

EN BANC

[A.M. NO.03-10-05-SC, July 20, 2006]

RE: (A) REQUEST OF ASSISTANT COURT ADMINISTRATOR FOR UPGRADING OF THEIR RANK, SALARY AND PRIVILEGES UPON EFFECTIVITY OF REPUBLIC ACT NO. 9282 ELEVATING THE COURT OF TAX APPEALS AND (B) GRANT OF SPECIAL DISTORTION ALLOWANCE TO POSITIONS IN THE JUDICIARY WITH RANK OF JUDGES OF METROPOLITAN TRIAL COURTS, ASSISTANT CLERK OF COURT OF THE CORONA, COURT OF APPEALS AND DIVISION CLERKS OF COURT OF THE COURT OF APPEALS,

[A.M. NO. 03-11-25-SC] RE: REQUEST FOR THE GRANT OF SPECIAL DISTORTION ALLOWANCE TO POSITIONS IN THE JUDICIARY WITH THE RANK OF METROPOLITAN TRIAL COURT JUDGES PARTICULARLY THE FIVE (5) EXECUTIVE CLERKS OF COURT III OF THE SANDIGANBAYAN,

R E S O L U T I O N

TINGA, J.:

On 1 October 2004, the Court issued a resolution clarifying the application of Republic Act (R.A.) No. 9282 and R.A. No. 9227 on the rank, salary and privileges of the Assistant Court Administrators (ACAs), Assistant Clerk of Court (ACC) and Division Clerks of Court (DCCs) of the Court of Appeals (CA), and the Executive Clerks of Court (ECCs) of the Sandiganbayan. The dispositive portion of the Resolution reads:

ACCORDINGLY, the request of the Assistant Court Administrators to upgrade their salaries and privileges to that of a Presiding Justice of the Court of Tax Appeals is DENIED.

The following are hereby GRANTED the Special Allowance under Section 2 of Republic Act No. 9227 from November 11, 2003, the date of effectivity of said law, but subject to the availability of funds:

- (1) The Assistant Court Administrators, the allowance of a Regional Trial Court judge with the highest earned increment;
- (2) The Assistant Clerk of Court and the Division Clerks of Court of the Court of Appeals, and the Executive Clerks of Court of the Sandiganbayan, the allowance of a Metropolitan Trial Court judge.

SO ORDERED.

The resolution led to the filing of requests by certain court officials for their inclusion in the implementation of the law, as well as the clarification and reconsideration of the resolution.

On 7 October 2004, Atty. Gemma Leticia F. Tablate, Chief Reporter of the CA, wrote a letter requesting that the implementation of the 1 October 2004 Resolution be extended to her. She alleged in her letter that her position as CA Reporter II had been upgraded from Salary Grade (SG) 27 to SG 28 and given the rank and privileges of a Metropolitan Trial Court (MeTC) judge in A.M. No. 99-5-18-SC^[1], thus putting her in equal rank and footing with the DCCs of the CA.

A letter of the same nature dated 20 October 2004 was also filed by Atty. Elvessa P. Apolinario, Executive Clerk of Court (ECC) III of the Court of Tax Appeals (CTA). Atty. Apolinario contends that in A.M. No. 99-1-04-CTA,^[2] her position in the CTA as ECC II with SG 27 had been upgraded to ECC III with SG 28, thus conferring upon her the rank of a MeTC judge.

These requests were referred to the Office of the Chief Attorney (OCAT) for study and recommendation. In separate reports, the OCAT recommended the granting of the requests.^[3] Since the Court had earlier granted the positions of Reporter II and ECC III the judicial rank of METC judge entitled to the same privilege as other officials in the CA with the same judicial rank, the OCAT recommended that the MeTC judge's allowance be extended to Attys. Tablate and Apolinario.

The recommendation of the OCAT is well taken at this point. As we had earlier stated in the resolution of 1 October 2004, the allowances granted under R.A. No. 9227 should be extended to holders of positions with the equivalent rank of METC judges, because although such officers do not perform the same functions as the METC judge, the law recognizes the substantial equality in the roles they play in the Judiciary as against judges and thus conferred upon them such rank. The positions of CA Reporter II and CTA ECC III should be placed at par, in rank, salary and privileges, with their counterparts in the Judiciary who have the rank, salary and privileges of an METC judge. Hence, it is but proper that the CA Reporter II and CTA ECC III be granted the allowance of an METC judge.

On 5 January 2005, the Fiscal Management and Budget Office (FMBO) submitted a Memorandum seeking clarification of the implementation of the 10 October 2004 Resolution. The FMBO had uniformly implemented the grant of Special Allowance for the Judiciary (SAJ) in amounts equivalent to 25% of the actual basic monthly salaries for the positions covered starting 11 November 2003 based on the salary grade levels of the officials. Hence, the SAJ granted to the ACC, DCCs and ACAs was computed at 25% of SG 30 plus the highest earned increment. However, the FMBO argues, if the 10 October 2004 Resolution would be followed, ACCs, DCCs and ACAs—who have the equivalent rank, salaries, and privileges of a Presiding Judge of the CTA with SG 30—should actually be receiving less than 25% of SG 30 since the Resolution orders that the ACA should be granted a distortion pay equivalent to the allowance of an RTC judge (who has SG 29)^[4] with the highest earned increment. This results in a diminution of these concerned officials' salaries and benefits and consequently may constitute a violation of the constitutional right under Art. VIII, Sec. 10.^[5] Per the FMBO's computation, there would be a discrepancy of P930.75 of the 11 November 2003 implementation of the SAJ for the ACCs, DCCs and ACAs.

