

## EN BANC

[ G. R. No. 143481, February 15, 2002 ]

### **NATIONAL ELECTRIFICATION ADMINISTRATION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.**

#### **DECISION**

**CARPIO, J.:**

#### **The Case**

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with prayer for preliminary injunction and temporary restraining order, to reverse and set aside Decision No. 2000-132 dated May 16, 2000 of the Commission on Audit<sup>[1]</sup> ("Commission" for brevity) in "RE: Appeal of Mr. Conrado Estrella III, Administrator, National Electrification Administration (NEA) Quezon City, for the lifting of the disallowance on the payment of accelerated increases under Joint Resolution No. 01 totaling P14,155,342.00." The dispositive portion of the Decision reads:

"Premises considered, the instant appeal has to be, as it is hereby denied for lack of legal basis. Consequently, the Notice of Disallowance issued by the NEA Auditor covering the subject disbursement is hereby sustained. Accordingly, all NEA officials and employees who received compensation and allowances in violation of the provisions of Executive Order No. 389 and National Budget Circular No. 458 are hereby directed to refund the same within a period of one year after the promulgation of this decision. NEA management is enjoined to effect said refund under the supervision of the NEA Auditor who shall ensure the proper and strict implementation of this decision."<sup>[2]</sup>

#### **The Antecedent Facts**

Petitioner National Electrification Administration ("NEA" for brevity) is a government-owned and controlled corporation created under Presidential Decree No. 269, as amended. NEA is charged with the responsibility of organizing, financing and regulating electric cooperatives throughout the country.

On July 1, 1989, Republic Act No. 6758 ("RA 6758"), entitled "*An Act Prescribing A Revised Compensation and Position Classification System in the Government and For Other Purposes*", took effect. RA 6758 provided, among others, a salary schedule for all government positions, appointive or elective, including positions in government-owned or controlled corporations and government financial institutions.

In response to pressing economic difficulties and the need to alleviate the plight of government personnel, the Senate and the House of Representatives passed on

March 3, 1994 Joint Resolution No. 01 entitled "*Urging the President of the Philippines to Revise the Existing Compensation and Position Classification System in the Government and to Implement the Same Initially Effective January 1, 1994.*" Approved by then President Fidel V. Ramos on March 7, 1994, Joint Resolution No. 01 adjusted the salary schedule of all officials and employees of the government. Paragraph 10 of Joint Resolution No. 01 provides that "***the new salary schedule shall be implemented within four (4) years***" beginning in 1994.

On December 28, 1996, then President Fidel V. Ramos issued Executive Order No. 389 ("EO 389") entitled "*Implementing the Fourth and Final Year Salary Increases Authorized by Joint Senate and House of Representatives Resolution No. 01, Series of 1994.*" EO 389 directed payment of the fourth and final salary increases authorized under Joint Resolution No. 01 in ***two tranches***, as follows:

**"SEC. 2. Full Implementation.** The Department of Budget and Management is hereby directed to implement in full in FY 1997 the remaining balance of said Salary Schedule after the partial implementation made of the same in 1994, 1995 and 1996 to civilian and uniformed personnel, as follows:

#### **1. For Civilian Personnel**

- a. ***Effective January 1, 1997*** = in accordance with the ***Fourth Interim Salary Schedule*** hereto attached and marked as Annex A of this Order. The adjustment shall be to the designated salary step of the employee in the salary grade allocation of his position as of December 31, 1996;
- b. ***Effective November 1, 1997*** = in accordance with the attached ***Salary Schedule*** marked as Annex B of this Order. The adjustment shall be to the designated salary step of the employee in the salary grade allocation of his position as of October 31, 1997.

x x x."

The Department of Budget and Management ("DBM" for brevity) issued Implementing Guidelines under National Budget Circular No. 458 ("NBC No. 458"), series of 1997, ***reiterating*** the schedule of payments in EO 389.

