[ADMINISTRATIVE ORDER NO. 123, May 29, 2000]

IMPOSING THE PENALTY OF SEVERE REPRIMAND WITH A WARNING ON OFFICER-IN-CHARGE/REGIONAL DIRECTOR RENATO F. HERRERA OF THE DEPARTMENT OF AGRARIAN REFORM-REGION IV

This refers to the administrative complaint filed against Officer-in-Charge/Regional Director Renato F. Herrera of the Department of Agrarian Reform (DAR) – Region IV (formerly OIC-RD of Region III) for gross dishonesty, conduct prejudicial to the best interest of the service, gross neglect of duty, gross misconduct, and violation of Sec. 3 (e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The case arose out of the letter-complaint of demoralized DAR Region III rank and file personnel dated July 23, 1998 addressed to this Office charging the respondent with acts constituting graft and corruption, as earlier mentioned. On August 1, 1998, the Presidential Commission Against Graft and Corruption (PCAGC) received its own copy of the complaint.

The complainants appeared to be anonymous. In line, however, with its mandate, i.e., to investigate on its own, and considering that there appeared to be pursuable leads based on the 1997 Annual Audit Report of the Commission on Audit, after a fact-finding investigation, the PCAGC, acting as the nominal complainant, filed the "Formal Charge" against the respondent. Finding sufficient cause for an administrative investigation, the PCAGC, in an order of April 27, 1999, required the respondent to file his counter-affidavit.

The facts of the case are as follows:

1. Respondent was Director III, Administrative Services, DAR Central Office when he was designated as Officer-in-Charge/Regional Director (OIC/RD) of Region III in Special Order No. 476, series of 1997, dated June 2, 1997 signed by Secretary Ernesto D. Garilao. He assumed office as OIC/RD of DAR Region III on June 23, 1997 and stayed as such until February 28, 1999, when he was assigned as OIC/RD of Region IV effective March 1, 1999 through Special Order No. 27, series of 1999 issued by Secretary Horacio R. Morales, Jr.;

2. That sometime in April 1994, Disbursement Voucher No. 15-94-040583 was drawn in favor of Lit's Litson in the amount of P6,000.00 for the payment of meals and snacks served during the Pre-Regional Planning Workshop held on January 11, 1994. Consequently, LBP check No. 288838 in the amount of P6,000.00 was issued in the name of Lit's Litson as payment therefor. The disbursement voucher was approved by the respondent in his capacity as the OIC/Assistant Regional Director for Administrative Services of DAR Region III and the corresponding check in his capacity as the countersigning authority; and

3. That the 1997 Annual Audit Report on DAR Region III issued by the Commission on Audit disclosed audit findings which was the basis of other charges leveled against the respondent, details of which are as follows: a) illegal disbursements resulting in disallowances in the net amount of P884,448.82; b) habitual failure to follow established accounting rules and regulations resulting in unascertainable validity of inventory-items for sale and fixed assets accounts; and c) unnecessary expenditures during the celebration of the 9th anniversary of CARP amounting to P25,375.00 and conduct of seminars/workshops in different hotels and restaurants resulting in unnecessary expenditures of P224,653.50 or a total of P250,028.50.

After due hearing, the Commission found that:

> "There are two issues to be resolved in the case at bar, which are: 1) Whether or not the respondent is administratively responsible for the failure of his office to withhold the caterer's tax; and 2) Whether or not the respondent is administratively responsible for the audit findings in the 1997 Annual Audit Report.
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> I. Failure to withhold caterer's tax
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> The evidence disclosed that Disbursement Voucher No. 15-94-040583 was drawn in favor of Lit's Litson in the amount of P6,000.00 for the payment of meals and snacks served during the Pre-Regional Planning Workshop held on 11 January 1994. A check LBP check no. 288838 in the amount of P6,000.00 in favor of Lit's Litson was issued as payment therefor. The respondent was found to have approved the voucher in his capacity as the OIC/Assistant Regional Director for Administration of DAR Region III and signed the corresponding check as countersignatory.
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> The transaction in question is no doubt subject to 4% caterer's tax pursuant to Section 114 of the National Internal Revenue Code which reads as follows:
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> > 'Section 114. Caterer's Tax. – A caterer's tax is hereby imposed as follows:
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> > (1) On operator or operators of restaurants, refreshment parlors, and other eating places, including clubs and caterers, four per centum (4%) of their gross receipts.
> > x x x
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> Likewise, the responsibility of withholding the prescribed creditable value-added tax from any payment due the seller of goods and the designation of withholding agents have been clearly established under Section 4 of the Bureau of Internal Revenue (BIR) Revenue Regulation No. 10-93, thus:
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> Section 4. Withholding Agents Charged With the Duty to Withhold and Remit. – All local government units, represented by the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, and Barangay Treasurer in barangays, the Treasurer of the GOCCs, and the Chief Accountant or any person holding similar position and performing similar function in national government

offices, as withholding agents, shall deduct and withhold the prescribed creditable value added-tax before making any payment to seller of goods or employees.

