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to run, despite an adverse decision of both the Board and the Securities and Exchange Commission, only if he comes to this Court and obtain an injunction against the enforcement of the decision disqualifying him. Without such injunction being required, all that petitioner has to do is to take his time in coming to this Court, and in so doing, he would in the meantime, be allowed to run, and if he wins, to sit. This would, however, be contrary to the doctrine that gives binding, if not conclusive, effect of findings of facts of administrative bodies exercising quasi-judicial functions upon appellate courts, which should, accordingly, be enforced until reversed by this Tribunal.

EN BANC

[A.M. No. 818-TEL. April 18, 1979]

RE: REPORT ON THE SHORTAGE OF THE ACCOUNTABILITIES OF CLERK OF COURT CARLITO U. ALVIZO.

SYLLABUS

ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; WARRANTS DISMISSAL FROM SERVICE. — Where a clerk of court, after having been examined and audited, has been found to be short in his cash and accounts, he shall be dismissed from the service for dishonesty and neglect of duty, with forfeiture of retirement gratuity, with prejudice to reinstatement, and without prejudice to criminal prosecution.

MAKASIAR, *J., concurring:*

ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MALVERSATION; SANCTION. — Where a clerk of court commits malversation of public funds penalized by Article 217

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of the Revised Penal Code, he should be prosecuted, aside from being barred from reinstatement or re-employment in the government, its local political subdivisions, and other agencies, including government-owned or controlled corporations. Mere dismissal would be too lenient for such a serious crime and would place a premium on the commission of graft by public officers.

DECISION

ANTONIO, *J.*:

On November 10, 1978, this Court received, thru the Chief Justice, a letter of Acting Chairman of the Commission on Audit dated October 18, 1978, informing Us that after an investigation of the accounts of respondent Carlito U. Alvizo, Clerk of Court of the Court of First Instance, Lianga, Surigao del Sur, the Provincial Auditor, Mr. Miguel Peñalosa, found his accounts short of ₱31,612.50. Consequently, on November 14, 1978, the Chief Justice directed the Executive Judge of the Court of First Instance at Lianga, Surigao del Sur, Hon. Otilio G. Abaya, to "*investigate and submit a report immediately*" on the matter, and if the relief of the Clerk of Court is warranted, to submit the name of one of his employees as temporary replacement.

In the meantime, this Court resolved: (1) to suspend Clerk of Court Alvizo from the discharge of his duties and functions as such, pending final disposition of the case; (2) to require him to file his answer to the charge of shortage of accountabilities against him; (3) to direct, within ten (10) days from notice, Judge Abaya to continue the investigation of Clerk of Court Alvizo; and (4) to designate Atty. Domingo de Castro as Officer-in-Charge of the Office of the Clerk of Court, Court of First Instance of Surigao del Sur at Lianga, in addition to his present duties, but without additional compensation.

On December 19, 1978, this Court received the complete records of the investigation conducted by the Executive Judge of Lianga, Surigao del Sur, regarding the shortage of the accountable funds of Clerk of Court Carlito U. Alvizo, confirming

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the shortage, the subsequent restitution of the amount by respondent, and his recommendation on the matter. According to his report, the aforementioned administrative case was set for hearing, after due notice to respondent, on November 27, 1978 at which proceedings Mr. Miguel Peñalosa, Provincial Auditor of Surigao del Sur and Mr. Nerio Sales, Chief of Auditing Division of the same office, testified that on August 22, 1978, they examined and audited the cash and accounts of respondent Clerk of Court Carlito U. Alvizo and found him short of ₱31,612.50 (Exhibits "A", "B", "B-1" to "B-3"), consisting of the following:

A.	Collections:	
	(1) As Clerk of Court	₱20,751.55
	(2) Fiduciary fund	5,440.00
	(3) Legal Research fund	1,059.55
	(4) Provincial Sheriff's fund	2,656.40
B.	Cash advance	1,705.00
	TOTAL (Exhibit "F")	₱31,612.50

Demand was made of respondent to refund or restitute such shortage of ₱31,612.50 on August 23, 1978 and again on October 5, 1978 (Exhibit "C"). The respondent sent a telegram to Nerio Sales on November 9, 1978, informing the latter that he would be remitting the amount corresponding to his shortage thru PNB, San Francisco, Agusan del Sur (Exhibit "D"). On November 16, 1978 and November 17, 1978, respondent deposited with the Philippine National Bank at San Francisco, Agusan del Sur, the total amount of ₱31,612.50 (Exhibits "W", "W-1"; "X", "X-1"; "Y", "Y-1"; "Z", "Z-1"; "AA", "AA-1") in full payment of his shortage.

In the meantime, due to the failure of the respondent to refund or restitute his shortage within the time granted him by the Provincial Auditor's office (Exhibit "C"), the Provincial Auditor sent a telegram on October 7, 1978 to the Regional Director, Commission on Audit, Region XI, Davao City, informing said official that upon examination of respondent's accounts he was found short of ₱31,612.50 (Exhibit "E"). On November 18, 1978, the Provincial Auditor submitted to the same Regional

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Director his findings and recommendations with respect to respondent's shortage of his cash and accounts (Exhibit "F").