The FMBO then requested further instructions if the SAJ were incorrectly computed.

The FMBO's Memorandum was likewise referred to the OCAT for evaluation, report and recommendation. In its Report dated 10 March 2005, the OCAT recommended that ACAs Antonio H. Dujua and Ismael G. Khan, Jr., who occupied the positions of ACA even before the promulgation of the 1 October 2004 Resolution, be allowed to receive SAJ based on their actual salaries including earned step increments and longevity pay until they have moved out of their positions, with the Resolution applied only to the successors to their position, and that ACA Reuben P. de la Cruz be entitled to SAJ prescribed in the 1 October 2004 Resolution, that is, his allowance is to be computed based on SG 29. He should also not be required to refund the excess of the amount of SAJ he already received as he is deemed to have acted in good faith in receiving the excess. The OCAT further recommended a review of the judicial ranking for all Court officials as a whole.

In recommending that the SAJ of ACAs Dujua and Khan be computed based on their actual salaries including step increments and longevity pay, the OCAT relied on the Court's previous resolution^[6] which clarified the term "basic monthly salary" to refer to the actual basic monthly salary of Justices and judges, including step increments and longevity pay, and excluding PERA, extraordinary allowance, RATA, and other forms of judicial compensation. Going by this definition, no two Justices or judges would receive the same amount of basic monthly salary and, consequently, SAJ, since the basis for the computation thereof would vary from the length of service of one official to the other. It would thus be unfair to grant ACAs a distortion allowance equivalent to the allowance of a RTC judge with the highest earned increment if that ACA has been in the judicial service for more than five years, the OCAT opined. In addition, since the Special Allowance has been interpreted by the Court as actually forming part of basic salary,^[7] such special allowance may not be decreased in amount without violating Sec. 10, Art. VIII of the Constitution. Moreover, per the principle of vested right, ACAs Dujua and Khan have acquired a right to the amount of Special Allowance computed on the basis of SG 30 with earned step increments and longevity pay.

As to ACA de la Cruz, he was appointed to the position of ACA after the promulgation of the 1 October 2004 Resolution. Since he could not have been entitled to the allowance if he did not have judicial rank, the OCAT deduces that the Resolution of 24 October 1996, granting ACAs the rank, salary and privileges of the CTA Presiding Judge, has been amended by the Resolution of 1 October 2004 such that the ACAs now have the rank, salary and privileges of an RTC Judge. That the ACAs should have the rank, salary and privileges of an RTC Judge may be implied not only from the prescribed distortion allowance specifying SG 29 of RTC judges but also from the discussion of the Resolution of 1 October 2004 that proscribes the grant to them of a judicial rank higher than an RTC judge, the OCAT expounds.

Furthermore, the OCAT believes that a similar problem in the judicial ranking and computation of SAJ of other officials in the court, specifically the Assistant Clerk of Court and the Division Clerks of Court, exists which may necessitate a review of qualification standards and judicial ranking for these positions.

On 10 January 2006, ACA de la Cruz submitted a Memorandum dated 3 January 2006 seeking clarification on the implementation of the 1 October 2001 Resolution

on ACAs and ultimately asking that the resolution be reconsidered and set aside. ACA de la Cruz opined that although the salary of the ACA has been fixed by law at SG 30,^[8] similar to the salary grade of a DCA, and the ACAs' entitlement to the special allowance in R.A. No. 9227 has been granted, de la Cruz believes that the ranking and category of ACAs remains undefined. He explains that the organizational ranking in the Office of the Court Administrator (OCA) will be disturbed should ACAs be granted the rank and category similar to that of the Presiding Judge of the CTA, which, by virtue of R.A. No. 9282, has been elevated to the rank of the Presiding Justice of the CA. The effect is that the ACAs would be at par with their superior, the Court Administrator, which has the rank and privileges of a CA Presiding Justice and SG 31. Hence, he posits, there is a distortion in the hierarchy of officials in the Judiciary that may supposedly be remedied if the Court adopts the recommendations of the OCAT in their Memorandum^[9] of 17 May 2004 to the Chief Justice, especially since the DCAs and ACAs actually perform parallel functions in assisting the Court Administrator in executing and implementing policies, orders, rules and regulations regarding administrative supervision of the lower courts. ACA de la Cruz then cites A.M. No. 98-7-01-SC dated 22 February 2005, *Re: Resolution Providing for the Staffing Pattern of the Office of the Court Administrator*, which defined the roles of the DCAs and the ACAs^[10] and shows that the ACAs are vested with a heavier responsibility than the DCAs. The functions of the DCAs and ACAs actually have no substantial distinction since both provide support functions to the Court Administrator in his performance of his functions. ACA de la Cruz also stresses that it is important to clarify the ACAs' judicial ranking and privileges so as not to confuse them with those of the RTC judges who are under the ACAs' supervision. Finally, such need for the clarification is important in view of the proposed establishment of the Regional Court Administration Offices pursuant to Memorandum Order No. 43-2005 dated 17 August 2005. Hence, ACA dela Cruz prays that the Resolution dated 1 October 2004 be reconsidered and set aside and that the ACAs be granted the rank, salary and privileges of an Associate Justice of the Court of Appeals.

