

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 123

**IMPOSING THE PENALTY OF SEVERE REPRIMAND WITH A WARNING
ON OFFICER-IN-CHARGE/REGIONAL DIRECTOR RENATO F.
HERRERA OF THE DEPARTMENT OF AGRARIAN REFORM-REGION
IV**

This refers to the administrative complaint filed against Officer-in-Charge/ Regional Director Renato F. Herrera of the Department of Agrarian Reform (DAR) - Region IV (formerly OIC-RD of Region III) for gross dishonesty, conduct prejudicial to the best interest of the service, gross neglect of duty, gross misconduct, and violation of Sec. 3 (e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The case arose out of the letter-complaint of demoralized DAR Region III rank and file personnel dated July 23, 1998 addressed to this Office charging the respondent with acts constituting graft and corruption, as earlier mentioned. On August 1, 1998, the Presidential Commission Against Graft and Corruption (PCAGC) received its own copy of the complaint.

The complainants appeared to be anonymous. In line, however, with its mandate, i.e., to investigate on its own, and considering that there appeared to be pursuable leads based on the 1997 Annual Audit Report of the Commission on Audit, after a fact-finding investigation, the PCAGC, acting as the nominal complainant, filed the "Formal Charge" against the respondent. Finding sufficient cause for an administrative investigation, the PCAGC, in an order of April 27, 1999, required the respondent to file his counter-affidavit.

The facts of the case are as follows:

1. Respondent was Director III, Administrative Services, DAR Central Office when he was designated as Officer-in-Charge/Regional Director (OIC/RD) of Region III in Special Order No. 476, series of 1997, dated June 2, 1997 signed by Secretary Ernesto D. Garilao. He assumed office as OIC/RD of DAR Region III on June 23, 1997 and stayed as such until February 28, 1999, when he was assigned as OIC/RD of Region IV effective March 1, 1999 through Special Order No. 27, series of 1999 issued by Secretary Horacio R. Morales, Jr.;

2. That sometime in April 1994, Disbursement Voucher No. 15-94-040583 was drawn in favor of Lit's Litson in the amount of P6,000.00 for the payment of meals and snacks served during the Pre-Regional Planning Workshop held on January 11, 1994. Consequently, LBP check no. 288838 in the amount of P6,000.00 was issued in the name of Lit's Litson as payment therefor. The disbursement voucher was approved by the respondent in his capacity as the OIC/Assistant Regional Director for Administrative Services of DAR Region III and the corresponding check in his capacity as the countersigning authority; and



3. That the 1997 Annual Audit Report on DAR Region III issued by the Commission on Audit disclosed audit findings which was the basis of other charges leveled against the respondent, details of which are as follows: a) illegal disbursements resulting in disallowances in the net amount of P884,448.82; b) habitual failure to follow established accounting rules and regulations resulting in unascertainable validity of inventory-items for sale and fixed assets accounts; and c) unnecessary expenditures during the celebration of the 9th anniversary of CARP amounting to P25,375.00 and conduct of seminars/workshops in different hotels and restaurants resulting in unnecessary expenditures of P224,653.50 or a total of P250,028.50.

After due hearing, the Commission found that:

"There are two issues to be resolved in the case at bar, which are:
1) Whether or not the respondent is administratively responsible for the failure of his office to withhold the caterer's tax; and 2) Whether or not the respondent is administratively responsible for the audit findings in the 1997 Annual Audit Report.

I. Failure to withhold caterer's tax

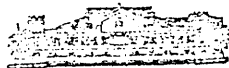
The evidence disclosed that Disbursement Voucher No. 15-94-040583 was drawn in favor of Lit's Litson in the amount of P6,000.00 for the payment of meals and snacks served during the Pre-Regional Planning Workshop held on 11 January 1994. A check, LBP check no. 288838 in the amount of P6,000.00 in favor of Lit's Litson was issued as payment therefor. The respondent was found to have approved the voucher in his capacity as the OIC/Assistant Regional Director for Administration of DAR Region III and signed the corresponding check as countersignatory.

