

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. CAMILO
MONTENEGRO,

L. G.R. No. 218544

Petitioner,

Present:

- versus -

COMMISSION ON AUDIT, HON.
KHEM N. INOK, Director IV,
Legal and Adjudication Office-
National, and HON. LEONOR D.
BOADO, Director IV, LSS Ad Hoc
Committee,

Respondents.

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,* and
GAERLAN, JJ.

CENTRAL BOARD OF
ASSESSMENT APPEALS
(CBAA),

Intervenor.

Promulgated:

June 2, 2020

X-----X

* On leave.

DECISION**INTING, J.:**

This is a Petition for *Certiorari*¹ filed pursuant to Rule 64 of the Rules of Court seeking to annul and set aside Decision No. 2013-213² of the Commission on Audit (COA) dated December 3, 2013. The COA disallowed in audit the salaries and emoluments of Atty. Camilo L. Montenegro (Atty. Montenegro) as hearing officer of the Central Board of Assessment Appeals (CBAA), Visayas Field Office on the basis of the expiration of his term on February 25, 1999.

Antecedents

Atty. Montenegro was appointed as hearing officer of the CBAA in the Visayas Field Office from February 26, 1993 until February 25, 1999, or for a term of six years. Prior to the expiration of his term and for lack of qualified applicants, the CBAA issued a Resolution³ dated February 15, 1999 that authorized Atty. Montenegro to continue service in a holdover capacity indefinitely until his successor is chosen pursuant to Section 230 of the Local Government Code (LGC).⁴

On June 20, 2003, the CBAA issued another Resolution⁵ that further authorized Atty. Montenegro to continue service indefinitely despite his compulsory retirement on even date.

*Ruling of the COA – Legal and Adjudication Office-National
(COA-LAO)*

On July 12, 2005, Notice of Disallowance (ND) No. 2005-025⁶ was issued against CBAA for ₱132,844.50, a portion of which is cited herein for reference:

¹ *Rollo*, pp. 5-26.

² *Id.* at 29-37.

³ *Id.* at 102.

⁴ *Id.* at 29.

⁵ *Id.* at 103.

⁶ *Id.* at 54-56.

We have audited the Audit Observation Memorandum (AOM) No. 04-0001-101 (03) dated February 11, 2004, issued by the Supervising Auditor, Mr. Charlie [S.] Baldago, Central Board of Assessment Appeals, Department of Finance and its supporting documents relative to the payment of salary, PERA and additional Compensation, Representation And Transportation Allowance (RATA), Loyalty Award, Clothing Allowance, Productivity Incentive Benefit, Christmas Bonus and Cash Gift to Atty. Camilo Montenegro, Hearing Officer for the Visayas, in the total amount of ₱132,844.50 for the period from July 1, 2003 to November 30, 2003 after his compulsory retirement on June 30, 2003, which we found illegal without the CSC[']s approval/resolution on the extension of his services pursuant to CSC Memorandum Circular No. 27 S. 2001, hence this disallowance:

x x x⁷

ND No. 2010-09-095⁸ dated September 6, 2010 was likewise issued for the amount of ₱1,432,339.93 on account of the expiration of the six-year term of Atty. Montenegro as hearing officer and his continuation in office even after his term without the approval of the Civil Service Commission (CSC) in violation of CSC Memorandum Circular (MC) No. 40, Series of 1998.

Atty. Montenegro, CBAA Chairman Cesar S. Gutierrez (Gutierrez), Cynthia V. Macabuhay (Macabuhay) as Accountant II, Angel P. Palomares, and Nelia C. Cabbab as Administrative Officer III, all from CBAA, were determined liable for Notice of Disallowance No. 2005-025;⁹ while only Gutierrez and Macabuhay were adjudged liable under Notice of Disallowance No. 2010-09-095.¹⁰

Meanwhile, on December 9, 2010, Atty. Montenegro submitted a resignation letter.¹¹ However, Gutierrez noted on the letter that Atty. Montenegro would not be deemed as resigned until his replacement has been chosen.¹²

⁷ *Id.* at 54.

⁸ *Id.* at 50-51.

⁹ *Id.* at 55.

¹⁰ *Id.* at 51.

¹¹ *Id.* at 104.

¹² *Id.*

Ruling of the COA – Commission Proper

In the Decision¹³ dated December 3, 2013, the Petition for Review¹⁴ filed by the CBAA through its chairman, Gutierrez, was denied for lack of merit.¹⁵ It reiterated the findings of the COA-LAO and ruled that Atty. Montenegro had been in a holdover capacity for more than nine years without approval from the CSC even far beyond his six-year term and more, beyond the latter's compulsory retirement age.¹⁶ It declared that the principle of *quantum meruit* could not apply because as early as February 11, 2004, audit observation memoranda to stop payment and find a replacement for Atty. Montenegro's position were already given to CBAA.¹⁷

Only Atty. Montenegro filed a Motion for Reconsideration,¹⁸ which the COA-Commission Proper denied in a Resolution¹⁹ dated March 9, 2015. Hence, this Petition for *Certiorari* filed by Atty. Montenegro.

