



Republic of the Philippines
Supreme Court
 Manila

EN BANC

DEPARTMENT OF PUBLIC
 WORKS AND HIGHWAYS,
 REGION IV-A and
 GENEVIEVE E. CUARESMA,
 as one of the Certifying Officers
 at the time of the grant of the
 assailed CNA Incentive,*
 Petitioners,

G.R. No. 237987

Present:

BERSAMIN, C.J.,**
 CARPIO,***
 PERALTA,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 REYES, A. JR.,
 GESMUNDO,
 REYES, J. JR.,****
 HERNANDO,****
 CARANDANG, and
 LAZARO-JAVIER, JJ.

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:

March 19, 2019

X -----X

DECISION

REYES, J. JR., J.:

This is a petition for *certiorari* under Section 1, Rule 64 of the Rules of Court which seeks to set aside the Decision No. 2016-377¹ dated

* Also referred to as "CNA Incentives" in the Petition and in some parts of the *rollo*.

** On Official Business.

*** Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

**** On leave.

¹ Concurred in by COA Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito; *rollo*, pp. 68-74.

V

November 10, 2016 and the Resolution No. 2017-458² dated December 27, 2017 of the respondent Commission on Audit (COA), which affirmed Decision No. 2013-29³ dated October 21, 2013 of the COA Regional Office No. IV-A (COA IV-A), which in turn affirmed Notice of Disallowance (ND) No. 09-01-101-(09) dated December 14, 2009.⁴

The Facts

On December 16, 2008, the Department of Public Works and Highways (DPWH), Central Office, through then Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane), issued a memorandum⁵ authorizing the grant of Collective Negotiation Agreement (CNA) Incentive to rank-and-file employees in the DPWH for calendar year 2008. The memorandum provides, among others, that:

3. That the CNA Incentive shall be paid out of savings generated from the Maintenance and Other Operating Expenses (MOOE), completed projects and Engineering and Administrative Overhead (EAO) of each office (Central Office and Regional and District Offices), subject to the usual accounting and auditing rules and regulations[.]⁶

The memorandum was issued pursuant to Administrative Order (A.O.) No. 135, Series of 2005 dated December 27, 2005, which confirmed the grant of CNA Incentive to rank-and-file employees in government agencies; and Public Sector Labor-Management Council (PSLMC) Resolution No. 04, Series of 2002, which supplied the guidelines for the grant of CNA Incentive to rank-and-file employees in national government agencies (NGAs), state universities and colleges (SUCs), and local government units (LGUs).

Later, the DPWH Regional Office No. IV-A (DPWH IV-A) released CNA Incentive for calendar year 2008 to its employees and officers amounting to ₱3,915,000.00.

On January 6, 2010, DPWH IV-A received a copy of ND No. 09-01-101-(09) dated December 14, 2009, signed by the Regional Audit Team Leader and Supervising Auditor, both of the COA IV-A. The COA auditors explained that the CNA Incentive in the amount of ₱3,915,000.00 was disallowed because it was paid out of the Engineering and Administrative Overhead (EAO), in violation of the Department of Budget and Management (DBM) Budget Circular No. 2006-1, issued on February 1,

² Id. at 19-21. (The said Resolution was docketed as “Decision No. 2017-458.”)

³ Penned by COA Regional Director Nilda M. Blanco; id. at 56-60.

⁴ Id. at 51.

⁵ Id. at 47.

⁶ Id.

2006, which states that CNA Incentive shall be sourced solely from the Maintenance and Other Operating Expenses (MOOE).

The COA auditors also identified several DPWH IV-A personnel whom they found to be liable for the illegal payment of the subject CNA Incentive. Among those found to be liable is herein petitioner Genevieve E. Cuaresma (Cuaresma), who was then the Chief Accountant of DPWH IV-A and who certified the availability of funds, completeness of the supporting documents, and validity of the obligation for the payment of the subject CNA Incentive.

On May 26, 2010, DPWH IV-A Regional Director Marcelina N. Ocampo (Director Ocampo) sent a letter, by way of an appeal, to the COA IV-A.

Ruling of COA Regional Office IV-A

In its Decision No. 2013-29 dated October 21, 2013, the COA IV-A dismissed Director Ocampo's appeal. COA IV-A stressed that the MOOE shall be the sole source of the CNA Incentive as expressly provided for in Budget Circular No. 2006-1; and that only rank-and-file employees may be granted the benefit of the said incentive. Thus, it ruled that the release of the subject CNA Incentive, charged from DPWH IV-A's EAO, to the DPWH IV-A employees including officers with salary grades 24 and above, was illegal. The dispositive portion of the said decision states:

All told, the questioned Incentive may not be charged to EAO, hence, the instant Appeal is hereby **DISMISSED** for lack of merit. ND No. 2009-01-101-09 is hereby **AFFIRMED**.⁷

Unconvinced, the DPWH IV-A Employees Association, represented by its president, Engineer Diosdado J. Villanueva (Engr. Villanueva) elevated an appeal,⁸ which was treated as a petition for review, to the COA Proper.

Ruling of the COA

In its assailed Decision⁹ No. 2016-377 dated November 10, 2016, the COA denied DPWH IV-A Employees Association's petition. The COA concurred with COA IV-A's conclusion that DPWH IV-A violated DBM Budget Circular No. 2006-1 when it paid the CNA Incentive out of the savings from the EAO, instead of the MOOE. Further, the COA observed that DPWH IV-A and its Employees Association failed to show any proof of

⁷ Id. at 59-60.

⁸ Id. at 61-67.

