

EN BANC

[G.R. No. 237813, March 05, 2019]

JAMES ARTHUR T. DUBONGCO, PROVINCIAL AGRARIAN REFORM PROGRAM OFFICER II OF DEPARTMENT OF AGRARIAN REFORM PROVINCIAL OFFICE-CAVITE IN REPRESENTATION OF DARPO-CAVITE AND ALL ITS OFFICIALS AND EMPLOYEES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

REYES, J. JR., J.:

This is a petition for *certiorari* under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the May 2, 2017 Decision^[1] and the October 26, 2017 Resolution^[2] of the Commission on Audit (COA) in Decision No. 2017-140 and COA CP Case No. 2011-337, respectively.

The Facts

On November 14, 2002, the Public Sector Labor Management Council (PSLMC) issued Resolution No. 4, Series of 2002, entitled "Grant of Collective Negotiation Agreement (CNA) Incentive for National Government Agencies, State Universities and Colleges and Local Government Units." The CNA Incentive is awarded to employees in "recognition of the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency at a lesser cost."^[3] Section 1 of the same Resolution mandates that "only savings generated after the signing of the CNA may be used for the CNA Incentive."^[4] Specifically, savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s. It may be derived from any of the following:

- a. After completion of the work/activity for which the appropriation is authorized;
- b. Arising from unpaid compensation and related costs pertaining to vacant positions; or
- c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.^[5]

Administrative Order No. 135, Series of 2005 (A.O. No. 135) issued by former President Gloria Macapagal-Arroyo, confirmed the grant of CNA Incentive to rank-and-file employees.^[6] Subsequently, the Department of Budget and Management

(DBM) released Budget Circular No. 2006-1, dated February 1, 2006, to implement A.O. No. 135 and to lay down the guidelines in the grant of CNA Incentive. In Section 7.1 thereof, it was stated that "the CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review x x x."

In 2009 and 2010, the Department of Agrarian Reform-Provincial Office-Cavite (DARPO-Cavite) released CNA Incentive to its officials and employees in the aggregate amounts of P1,518,800.00 and P1,176,000.00, respectively. The grant was sourced from the Comprehensive Agrarian Reform Program (CARP) Fund, or Fund 158.

Consequently, respondent COA, through the Audit Team Leader and Supervising Auditor of Audit Group E-Cavite Province, issued two Notices of Disallowance (NDs) against DARPO-Cavite: 1) ND No. 11-01-158-CNA(09), dated January 17, 2011;^[7] and 2) ND No. 11-02-158-CNA(09), dated January 31, 2011,^[8] both of which pertain to the CNA Incentive released in 2009 and 2010. The audit officers reasoned that the utilization of the CARP Fund for the grant of CNA Incentive was illegal because the appropriation and expenditure of the CARP Fund must be in accordance with the law creating the same.

Thus, Cynthia E. Lapid (Lapid) and Felixberto Q. Kagahastian (Kagahastian), then Provincial Agrarian Reform Officers II of DARPO-Cavite, appealed the disallowances to the COA Regional Office No. IV.

The Ruling of the COA Regional Office No. IV

In a Decision,^[9] dated September 1, 2011, the COA Regional Office No. IV ruled that the grant of CNA Incentive may only be sourced from MOOE savings as specifically stated in DBM Budget Circular No. 2006-1. It noted that the DBM Circular uses the word "shall" denoting the mandatory character of the provision. The *fallo* reads:

Premises considered, the instant Appeals are hereby DENIED for lack of merit. Accordingly, the assailed NDs are hereby affirmed.^[10]

Aggrieved, Lapid and Kagahastian filed a petition for review before the COA *En Banc*.

The Ruling of the COA En Banc

In a Decision,^[11] dated May 2, 2017, the COA held that the grant of the CNA Incentive to DARPO-Cavite officials and employees, sourced from the CARP Fund, was illegal. It reasoned that the source of funds for the grant was not taken from the savings of the allotment for MOOE, but was charged against the CARP Fund of the agency. The COA added that the CARP Fund is a special fund which could only be utilized for the purpose for which it was created, that is, solely for the implementation of CARP projects. It further declared that the opinion of then DBM Secretary Rolando G. Andaya, Jr. (Secretary Andaya, Jr.) does not bind the COA which is constitutionally mandated to audit expenditure of public funds.