In January 1997, NEA implemented the salary increases prescribed for the year 1997 pursuant to Joint Resolution No. 01. However, NEA did not implement the salary increases in accordance with the schedule of payment specified in EO 389 and NBC No. 458. Instead, NEA implemented in one lump sum beginning January 1, 1997 the salary increases required to be paid in two tranches, the first tranche on January 1, 1997 and the second tranche on November 1, 1997. ***Otherwise stated, NEA accelerated the implementation of the salary increase by paying the second tranche starting January 1, 1997 instead of November 1, 1997.***

On September 26, 1997, the Commission's resident auditor in NEA issued a Notice of Suspension requiring the submission of the legal basis "for the full implementation of the new salary schedule effective January 1, 1997 instead of

November 1, 1997.” The NEA failed to submit the basis for its advance implementation of the prescribed salary rates. Thus, the Commission’s resident auditor issued on May 14 and 27, 1998, Notices of Disallowance Nos. 98-010-101 and 98-011-101, respectively. The resident auditor issued another Notice of Disallowance on September 18, 1998. On September 28, 1998 the resident auditor denied NEA’s September 23, 1998 request to reconsider the disallowance. Consequently, NEA appealed to the Corporate Audit Office II of the Commission but the appeal was denied on February 5, 1999. On March 12, 1999, NEA filed an appeal with the Commission en banc but the latter denied the same on May 16, 2000 and sustained the disallowance made by the resident auditor.

Hence, this Petition.

### **Ruling of the Commission on Audit**

In sustaining the disallowance made by the resident auditor, the Commission explained thus:

“After a careful evaluation of the facts and pertinent laws obtaining in this case, this Commission finds the instant appeal bereft of merit. Pursuant to Article 29 (1) of the 1987 Constitution “No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.” Also, under R.A. 8244, a law appropriating twenty-seven billion pesos for the fourth and final year of implementation of the salary increases pursuant to the Senate-House of Representatives Resolution No. 01 Series of 1994 for all National Government civilian and uniformed personnel, it is specifically provided that the salary increases shall be effective on the following schedule of payments:

1. “Effective January 1, 1997 for the first 50% of the unimplemented balance as of December 31, 1996; and
2. “Effective November 1, 1997 the remaining fifty percent (50%) of said unimplemented balance to effect full salary adjustment.”

Perusal of the provision of E.O. No. 389 and National Budget Circular No. 458 Series of 1997 would show the same effectivity dates or schedule of payments. Suffice it to say, that the aforementioned provisions of law treating on the subject salary implementation is clear and unequivocal such that there could never be any room for a different interpretation regarding the effectivity dates except that which is explicitly stated therein. Thus, when the NEA effected full implementation of the new salary schedule on January 1, 1997, instead of November 1, 1997, NEA was, then, clearly acting in violation of the mandates of the law. Consequently, said wrongful implementation must be struck down for being baseless and unlawful, and all its employees who received the undue increases must necessarily return the amount thus received.”

### **The Issues**

In its Memorandum,<sup>[3]</sup> NEA avers that the Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the increased

salaries of NEA's officials and employees for the period January 1, 1997 to October 31, 1997 for the following reasons:

- "1. NEA's accelerated implementation of SSL II is in accordance with law, Joint Senate-House of Representatives Resolution No. 01 dated March 3, 1994, particularly Section 10 thereof x x x.
- "2. The fund to pay such increase had the "**imprimatur**" of the DBM and was included in the General Appropriations Act of 1997 (R.A. 8250) x x x."<sup>[4]</sup>

In the main, NEA argues that it may accelerate the implementation of the salary increases for the year 1997 due to the availability of funds.

### **The Court's Ruling**

The Petition has no merit.

**First**, we find that NEA's accelerated implementation of the Salary Standardization Law II is **not** in accordance with law.

We reject NEA's claim that Republic Act No. 8250, otherwise known as the General Appropriations Act of 1997 ("1997 GAA"), serves as legal basis for NEA's accelerated implementation of the last phase of the Salary Standardization Law II. The 1997 GAA is not self-executory so as to serve as outright legal authority for NEA to spend what had been appropriated for NEA's "Personal Services" under the 1997 GAA. Budgetary appropriations under the GAA do not constitute unbridled authority to government agencies to spend the appropriated amounts as they may wish.