The Issue

The issues brought to the Court for resolution are worded as follows:

I

PUBLIC RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN DECLARING THAT MONTENEGRO, IN HOLDING HIS POSITION IN HOLDOVER CAPACITY, NEEDS PRIOR APPROVAL FROM CSC.

II

PUBLIC RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN CITING THE CASE OF *TOMALI VS. CIVIL SERVICE COMMISSION* TO SUPPORT ITS DECISION;

¹³ *Id.* at 29-37.

¹⁴ *Id.* at 39-51.

¹⁵ *Id.* at 36.

¹⁶ *Id.* at 33.

¹⁷ *Id.* at 35.

¹⁸ *Id.* at 83-98.

¹⁹ *Id.* at 38.

AND, DISREGARDING THE *LECAROS CASE* CITED BY THE HONORABLE ACTING CHAIRMAN, CSC.²⁰

Simply put, the issue boils down to whether Atty. Montenegro is entitled to the salary, emoluments, and benefits as a hearing officer of the CBAA by reason of the extension of his appointment in a holdover capacity even beyond his compulsory retirement.

The Petition

Filed under Rule 64 of the Rules of Court, Atty. Montenegro alleges that he remained in the service in a holdover capacity as authorized by two CBAA Resolutions; thus, he is entitled to receive his salary and emoluments for actual services rendered.²¹

During the pendency of the petition, Atty. Montenegro applied for an Extremely Urgent Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction²² on COA's Order of Execution which the Court granted on January 19, 2016.²³

CBAA then filed its Petition-in-Intervention²⁴ wherein it adopts and incorporates the arguments raised by Atty. Montenegro.

COA's Comment on the Petition

The COA, as represented by the Office of the Solicitor General (OSG), reiterates its stance that the appointment of CBAA hearing officers shall be subject to civil service laws, rules and regulations; hence, the CBAA Resolutions that granted an indefinite extension of service that lasted for more than nine years is literally a reappointment as hearing officer that is proscribed under Section 230 of the LGC. Moreover, the CBAA Resolutions authorizing the holdover violate Section 1, Rule VI of CSC MC No. 40, Series of 1998, which requires that an appointment shall be submitted to the CSC within 30 days from date of issuance. Assuming that the grant of holdover capacity does not

²⁰ *Id.* at 11.

²¹ *Id.* at 22-25.

²² *Id.* at 280-286.

²³ *Id.* at 298-302.

²⁴ *Id.* at 373-391.

need the approval of the CSC, the COA emphasizes that Section 5, Rule III of CSC MC No. 40, Series of 1998 still requires the submission to the CSC of personnel actions which do not involve changes in position title, rank, or status. More importantly, the COA is of the view that, in the case of extensions after the compulsory age of retirement, the approval by the CSC is required by law.

The COA likewise finds no justification for the failure of CBAA to hire a qualified successor for more than nine years considering that the position is not highly technical and at most required only at least five years of practice of law in the Philippines. For the COA, the CBAA failed to establish that there were efforts done to search for Atty. Montenegro's replacement.

With respect to the Petition-in-Intervention, the COA argues that it should be dismissed. Being parties during the proceedings before the COA, the failure of CBAA or its officers to timely file a motion for reconsideration or a petition for that matter rendered the COA decision and resolution final and executory.

The Ruling of the Court

On the Petition-in-Intervention filed by the CBAA

Preliminarily, the Court disposes of the Petition-in-Intervention filed by the CBAA.

Interventions are sanctioned under Section 1, Rule 19 of the Rules of Court:

Section 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Hi-Tone Marketing Corp. v. Baikal Realty Corp.*,²⁵ the Court defined intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding.²⁶ Indeed, as correctly observed by the COA, the CBAA, being a party during the proceedings before the COA, cannot be allowed to circumvent procedural technicalities by allowing its petition-for-intervention that penultimately merely adopted by reference all the arguments raised by Atty. Montenegro in his petition. CBAA's petition-in-intervention, in effect, is a bid to cure its failure, together with its officers, to timely file a motion for reconsideration or a petition for that matter, which the Court cannot tolerate.

Thus, the only issue left for the determination of the Court is ND No. 2005-025 for the amount of ₱132,844.50 wherein Atty. Montenegro was determined as one of the parties accountable. With respect to ND No. 2010-09-095 which referred to the amount of ₱1,432,339.93, Atty. Montenegro was not decreed liable by the COA.