On December 4, 1978, respondent submitted his manifestation, alleging the following:

"1. That it is true that the cash and accounts of the undersigned as Clerk of Court of this Honorable Court were examined by the representative of the Provincial Auditor's Office, this Province, on August 22, 1978;

"2. That after the examination of the undersigned's cash and accounts on August 22, 1978, there was found a balance of Thirty Thousand Nine Hundred Thirty Six Pesos and Fifty Centavos (₱30,936.50);

"3. That the undersigned requested after the examination of his cash and accounts made on August 22, 1978 for re-examination of his cash and accounts which was granted;

"4. That after the request for re-examination of undersigned's cash and accounts was granted, Mr. Nerio A. Sales, Provincial Auditor's representative, Commission on Audit, this province, brought to Tandag, Surigao del Sur undersigned's record books for Clerk of Court collections, Provincial Sheriff *Ex-Oficio* collections, Fiduciary Fund collections, Legal Research Fund collections and Cash advance from Supreme Court record book, for the purpose of re-examination (Attached hereto is the receipt marked as Annex 1 showing receipt by Mr. Nerio A. Sales from the undersigned of the record books mentioned);

"5. That on October 19, 1978, the undersigned received the results of the re-examination of the cash and accounts of the undersigned by the Auditor's Office, Tandag Surigao del Sur, dated October 5, 1978, showing a balance of Thirty One Thousand Six Hundred Twelve Pesos and Fifty Centavos (₱31,612.50) as of August 22, 1978;

"6. That as a result of the re-examination of the undersigned's cash and accounts a difference of Six Hundred Seventy Six (₱676.00 Pesos appeared;

"7. That after receipt of the results of the re-examination of the undersigned's cash and accounts, the undersigned remitted the full balance in the sum of Thirty One Thousand Six Hundred Twelve (₱31,612.50) and Fifty Centavos thru the Philippine National Bank,

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San Francisco, Agusan del Sur, as evidenced by Official Receipts Nos. 968132 J dated November 16, 1978 for ₱1,059.55 representing collections for Legal Research Fund; 968133 J dated November 16, 1978 for ₱1,705.00 representing the balance of the cash advance received by the undersigned from the Supreme Court; 968134 J dated November 16, 1978 for ₱20,751.55 representing collections for Clerk of Court; 943934 L dated November 17, 1978 Philippine National Bank, Tandag, Surigao del Sur, representing collections for Fiduciary Fund (Deposit) and 943935 L dated November 17, 1978 for ₱2,656.40 representing collections for Provincial Sheriff *Ex-Oficio*, all marked as Annexes 2, 3, 4, 5 and 6, respectively, and all contained in Remittance Advice No. 78-1, in the total sum of ₱31,612.50;

"8. That the aforementioned remittance were only made on November 16 and 17, 1978 because the undersigned was on official leave of absence for fifteen (15) days effective October 23 to November 10, 1978;

"9. That it was only on October 19, 1978 that the undersigned received the results of the re-examination of his cash and accounts." (*Rollo*, pp. 14-16).

According to the report, it has been sufficiently established that —

"*** respondent was short in his cash and accounts as Clerk of Court in the total amount of ₱31,612.50 when he was examined by Nerio Sales of the Provincial Auditor's office of Surigao del Sur, and this examination was found to be correct by Provincial Auditor Miguel Peñalosa after his review of Sales' findings. This shortage was also confirmed by the acts of respondent in sending a telegram (Exh. D) informing Nerio Sales that he would be remitting said amount of shortage thru PNB, San Francisco, Agusan del Sur, and his actual payments of his shortage of ₱31,612.50 thru the same bank on November 16 and 17, 1978 (Exhs. W, W-1, X, X-1, Y, Y-1, Z, Z-1, AA, AA-1), after he was already found short of his cash and accounts by the Provincial Auditor's Office." (*Rollo*, p. 12).

On the basis thereof, the Investigator concurred in the recommendation of the Provincial Auditor that respondent Carlito U. Alvizo be separated from the service for dishonesty and neglect of duty.

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We are in accord with the recommendation of the Provincial Auditor as adopted by the Investigating Judge.

WHEREFORE, in view of the foregoing, the Court finds respondent Carlito U. Alvizo guilty of dishonesty and neglect of duty (Rule XVIII, Section 19 (c & g) of the Civil Service Rules and Regulations, and Section 1 (a & d), Presidential Decree No. 6), and hereby orders his DISMISSAL from the service, effective from the date of his suspension, with forfeiture of *retirement gratuity, if any with prejudice to reinstatement, and* without prejudice to criminal prosecution.

Fernando (Acting C.J.), Teehankee, Barredo, Aquino, Concepcion Jr., Santos, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.,* concur.

Makasiar, J., concurs in a separate opinion.

Fernandez, J., on leave.

MAKASIAR, *J., concurring*:

The act committed by respondent constitutes malversation of public lands penalized by Article 217 of the Revised Penal Code and he should accordingly be prosecuted, aside from being barred from reinstatement or re-employment in the government, its local political subdivisions, and other agencies, including government-owned or controlled corporations. Mere dismissal would be too lenient for such a serious crime and would place a premium on the commission of graft by public officers.

Hence, the dispositive portion should include "with prejudice to his reinstatement or re-employment in the government or any of its local political subdivisions or agencies, including government-owned or controlled corporations; but without prejudice to his criminal prosecution.

"Let certified copies of this decision and the pertinent records of this case, be referred to the Provincial Fiscal of Surigao del Sur for appropriate action."