In his Counter-Affidavit, respondent Herrera denied that there was overpayment since the service contract shows that the total expenditure to be paid was Six Thousand Pesos (P6,000.00) and the amount disbursed by government was the same amount of Six Thousand Pesos. Further, respondent Herrera averred the following:

> '1. That even assuming that there was a need to withhold taxes, there can be no liability when there is no obligation imposed. The obligation to pay the taxes assuming that taxes are indeed required, falls on the supplier of the services or food and not on the respondent;
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> 2. That Section 4 of BIR Revenue Regulation No. 10-93 designates the Chief Accountant as the withholding agent tasked with the duty to deduct and withhold the prescribed creditable value added tax before making any payment to the seller of goods or employees;
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> 3. That the approval of the voucher and the signing of the check which resulted in the alleged overpayment was a mere ministerial act on the part of the respondent since the duty to withhold taxes, if any, is lodged with the Office of the Chief Accountant of DAR Region III, and not on the respondent.

"It is established that the contract between DAR Region III and Lit's Litson for the latter to serve the meals and snacks of participants of the Pre-Regional Planning Workshop on the 11th of January 1994 is subject to the caterer's tax equivalent to 4% of the gross receipt pursuant to Section 114 of the National Internal Revenue Code.

A close examination of Disbursement Voucher No. 15-94-040583 shows that a withholding tax equivalent to 4% of the gross amount of P6,000.00 or P240.00 was withheld by means of account 8-84-1-100 resulting in a net amount due the seller of P5,760.00 shown by means of account 8-70-707. Contrary however to the accounting entries in the voucher, the check issued as payment therefor, LBP check no. 288838 dated 18 April 1994 was in the gross amount of P6,000.00, instead of the net amount of P5,760.00.

The error resulted in the failure of DAR Region III to withhold the caterer's tax that should have been deducted from the gross amount due Lit's Litson for remittance to the BIR pursuant to Sec. 4 of BIR Revenue Regulation No. 10-93.

The respondent, not only as OIC/Assistant Regional Director of Administration of DAR Region III but approving official of the voucher and signatory to the check cannot, and should not be allowed to conveniently pass on to his subordinate, in this case, the Chief Accountant, his fiscal duties and responsibilities in line with the principle of primary

responsibility enunciated under Section 102 of Presidential Decree No. 1445, which reads as follows:

> 'Section 102. Primary and secondary responsibility. – (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. x x x

While it is true that there was no overpayment committed, respondent Herrera is found remiss of his duties and responsibilities as the Officer-in-Charge for the failure of his office to withhold the caterer's tax."

II. Audit Findings in the 1997 Annual Audit Report

"There are three charges leveled against the respondent based on the 1997 Annual Audit Report, namely: a) illegal disbursement resulting in disallowances in the net amount of P884,448.82; b) habitual failure to follow established accounting rules and regulations resulting in unascertainable validity of inventory-items for sale and fixed assets accounts; and c) unnecessary expenditures of P250,028.50 as a result of a Value For Money Audit."

A. Illegal disbursement resulting in disallowances in the net amount of P884,448.82.

"The post-audit by the Commission on Audit on the 1997 transactions resulted in disallowances of P891,234.52, while settlement during the year amounted to P6,785.70, thus leaving a balance of P884,448.82 at the end of the year.

The bulk of the disallowances represents the payment of additional anniversary bonus (P6,000.00 per employee) which was disallowed by the Auditor on the ground that such payment was without legal basis.

Respondent Herrera declared in his Counter-Affidavit that he was not yet in DAR Region III Office when the alleged unlawful disbursement was made as he was still assigned to the DAR Central Office, therefore, he could not be made to answer to charges which occurred prior to his designation to the post. To support his claim, he submitted copies of DAR Special Order No. 476 dated 2 June 1997 which designated the respondent as OIC/RD of DAR Region III and the certification of Ms. Josephine K. Aguinaldo, Chief, Personnel Section of DAR Region III that respondent assumed office in compliance with said Order on 23 June 1997.

It is established clearly based on the Certificate of Settlement and Balances and the Notices of Disallowance issued for the purpose that the transactions subject of disallowance occurred within the period from 25 September 1996 to 1 April 1997, during which time the respondent was not the OIC/RD of DAR Region III but the Director III of the Administrative Services of DAR Central Office.

Hence, respondent Herrera has proven that he had no participation on the transactions subject of disallowance.