*Montenegro's Continuation of
Service in a Holdover Capacity
Beyond Compulsory Retirement
Age*

A hearing officer of the CBAA in a holdover capacity beyond compulsory retirement age is not exempt from civil service laws, rules and regulations.

In the instant case, there is an interplay of factors that complicated Atty. Montenegro's continuance in service as a hearing officer in a holdover capacity beyond his compulsory retirement age. To note, he was appointed on February 26, 1993 and his term ended on February 25, 1999. Before his term expired, CBAA, through a board resolution allowed him to continue in service as a hearing officer on the holdover principle, until his successor has been chosen and qualified, for the exigency of the service.²⁷ The CBAA issued another Resolution on June 20, 2003 in anticipation of Atty. Montenegro's compulsory retirement

²⁵ 480 Phil. 545 (2004).

²⁶ *Id.* at 569, citing *Manalo v. Court of Appeals*, 419 Phil. 215, 233 (2001).

²⁷ *Rollos*, p. 102.

which again allowed the latter to continue in office in a holdover capacity until a successor is appointed.²⁸

Per letter of Gutierrez, addressed to Myrna K. Sebial, State Auditor V, Supervising Auditor of the Department of Finance, there were no qualified applicants for the position of hearing officer after the expiration of the term of Atty. Montenegro despite the quarterly report of CBAA to the CSC of all its existing vacancies, as well as the publication of the position in major newspapers.²⁹ It was also raised in the same letter that they still have three vacant positions of hearing officer that needed to be filled up,³⁰ which emphasized the difficulty of engaging someone for that position. As underscored in the CBAA Resolution dated February 15, 1999, it is important and necessary that there is an incumbent to the position who will attend to, try, and receive evidence on the appealed assessment cases in the Visayas as well as for Mindanao.³¹ The CBAA Resolution dated June 20, 2003 for the extension of Atty. Montenegro's service despite his compulsory retirement contained the same wordings.³² Veritably, the exigency of the service necessitated that Atty. Montenegro remained as hearing officer despite the lapse of his six-year term and his compulsory retirement age until a successor is qualified and appointed.

The basis for ND No. 2005-025 was the illegality of the extension of Atty. Montenegro's services for the period from July 1, 2003 to November 30, 2003 after his compulsory retirement on June 30, 2000 pursuant to CSC MC No. 27, Series of 2001.

CSC MC No. 27, Series of 2001 dated October 8, 2001; requires the prior approval of the CSC before an employee could be allowed to extend his/her service beyond the compulsory retirement age:

Relative thereto, the Commission has issued CSC Resolution No. 011624 amending and clarifying Section 12, Rule XIII of CSC MC No. 15, s. 1999, as follows:

Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any

²⁸ *Id.* at 103.

²⁹ *Id.* at 76-77.

³⁰ *Id.* at 76.

³¹ *Id.* at 102.

³² *Id.* at 103.

position in the government, subject only to the exception provided under sub-section (b) hereof.

However, in meritorious cases, the Commission may allow the extension of service of a person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that, such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law.

A request for extension shall be made by the head of office and shall be filed with the Commission not later than three (3) months prior to the date of the official/employee's compulsory retirement.

Henceforth, the only basis for Heads of Offices to allow an employee to continue rendering service after his/her 65th birthday is a Resolution of the Commission granting the request for extension. Absent such Resolution, the salaries of the said employee shall be for the personal account of the responsible official.

Services rendered during the period of extension shall no longer be credited as government service. However, services rendered specifically for the purpose of completing the 15 years of service under the GSIS Law shall be credited as part of government service for purposes of retirement.

An employee on service extension shall be entitled to salaries, allowances and other remunerations, that are normally considered part and parcel of an employee's compensation package, subject to existing regulations on the grant thereof.

a.1. The following documents shall be submitted to the Commission:

1. Request for extension of service signed by the Head of Office, containing the justifications for the request;
2. Certification that the employee subject of request is still mentally and physically fit to perform the duties and functions of his/her position;
3. Certified true copy of the employee's Certificate of Live Birth;

4. Service record of the employee if the purpose of the extension is to complete the 15-year service requirement under the GSIS law;
5. Proof of payment of the filing fee in the amount of Two Hundred Pesos (P200.00).

b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/he services are earlier terminated. (Italics omitted; underscoring supplied.)

A perusal of the aforesaid CSC Circular would indicate that extensions of service beyond the compulsory retirement age is allowed, albeit subject to the approval of the CSC. In the absence of a CSC resolution for extension of service, an employee who is allowed to perform the duties of the position shall make the official responsible for the continued service of the employee liable for the salaries.