The transaction in question is no doubt subject to 4% caterer's tax pursuant to Section 114 of the National Internal Revenue Code which reads as follows:

'Section 114. Caterer's Tax - A caterer's tax is hereby imposed as follows:

- (1) On operator or operators of restaurants, refreshment parlors, and other eating places, including clubs and caterers, four per centum (4%) of their gross receipts. x
x x

Likewise, the responsibility of withholding the prescribed creditable value-added tax from any payment due the seller of goods and the designation of withholding agents have been clearly established under Section 4 of the Bureau of Internal Revenue (BIR) Revenue Regulation No. 10-93, thus:



Section 4. Withholding Agents Charged With the Duty to Withhold and Remit. - All local government units, represented by the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, and Barangay Treasurer in barangays, the Treasurer of the GOCCs, and the Chief Accountant or any person holding similar position and performing similar function in national government offices, as withholding agents, shall deduct and withhold the prescribed creditable value added-tax before making any payment to seller of goods or employees.

In his Counter-Affidavit, respondent Herrera denied that there was overpayment since the service contract shows that the total expenditure to be paid was Six Thousand Pesos (P6,000.00) and the amount disbursed by government was the same amount of Six Thousand Pesos. Further, respondent Herrera averred the following:

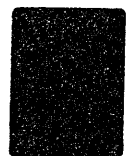
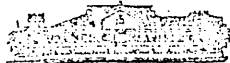
1. That even assuming that there was a need to withhold taxes, there can be no liability when there is no obligation imposed. The obligation to pay the taxes assuming that taxes are indeed required, falls on the supplier of the services or food and not on the respondent;

2. That Section 4 of BIR Revenue Regulation No. 10-93 designates the Chief Accountant as the withholding agent tasked with the duty to deduct and withhold the prescribed creditable value added tax before making any payment to the seller of goods or employees;

3. That the approval of the voucher and the signing of the check which resulted in the alleged overpayment was a mere ministerial act on the part of the respondent since the duty to withhold taxes, if any, is lodged with the Office of the Chief Accountant of DAR Region III, and not on the respondent.

"It is established that the contract between DAR Region III and Lit's Litson for the latter to serve the meals and snacks of participants of the Pre-Regional Planning Workshop on the 11th of January 1994 is subject to the caterer's tax equivalent to 4% of the gross receipt pursuant to Section 114 of the National Internal Revenue Code.

A close examination of Disbursement Voucher No. 15-94-040583 shows that a withholding tax equivalent to 4% of the gross amount of P6,000.00 or P240.00 was withheld by means of account 8-84-1-100 resulting in a net amount due the seller of P5,760.00 shown by means of account 8-70-707. Contrary however to the accounting entries in the voucher, the check issued as payment therefor, LBP check no. 2888838 dated 18 April 1994 was in the gross amount of P6,000.00, instead of the net amount of P5,760.00.



The error resulted in the failure of DAR Region III to withhold the caterer's tax that should have been deducted from the gross amount due Lit's Litson for remittance to the BIR pursuant to Sec. 4 of BIR Revenue Regulation No. 10-93.

The respondent, not only as OIC/Assistant Regional Director of Administration of DAR Region III but approving official of the voucher and signatory to the check cannot, and should not be allowed to conveniently pass on to his subordinates, in this case, the Chief Accountant, his fiscal duties and responsibilities in line with the principle of primary responsibility enunciated under Section 102 of Presidential Decree No. 1445, which reads as follows;

'Section 102. Primary and secondary responsibility. - (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. x x x

While it is true that there was no overpayment committed, respondent Herrera is found remiss of his duties and responsibilities as the Officer-in-Charge for the failure of his office to withhold the caterer's tax."

II. Audit Findings in the 1997 Annual Audit Report

"There are three charges leveled against the respondent based on the 1997 Annual Audit Report, namely: a) illegal disbursement resulting in disallowances in the net amount of P884,448.82; b) habitual failure to follow established accounting rules and regulations resulting in unascertainable validity of inventory-items for sale and fixed assets accounts; and c) unnecessary expenditures of P250,028.50 as a result of a Value For Money Audit."

A. Illegal disbursement resulting in disallowances in the net amount of P884,448.82.

"The post-audit by the Commission on Audit on the 1997 transactions resulted in disallowances of P891,234.52, while settlement during the year amounted to P6,785.70, thus leaving a balance of P884,448.82 at the end of the year.

The bulk of the disallowances represents the payment of additional anniversary bonus (P6,000.00 per employee) which was disallowed by the Auditor on the ground that such payment was without legal basis.

Respondent Herrera declared in his Counter-Affidavit that he was not yet in DAR Region III Office when the alleged unlawful disbursement was made as he was still assigned to the DAR Central



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Office, therefore, he could not be made to answer to charges which occurred prior to his designation to the post. To support his claim, he submitted copies of DAR Special order No. 476 dated 2 June 1997 which designated the respondent as OIC/RD of DAR Region III and the certification of Ms. Josephine K. Aguinaldo, Chief, Personnel Section of DAR Region III that respondent assumed office in compliance with said Order on 23 June 1997.

It is established clearly based on the Certificate of Settlement and Balances and the Notices of Disallowance issued for the purpose that the transactions subject of disallowance occurred within the period from 25 September 1996 to 1 April 1997, during which time the respondent was not the OIC/RD of DAR Region III but the Director III of the Administrative Services of DAR Central Office.

Hence, respondent Herrera has proven that he had no participation on the transactions subject of disallowance.

"B Habitual failure to follow established accounting rules and regulations resulting in unascertainable validity of inventory - items for sale and fixed assets accounts.

The Audit Certificate issued by the Auditor as part of her Annual Audit Report from 1994 to 1997 clearly shows that the Auditor had consistently rendered no opinion on the financial statements of DAR Region III in view of the unascertainable validity of inventory - items for sale and fixed assets accounts with combined amount of P105M.

In his Counter-Affidavit, respondent Herrera asserted that: a) he should not be held responsible for the alleged habitual failure to follow established accounting rules and regulations because he only assumed office in DAR Region III on 23 June 1997 shortly before the COA conducted its 1997 annual audit; b) granting that there was habitual failure to follow established accounting rules and regulations, it should not be blamed on his administration because the period between his assumption of office, and the conduct of the 1997 annual audit of COA was too short to implement the necessary corrective measures and could hardly be said to be habitual; and c) the COA report indicates that the office has been complying with the recommendations of the Auditor.

The evidence on hand undoubtedly placed the date of assumption of respondent Herrera as OIC/RD of DAR Region III on the 23 of June 1997. Considering that the 1997 audit covered the period from 1 January to 31 December, the time was indeed so short for the respondent to institute the necessary corrective measures to solve the accounting problem plaguing the DAR Region III for several years which the respondent inherited from his predecessors.

Additionally, the Auditor in the 1994 and 1996 Annual Audit Reports under Part III - Status of Implementation by Management of Prior Year's Recommendations reported that there were efforts exerted in



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the past to address the accounting problem but was not completed due to some resignations of concerned employees.

Thus, respondent Herrera, considering the timing of his assumption to office, cannot be held responsible for the lapses of internal control committed by his predecessors.

C. Unnecessary expenditures of P25,028.50 as a result of a Value For Money Audit.

DAR Region III celebrated its 9th CARP Anniversary on 13 June 1997. As part of the celebration, a reservation for 350 expected guests and awardees was made in a restaurant at P203.00 per person even without confirming their attendance. In view of this lapse in planning, it resulted in the non-appearance of 125 expected guests and awardees during the celebration. In spite of this, DAR Region III paid in full the reservation for 350 persons, resulting in wasteful expenditure of P25,375.00 (125 x 203).

When the celebration occurred, the respondent was not the incumbent regional director then since he assumed as OIC/RD of DAR Region III only on 23 June 1997 or ten (10) days after the celebration.

The DAR Region III conference room has accommodation capacity of more or less 50 persons, equipped with airconditioners and sound systems necessary in the conduct of trainings/workshops. DAR Ladies Association (DARLA) is available to provide the catering services at P150.00 per person for meals and snacks; its capability has been proven when the DAR Region III entered into a contract with it during a workshop on 14 October 1997 to serve meals and snacks for 70 participants at P150.00 per person.

The availability of appropriate training/workshop venue in the regional office notwithstanding, during the year 1997, out of the twenty five (25) in-house trainings and workshops conducted, eight (8) were conducted in different hotels and restaurants in the cities of Baguio and Angeles and the provinces of Laguna and Tarlac within the period 22 January 1997 to 17 October 1997 in violation of Section 396 (b), Volume I, Government Accounting and Auditing Manual.

Based on the analysis of the Auditor (Annex 6 of AAR), the 8 workshops/sessions had cost DAR Region III a total of P305,953.50; had these been conducted using the facilities of DAR Region III and DARLA catering at P150.00 per person, it would cost P81,300.00 only or a variance of P224,653.50.

During the incumbency of the respondent, three (3) out of the eight (8) workshops/sessions were conducted outside the DAR Regional Office involving expenditure in the amount of P104,460.50; compared to if the facilities of DAR Region III and DARLA catering were used, it would cost P28,800.00 only or variance of P75,660.50



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Audit findings on unnecessary expenditures were the result of a Value For Money Audit, thus, there is no record that said expenditures were suspended or disallowed in audit.

Respondent Herrera in his Counter-Affidavit asserted that the allegation that Two hundred twenty four thousand six hundred fifty three and fifty centavos (224,653.50) have been unnecessarily spent in strategic Planning Workshops/Value Enhancement Sessions because they were not done in the DAR premises is mere speculation. He further averred as follows:

1) That DAR premises are not suited to host such activities because of repairs it will require to become useable for such activities and such repairs will definitely cost more than what was actually spent;

2) That the training and seminars took more than one day and require an overnight stay, which is not possible using the DAR premises as there are no lodging facilities in the DAR conference room;

3) That the comparison made between what was expended and the DARLA charges is not accurate as the charges included lodging while that of DARLA only included food;

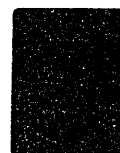
4) That it was not the respondent's responsibility to run these trainings and seminars but that of a division and respondent should be accorded the reasonable assumption that he may rely on the sound judgment of his subordinates in such matters; and

5) That COA Report only recommends the utilization of the available facilities of the regional office as an alternative venue for its seminars and workshops, which means that such activities may be held outside the premises of the regional office, provided such is justified.

"Section 396 of Volume I of Government Accounting and Auditing Manual provides the regulations on the conduct of government training and development programs, quoted hereunder:

Section 396. Regulations on the conduct of government training and development programs. - Programs and allowances:

'a. The head of the agency shall be responsible for approving the training and development programs of their respective agencies. Likewise, accreditation of such programs for purposes of personnel actions shall be the responsibility of the head of agency.



b. All government agencies may conduct in-house training programs for the development and productivity of agency personnel with the use of minimal expenses for:

1. x x x

5. x x x

For this purpose, training programs shall refer to those activities involving instruction and strategies whereby participants will be required to undergo manual or practical exercises and action learning as a means of strengthening work and job related skills. In all instances of training administration, efforts shall be exerted in utilizing available resources and government facilities.

After careful review of records, the observations of the auditor appeared to be more credible than the claim of the respondent.

By authorizing the conduct of two (2) seminars/workshops at Blake Hotel, DAU, Mabalacat, Pampanga and another one at Villa Consolacion, Baguio City, he failed to exercise due prudence in the use of government funds as head of DAR Region III who is primarily responsible therefor, in violation of Section 396, Volume I of the Government Accounting and Auditing Manual and the declared State Policy as provided for in Section 2 of Presidential Decree No. 1445 which reads as follows:

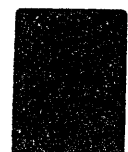
Section 2. Declaration of Policy. - It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief of the government agency concerned.

Recapitulating therefore, the Commissions finds that: a) the respondent is guilty on the first charge for negligence in the performance of his duty when his office failed to withhold the caterer's tax; b) the second and third charges are without merit; and c) the respondent is guilty on the fourth charge to the extent of transactions he participated in for his failure to exercise due diligence of a good father of a family in the use of government funds and resources which is tantamount to negligence in the performance of official duty. However, respondent's conduct may not be so grave as to deserve a serious penalty."

On the basis of the foregoing premises, the PCAGC recommended that respondent be severely reprimanded, with warning.



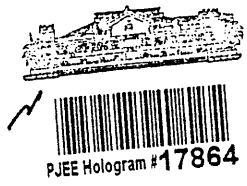
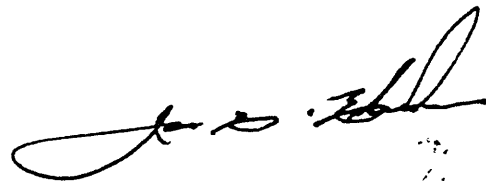
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The findings and conclusions of the PCAGC, supported as they are by, or at least reasonably inferable from, substantive evidence on record commend themselves for concurrence.

WHEREFORE, in view of the foregoing and as recommended by the Presidential Commission Against Graft and Corruption, respondent Officer-in-Charge/Regional Director **RENATO F. HERRERA** of the Department of Agrarian Reform Region IV is hereby **SEVERELY REPRIMANDED WITH A WARNING** that a repetition of the same shall be dealt with more drastically.

Done in the City of Manila, this *29th* day of *May* in the year of Our Lord Two Thousand.



By the President:



RONALDO B. ZAMORA
Executive Secretary