SIC findings and recommendations against the petitioner, to wit:^[6]

- a) that the Board endorse the Special Investigating Committee's findings and recommendations on the suspension of Amb. Lavina for six (6) months without pay and in view of Amb. Laviña's forty years of service to the Department, to recommend the acceptance of his offer to retire under R.A. 660 upon the service of said penalty.
- b) that the four (4) months suspension without pay of Mr. Nestor Padalhin be increased to six (6) months despite his proffered apologies; and
- c) that there should be a strong reprimand to Mr. Nestor Padalhin not to trifle with sovereign prerogatives in connection with his unilateral waiver of the Embassy's diplomatic immunity.

On June 11, 1999, the petitioner submitted to BFSA his omnibus petition for review and to admit newly discovered evidence. A hearing was held on September 3, 1999 wherein the petitioner extensively participated.

On November 8, 1999, BFSA modified its Resolution No. 99-07 by recommending to the Office of the President the imposition on the petitioner of suspension without pay for 1 month and 1 day, after taking into consideration the petitioner's 40 years of service with DFA and very satisfactory performance.^[7]

The DFA Secretary transmitted a Memorandum dated May 22, 2000 to the Office of the President recommending that the petitioner be charged administratively on the basis of the modified finding of BFSA that he had committed 1 count of misconduct for the offense of deducting from and/or appropriating for his own personal use the salaries and compensation of 4 Kenyan hires of the Philippine Embassy.^[8]