*The COA did not err when it
Disallowed Montenegro's
Salary, Emoluments and other
Benefits*

The theory of COA as to the subject disallowance is mainly grounded on Atty. Montenegro's noncompliance with the Civil Service Rules applicable to a public official who renders service beyond his compulsory retirement age. Based from the foregoing cited rules, the Court finds valid and proper COA's disallowance of Atty. Montenegro's salary and other emoluments actually received after his compulsory retirement. The Court finds no grave abuse of discretion on the part of COA in sustaining the disallowance.

A fortiori, in the interest of substantial justice and equity, the principle of *quantum meruit* should benefit Atty. Montenegro for the actual services which he rendered. To deny Atty. Montenegro the compensation for the services which he rendered during the period of his engagement would be tantamount to injustice which the Court cannot

countenance. Accordingly, while his failure to observe the proper procedure for the extension of his service beyond compulsory retirement necessitated the disallowance of his salary, emoluments and other benefits, personal liability should not attach to Atty. Montenegro. It should be noted that CSC MC No. 27, Series of 2001 dated October 8, 2001 only holds the responsible official liable. An indication that it acknowledges the employee's time or work performed as compensable, notwithstanding the presence of a procedural infirmity. The salary and other emoluments given to a government employee who extends his services beyond the compulsory retirement age is an expenditure or use of government funds, which is irregular since it was incurred without adhering to established rules, regulations, procedural guidelines, policies, principles, or practices that have gained recognition in law,³³ more particularly, the requisite filing with the CSC for a request of extension of service on account of an employee's compulsory retirement. As defined by the COA rules, irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law; whereas the former is incurred in violation of applicable rules and regulations other than the law.³⁴

Veritably, the appointing authority, Gutierrez and the other officials found liable by the COA who authorized the disbursement of the salaries, emoluments, and benefits to Atty. Montenegro for the services actually rendered by the latter despite noncompliance with Civil Service Rules should be held accountable for the amount covered in ND No. 2005-025.

WHEREFORE, the Petition for *Certiorari* is **PARTIALLY GRANTED**. The Decision No. 2013-213 of the Commission on Audit dated December 3, 2013 is hereby **AFFIRMED with MODIFICATION** in that petitioner Atty. Camilo L. Montenegro is absolved from liability under Notice of Disallowance No. 2005-025. This pronouncement is without prejudice to any other administrative or criminal liabilities of the officials responsible for the illegal disbursement.

SO ORDERED.


³³ Commission on Audit Circular No. 85-55-A dated September 8, 1985.

³⁴ *Id.*




HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



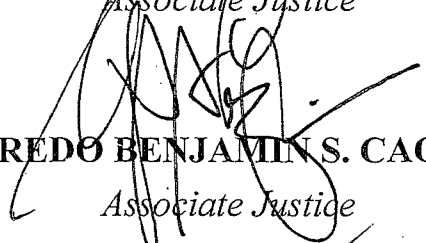
DIOSDADO M. PERALTA
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



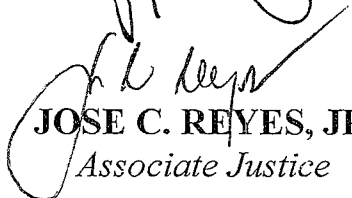
MARVIC M. V. LEONEN
Associate Justice



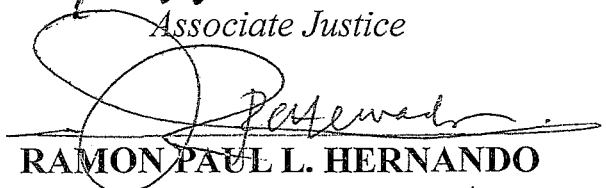
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



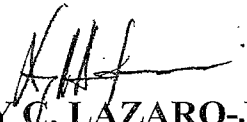
JOSE C. REYES, JR.
Associate Justice



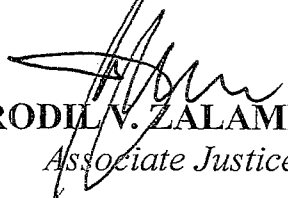
RAMON PAUL L. HERNANDO
Associate Justice



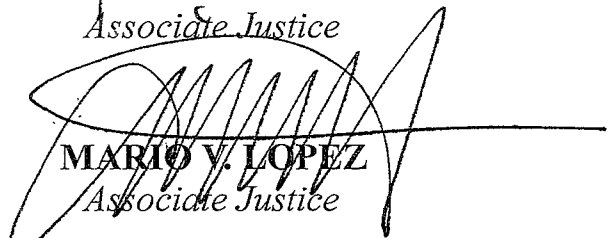
ROSMARI D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

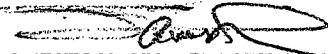


RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice

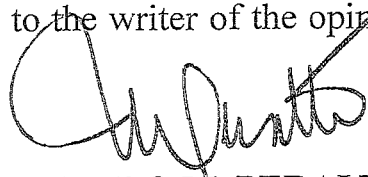
(On leave)
EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice

