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TINANA, MA. SOCORRO CHUA, IMELDA LIGUATON, CHARITY MALTO, BEVERLY TUMBAGAHAN, LUCIA AYSON, LETICIA T. FERNANDEZ, LODIVINA PUNZALAN, MONETTE DEAPERA, AMELIA P. DOMINGO, MARILOU P. MENDOZA, LEONARDO D. GABRIEL, JR., NYDIA COMETA, ROMULO PANTI, ORLANDO TUPAZ, ZENAIDA SALDUA, ROWENA PAJE, BRAULIO BANGAY, DELIA CRUZ, MARILYN A. ALBAR, LOURDES SALAZAR, FERNANDA Z. NATIVIDAD, DIONISIA CANONIZADO, CECILIA DOMINGUEZ, MELITTA VELACRUZ, JONATHAN ALABOT, AND RODELIO DAMPIL, PETITIONERS, VS. COMMISSION ON AUDIT AND THE DIRECTOR, NATIONAL GOVERNMENT AUDIT OFFICE I, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Directives and orders issued by the President in the valid exercise of his power of control over the executive department must be obeyed and implemented in good faith by all executive officials. Acts performed in contravention of such directives merit invalidation.

Challenged via petition for certiorari under Rule 64 *vis-à-vis* Rule 65 of the Rules of Court is the Decision[1] dated September 15, 2009 of respondent Commission on Audit (COA) disallowing the Merit Incentive Award and Birthday Cash Gift granted to petitioners.

The Facts

Sometime after the effectivity of the Administrative Code of 1987 (E.O. 292) and in accordance with Section 35,[2] Chapter 5, Subtitle A, Title I, Book V thereof and its implementing rules, the Tariff Commission established its own Employee Suggestions and Incentives Awards System (ESIAS),[3] which was approved by the Civil Service Commission (CSC) on December 2, 1993. Subsequently, however, the CSC ordered the Tariff Commission to revise the ESIAS to comply with certain requirements.[4] On January 24, 1994, the revised ESIAS was submitted to the CSC for approval.[5]

Without the revised ESIAS having been acted upon by the CSC, the Tariff Commission, through its then Chairman Emmanuel T. Velasco, issued Special Order No. 95-02[6] on December 12, 1995, granting the subject Merit Incentive Award to its officials and employees in amounts ranging from P1,000.00 to P7,000.00, depending on the date of employment, for a total disbursement of P929,000.00. Subsequently, on December 16, 1996, the Tariff Commission also issued Resolution No. 96-01, as amended by Resolution No. 96-01A,[7] granting the subject Birthday Cash Gift of P2,000.00 to eligible officials and employees for calendar years 1994, 1995 and 1996, for which it disbursed P794,000.00.[8]

Upon post-audit conducted by the COA, the grant of the Merit Incentive Award was suspended for "lack of approval of the Office of the President."[9] The Birthday Cash

Gift was likewise suspended for "lack of legal basis."[10] There being no settlement or submission by the Tariff Commission of the requirements for the lifting of both suspensions, the same eventually matured into disallowances.[11] Thus, Chairman Velasco, in a letter[12] to the COA, sought reconsideration with a request that if the disallowances are not reconsidered, the Merit Incentive Award be converted instead into "Hazard Pay," similar to that granted by the National Economic Development Authority (NEDA) to its employees, to dispense with the requirement of a separate approval from the Office of the President considering that the Tariff Commission is an attached agency of the NEDA.[13] He also informed the COA that the Tariff Commission adopted Resolution No. 96-01A which converted the Birthday Cash Gift into "Amelioration Assistance" to match the same benefit granted to NEDA officials and staff.

In a letter[14] dated March 17, 1999, State Auditor Malaya R. Ochosa denied Chairman Velasco's request for reconsideration, stating that the grant of the subject incentives was contrary to Presidential Administrative Order No. 161[15] (AO 161) dated December 6, 1994 and Department of Budget and Management (DBM) National Compensation Circular No. 73[16] (NCC 73) dated December 27, 1994, which prohibited heads of departments and agencies from establishing and authorizing a separate productivity and performance incentive award. She also found no legal basis for the conversion of the disallowed payments into other forms of allowances.[17]

The matter was elevated to COA Director IV Juanito Espino, Jr. who affirmed the pronouncements of State Auditor Ochosa, holding that since the revised ESIAS was never approved by the CSC, then the same could not be a valid basis for the grant of the subject incentives.[18]

Hence, the filing of a petition for review with the COA *En Banc* assailing the disallowance of the subject incentives.[19]