Pursuant to the provisions on National Government Budgeting<sup>[5]</sup> found in the Revised Administrative Code of 1987 ("Administrative Code"), appropriations for Personal Services are not itemized. Thus, the 1997 GAA contains a lump sum appropriation of P210,766,000.00 for NEA's Personal Services, broken down into P37,476,000.00 for General Administration and Support, P103,855,000.00 for Support to Operations, and P69,435,000.00 for Operations. There is no itemization of Personal Services in the 1997 GAA, and nothing is mentioned therein about the acceleration or full payment of the Salary Standardization Law II.

The itemization of Personal Services is prepared **after** the enactment of the annual GAA and requires the approval of the President. Thus, Section 23, Chapter 4, Book IV of the Administrative Code provides that:

"SEC. 23. *Content of the General Appropriations Act.* – The General Appropriations Act shall be presented in the form of budgetary programs and projects for each agency of the government, with the corresponding appropriations for each program and project, including statutory provisions of specific agency or general applicability. ***The General Appropriations Act shall not contain any itemization of personal services, which shall be prepared by the Secretary after enactment of the General Appropriations Act, for consideration and approval of the President.***" (Emphasis supplied)

Further, the execution of the annual GAA is subject to a program of expenditure to be approved by the President and this approved program of expenditure is the basis for the fund release. Thus, Section 34, Chapter 5, Book IV of the Administrative Code states that –

“Sec. 34. *Program of Expenditure* - The Secretary of Budget shall recommend to the President the year’s program of expenditure for each agency of the government on the basis of authorized appropriations. ***The approved expenditure program shall constitute the basis for fund release during the fiscal period, subject to such policies, rules and regulations as may be approved by the President.***”  
(Emphasis supplied)

Moreover, Section 60, Chapter 7, Book VI of the Administrative Code provides that no portion of the appropriations in the GAA shall be used for payment of any salary increase or adjustment unless specifically authorized by law or appropriate budget circular. It reads:

SEC. 60. *Restrictions on Salary Increases.* – ***No portion of the appropriations provided in the General Appropriations Act shall be used for payment of any salary increase or adjustment unless specifically authorized by law or appropriate budget circular*** nor shall any appropriation for salaries authorized in the General Appropriations Act, save as otherwise provided for under the Compensation and Position Classification Act, be paid unless the positions have been classified by the Budget Commission. (Emphasis supplied)

Finally, Section 33 of the 1997 GAA itself expressly provides that the salary increases authorized by the Senate-House of Representatives Joint Resolution No. 01 or the Salary Standardization Law II are ***subject to approval by the President.*** It reads:

“Sec. 33. *Compensation Adjustment and Productivity Incentive Benefits.* The amount authorized for Compensation Adjustment and Productivity Incentive Benefits shall be used for the adjustment in basic salary and associated benefits of national government personnel pursuant to Joint Resolution No. 01, s. 1994 of Congress, as well as Productivity Incentive Benefits ***as may be approved by the President:*** PROVIDED, That such compensation adjustment shall be fully implemented within FY 1997: PROVIDED, FURTHER, That transportation allowance, if any, shall be deducted from or reduced by the salary adjustment: PROVIDED, FURTHERMORE, That compensation adjustment for government-owned or controlled corporations and local government units shall be charged to their corporate and local funds, respectively: xxx.” (Emphasis supplied)

Clearly, NEA cannot automatically spend its authorized appropriation for Personal Services under the 1997 GAA. The Budget Secretary must first prepare an itemization of the Personal Services, and submit the same for approval of the President. Next, the Budget Secretary must recommend to the President NEA’s program of expenditure for the current year based on NEA’s authorized appropriation. The President may approve the expenditure program subject to certain policies and rules. The salary adjustments as well as the associated benefits granted by the Salary Standardization Law II are, under the 1997 GAA, expressly