We deal with the requests of the FMBO and ACA de la Cruz jointly.

It would be best to trace the history of the creation of the CTA and OCA and the relevant positions under them in order to better understand their place in the hierarchy of courts. Thus:

The CTA was created by R.A. No. 1125^[11] in 1954. The CTA's standing in the hierarchy of courts in our jurisdiction, before its elevation to a collegiate tribunal by virtue of R.A. No. 9282, was that of a specialized court of limited jurisdiction.^[12] It was not at the same level as the CA, since its decisions may be appealed thereto, and it was not also a trial court. Under Section 1 of R.A. No. 1125, the Presiding Judge of the CTA had the same qualifications, rank, category and privileges as the Presiding Judge of the Court of Industrial Relations (CIR) while the Associate Judge of the CTA had the same qualifications, rank, category and privileges of a member of the CIR. In *Kaisahan ng mga Manggagawa sa La Campana v. Hon. Caluag*,^[13] the CIR was equal in rank with the Courts of First Instance. On 7 March 1994, President Fidel V. Ramos issued Executive Order No. 164^[14] adopting the Compensation and Position Classification System under Joint Resolution No. 1, series of 1994, which assigned SG 30 to the Presiding Judge of the CTA.

Presidential Decree No. 828^[15] created the Office of the Court Administrator and granted the Court Administrator the same rank, privileges, and compensation as those of the Presiding Justice of the CA. The three DCAs created were given the same rank, privileges and compensation as those of Associate Justices of the CA. Hence, the Court Administrator enjoyed SG 31 and the DCAs, SG 30.

On 20 June 1995, the Court *en banc* issued a resolution giving the Clerk of Court (COC) the rank, salary and privileges of an Associate Justice of the CA, the ACC and the DCCs the rank, salary and privileges of a Presiding Judge of a Specialized Court (CTA), and the Deputy COCs and Chiefs of Offices and Executive Officers the rank, salary and privileges of RTC judges.

On 24 October 1996, the Court *en banc* issued a resolution reorganizing and strengthening the OCA and creating two positions of ACA with the same qualifications, rank, salary and privileges as the Presiding Judge of the CTA. On 22 June 1999, another resolution was issued creating another position of ACA as Chief of the Public Information Office, also with rank, salary and privileges of a CTA Presiding Judge. Hence, the COC, ACC, DCCs and ACAs enjoy the same SG 30.

R.A. No. 9282 elevated the rank of the CTA to that of a collegiate court with special jurisdiction in the same level as the Court of Appeals and such elevation necessitated the increase in rank, salary, and privileges of its Presiding Judge and Associate Judges to Presiding Justice and Associate Justices, respectively. However, such elevation of rank, salary and privileges of the CTA Presiding Judge to that of CA Presiding Justice did not translate to the elevation to the same level of other positions vested with the judicial rank of CTA Presiding Judge.

The 1 October 2004 Resolution which granted the ACAs a special allowance of an RTC judge with the highest earned step increment also did not lower the judicial rank of the ACA to that of an RTC judge, as interpreted by the OCAT.^[16] Instead, it appears that the Resolution, in granting such allowance to the ACAs, CA DCCs and SB ECCs, intended to keep intact the judicial hierarchy in our courts while extending the coverage of R.A. No. 9227 to those who were excluded in the enumeration of entitled judicial officers, in violation of the equal protection clause.

The Resolution of 1 October 2004 also recognized that there is a difference in the functions performed by the DCAs and the ACAs. The DCAs' functions cover regions, while those of the ACAs cover cities and municipalities in the National Capital Region and in an assisting capacity to the Court Administrator. The DCA exercises greater responsibilities than the ACAs and are thus, according to the Resolution, granted benefits greater than those of ACAs. Consequently, the DCA was granted the special allowance of a CA Associate Justice, while the ACA the special allowance of an RTC judge with the highest earned step increment.

However, we cannot discount the fact that the law accords the DCAs and the ACAs the same SG 30 despite the difference in their rank and functions. There is thus, merit to the concerns expressed by the FMBO and the OCAT of diminution of salaries and benefits and distortion in the judicial hierarchy.

Sec. 2 of R.A. No. 9227 clearly provides that the concerned officials shall be granted