The COA pronounced that good faith could not be appreciated considering that several audit disallowances on the CNA Incentive granted to DARPO officials and employees had previously been issued by auditors on the ground of illegality. Moreover, the grant of the CNA Incentive sourced from the CARP Fund is clearly prohibited by existing laws and regulations. The COA disposed the case in this wise:

WHEREFORE, premises considered, the Petition for Review of Mr. Felixberto Q. Kagahastian and Ms. Cynthia E. Lapid, both Provincial Agrarian Reform Officer II, Department of Agrarian Reform Provincial Office (DARPO) Cavite, is hereby **DENIED** for lack of merit. Accordingly, the Commission on Audit Regional Office No. IV Decision No. 2011-21 dated September 1, 2011 and Notice of Disallowance Nos. 11-01-158-CNA(09) and 11-02-158-CNA(09) dated January 17, 2011 and January 31, 2011, respectively, on the payment of Collective Negotiation Agreement Incentives to DARPO-Cavite officials and employees, in the total amount of P2,694,800.00 are **AFFIRMED**.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.^[12]

Petitioner James Arthur T. Dubongco (petitioner), the current Provincial Agrarian Reform Program Officer II of DARPO-Cavite, moved for reconsideration, but the same was denied by the COA on October 26, 2017.^[13] Hence, this petition for *certiorari*.

The Issues

WHETHER THE CARP FUND OR FUND 158 CAN BE A VALID SOURCE FOR THE GRANT OF CNA INCENTIVE TO RANK-AND-FILE EMPLOYEES; and

WHETHER THE RECIPIENTS MAY BE HELD LIABLE FOR THE REFUND OF THE DISALLOWED CNA INCENTIVE.

Petitioner argues that although the CARP Fund is a special fund, DARPO-Cavite holds the same for its own use and not for the benefit of another government agency; that although DBM Budget Circular No. 2006-01 uses the word "shall," the said circular did not specify the source of the savings which would be used in the grant of CNA Incentive; that DARPO-Cavite relied on the opinion of former DBM Secretary Andaya, Jr. to the effect that the use of the CARP Fund for the grant of the CNA Incentive is allowable; that the purpose for which the CARP Fund was created must necessarily include the grant of incentives to employees who are the lifeblood of the agency; and that the officials and employees acted in good faith when they received the CNA Incentive.^[14]

In its Comment,^[15] respondent COA counters that it merely enforced the provisions of DBM Budget Circular No. 2006-01, which provides that the CNA Incentive shall be sourced solely from savings from released MOOE allotments; that the DBM intended that the release of the CNA Incentive should only come from one source, i.e., the agency's MOOE; that the opinion of former DBM Secretary Andaya, Jr. does not bind COA because any interpretation of the law that administrative or quasi-judicial

agencies make is only preliminary and never conclusive; that the CARP Fund is a special trust fund created and to be disbursed only for a specific purpose; and that petitioner should refund the disallowed amounts because Section 103 of Presidential Decree (P.D.) No. 1445 provides that expenditures of government funds, or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

In his Reply,^[16] petitioner admits that the CARP Fund is a special trust fund created and to be disbursed only for the fulfilment of the purpose for which the fund was created; that the purposes of the CARP Fund do not only pertain to those which are traditionally viewed as essentially for government functions, but must necessarily include the promotion of the employees' welfare; and that officials and employees of DARPO-Cavite could not be held personally liable for the disallowed incentives because they were of the honest belief that the grant of incentives had legal basis.

The Court's Ruling

The petition lacks merit.

CNA Incentive may be granted to rank-and-file employees only if there are savings from operating expenses

In a petition for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.^[17] In this case, petitioner failed to prove grave abuse of discretion on COA's part. On the contrary, the COA discharged its constitutional duty to examine and audit all accounts pertaining to the expenditures and uses of public funds and property.^[18]

PSLMC Resolution No. 4, Series of 2002, authorizes the grant of the CNA Incentive, the primary purpose of which is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency at a lesser cost.^[19]

The same Resolution mandates that "only savings generated after the signing of the CNA may be used for the CNA Incentive."^[20] Specifically, savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s. It may be derived from any of the following:

- a. After completion of the work/activity for which the appropriation is authorized;
- b. Arising from unpaid compensation and related costs pertaining to vacant positions; or
- c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.^[21]

On December 27, 2005, former President Gloria Macapagal-Arroyo issued A.O. No. 135, which confirmed the grant of the CNA incentive to rank-and-file employees under PSLMC Resolution No. 4, Series of 2002.^[22] A.O. No. 135 specifically stated that the CNA Incentive shall be sourced only from the savings generated during the life of the CNA.^[23]

Then, on February 1, 2006, DBM issued Budget Circular No. 2006-1, which provides the procedural guidelines and limitations on the grant of the CNA Incentive:

5.0 Policy Guidelines

5.6 The amount/rate of the individual CNA Incentive:

5.6.1 Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

5.6.2 Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (Social Security System vs. Commission on Audit, 384 SCRA 548, July 11, 2002);

5.6.3 May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA[.]

x x x x

5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

x x x x

7.0 Funding Source

7.1 The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated out of cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x