Ruling of the COA

On September 15, 2009, the COA *En Banc* rendered the assailed Decision[20] upholding the disallowances. It ruled that Section 7 of AO 161 revoked Section 35, Chapter 5, Subtitle A, Title I, Book V of EO 292 and therefore, presidential approval was required for the grant of the Merit Incentive Award. It found that the conversion of the subject incentives did not remove the grant from the coverage of the proscription under AO 161 and NCC 73. Finally, the COA held that the Tariff Commission officers did not act in good faith since they authorized the subject incentives even after AO 161 had already been in effect for more than a year. Thus, they must be held personally liable therefor. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, this Commission finds the instant petition undeserving of merit. Accordingly, the subject disallowances and credit notice are hereby AFFIRMED, and the approving officers and recipients of the subject Merit Incentive Award and Birthday Cash Gift are held liable therefor.[21]

Hence, the present petition.[22]

Issues Before The Court

Petitioners fault the COA and raise issues which may be summarized as follows:

(1) Whether or not the grant to petitioners of the Merit Incentive Award and Birthday Cash Gift has legal basis.

(2) Whether or not petitioners should refund the subject benefits which they received.

Ruling of the Court

The petition is partly meritorious.

AO 161 was issued to rationalize the grant of productivity incentive benefits under a *uniform* set of rules. It sought to address the dissension and dissatisfaction – which came about when some department heads granted incentive benefits of varying amounts to their officials and employees based on the provisions of Sections 31, 35 and 36 (2), Chapter 5, Subtitle I, Book V of the Administrative Code of 1987 – among those government employees who received less or no benefits due to lack of funds. It recognized the need to have a "standard system of incentive pay based on productivity and performance among officials and employees of the Government."[23]

In accordance with its stated purposes, AO 161 prohibited the establishment of separate productivity and performance incentive awards. It also expressly revoked all administrative authorization/decrees relative to the grant of incentive award or bonus pursuant to Sections 31,[24] 35 and 36 (2),[25] Chapter 5, Subtitle A, Title I, Book V of EO 262. The pertinent provisions of AO 161 read:

> Sec. 7. Prohibition from Establishing/Authorizing a Separate Productivity and Performance Incentive Award. Heads of departments, agencies, governing boards, commissions, offices including government-owned and/or controlled corporations and government financial institutions, and local government units, are hereby prohibited from establishing and authorizing a separate productivity and performance incentive award or any form of the same or similar nature;
>
> Accordingly, all administrative authorization/decrees issued to select government offices/agencies, government-owned and/or controlled corporations and government financial institutions, and local government units, relative to grant of any Incentive Award or Bonus; administrative, memorandum and/or any order issued authorizing the grant of Incentive Award or Bonus or any form of similar nature pursuant to the provisions of Sections 31, 35 and 36(2), Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987; and executive orders providing for the grant of said Incentive

> Award or Bonus that are not consistent with this Order are hereby revoked.

Subsequently, or on December 27, 1994, and conformably with the provisions of AO 161, the DBM issued NCC 73[26] which, echoing the presidential issuance, prohibited the different government agencies from establishing separate productivity and performance incentive awards.

On this score, it bears pointing out that while the Tariff Commission's ESIAS, which the CSC approved on December 2, 1993, established the general basis for allowing the Merit Incentive Award and Birthday Cash Gift, the specific grant and release of these cash benefits, however, were authorized only through Special Order 95-02 and Resolution No. 96-01 (as amended by Resolution No. 96-01A) dated December 12, 1995 and December 16 (17), 1996, respectively. Notably, when these authorizations were issued, AO 161 and NCC 73 were already in effect.[27]

Considering these antecedents, the Court cannot therefore give credence to petitioners' argument that the Tariff Commission's ESIAS provides the legal basis for the grant of the subject benefits,[28] and that AO 161 finds no application to their existing ESIAS as the said presidential issuance prohibits only the *future* establishment of separate incentive awards.[29]

The Tariff Commission's ESIAS cannot be implemented independently and without regard to subsequent presidential administrative orders such as AO 161. In *Blaquera v. Alcala,*[30] the Court comprehensively discussed the effects of an administrative order similar to AO 161 on the implementation of the ESIAS. It ruled that in issuing an administrative order to regulate the grant of productivity incentive benefits, the President was only exercising his power of control, thus:

> Specifically, implementation of the Employee Suggestions and Incentive Award System has been decentralized to the President or to the head of each department or agency –
>
> > Section 35. *Employee Suggestions and Incentive Award System.* - There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.
> >
> > In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.