⁹ Supra note 1.

the cost-cutting measures it undertook to generate savings as required under DBM Budget Circular No. 2006-1, PSLMC Resolution No. 4, Series of 2002, and Section 3 of A.O. No. 135, Series of 2005. The dispositive portion of the assailed decision provides:

WHEREFORE, premises considered, the Petition for Review of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Region IV-A Employees Association, of Commission on Audit Regional Office (RO) No. IV-A Decision No. 2013-29 dated October 21, 2013 is hereby **DENIED**. Accordingly, Notice of Disallowance No. 2009-01-101-(09) dated December 14, 2009 on the payment of 2008 Collective Negotiation Agreement incentive to officials and employees of DPWH RO No. IV-A in the total amount of ₱3,915,000.00 is **AFFIRMED**.¹⁰

DPWH IV-A Employees Association, through Engr. Villanueva, moved for reconsideration, but the same was denied by the COA in its Resolution¹¹ No. 2017-458 dated December 27, 2017. In denying the motion for reconsideration, the COA maintained that the CNA Incentive could not be validly sourced from the EAO. It stressed that DBM Budget Circular No. 2006-1 is clear on this point. Further, it reiterated the liability of the officers who approved the invalid release of the CNA Incentive as well as the officers who certified the availability of funds and sufficiency of documents necessary for such release. It, however, clarified that the officers and employees who were mere passive recipients of the said benefit need not refund the amounts they received in good faith. The dispositive portion of the resolution states:

WHEREFORE, premises considered, the Motion for Reconsideration of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Regional Office (RO) No. IV-A Employees Association, is hereby **DENIED with FINALITY**. Accordingly, Commission on Audit (COA) Decision No. 2016-377 dated November 10, 2016, denying the Petition for Review of COA RO No. IV-A Decision No. 2013-29 dated October 21, 2013 and affirming Notice of Disallowance No. 09-01-101-(09) dated December 14, 2009, on the payment of Collective Negotiation Agreement Incentive for calendar year 2008 to officials and employees of DPWH RO No. IV-A in the total amount of ₱3,915,000.00, is **AFFIRMED**. However, passive recipients need not refund the benefits they received in good faith, while the approving/certifying officers remain solidarily liable for the entire amount of disallowance based on the *Silang* case.¹²

On February 28, 2018, Cuaresma received a copy of the COA Resolution No. 2017-458. Considering that she was among those found to be

¹⁰ Id. at 72-73.

¹¹ Supra note 2.

¹² Id. at 20.

liable for the disallowed incentive, Cuaresma was prompted to file this petition.

The Issues

I.

WHETHER OR NOT THE GRANT OF THE CNA INCENTIVE IS VALID AND SUPPORTED BY LAW AND OTHER PERTINENT RULES AND REGULATIONS.

II.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING WITH FINALITY THE MOTION FOR RECONSIDERATION OF ENGR. DIOSDADO J. VILLANUEVA AND FURTHER AFFIRMED THE DECISION NO. 2016-377 DATED NOVEMBER 10, 2016, DENYING THE PETITION FOR REVIEW OF COA RO NO. IV-A DECISION NO. 2013-29 DATED OCTOBER 21, 2013 AND AFFIRMING THE NOTICE OF DISALLOWANCE NO. 09-01-101-(09) DATED DECEMBER 14, 2009, ON THE PAYMENT OF COLLECTIVE NEGOTIATION AGREEMENT INCENTIVE FOR CALENDAR YEAR 2008 TO OFFICIALS AND EMPLOYEES OF DPWH RO NO. IV-A IN THE TOTAL AMOUNT OF PHP3,915,000.00.

III.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING THE SAID DECISION AND DECLARING THAT PASSIVE RECIPIENTS NEED NOT REFUND THE BENEFITS THEY RECEIVED IN GOOD FAITH, WHILE THE APPROVING/CERTIFYING OFFICERS REMAIN SOLIDARILY LIABLE FOR THE ENTIRE AMOUNT OF DISALLOWANCE BASED ON *SILANG* CASE.¹³

Cuaresma insists that the subject CNA Incentive was validly paid out of the EAO. She argues that payment of the CNA Incentive out of the savings from the EAO in lieu of the MOOE is allowed under the General Appropriations Act (GAA) because MOOE and EAO serve substantially the same purpose. According to her, this intent could be gleaned from the budget deliberations of the DPWH in Congress, where the reason for the reduction of DPWH's MOOE was discussed.

Cuaresma further argues that she should not be held liable for the amount of the disallowance. She explains that she merely relied on the

¹³ Id. at 7-8.

authority given by then DPWH Secretary Ebdane, when the latter issued a memorandum stating that the CNA Incentive may be paid out of the savings from the EAO.

Lastly, Cuaresma avers that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA Incentive. She asserts that DPWH IV-A was among the offices singled out by the COA concerning the disallowance of the CNA Incentive. She claims that there were other offices which granted the CNA Incentive sourced from the savings from EAO but these releases were allowed. Cuaresma further points out that the DPWH IV-A's CNA Incentive for calendar year 2007, or for the previous year, was also paid out of the savings from the EAO. Surprisingly, however, the COA did not disallow the release of this incentive.

In its Comment¹⁴ dated August 23, 2018, the COA, through the Office of the Solicitor General, maintains that the subject CNA Incentive was invalidly released and paid out of the savings from the EAO. It counters that DBM Budget Circular No. 2006-1 unequivocally states that the CNA Incentive shall be sourced solely from the savings from the MOOE and to no other fund.

As to Cuaresma's defense that she merely relied on the authority given by Secretary Ebdane, the COA stresses that the December 16, 2008 memorandum itself cited A.O. No. 135, Series of 2005 as its basis and even specified that the CNA Incentive shall be subject to the usual accounting and auditing rules and regulations. As such, the authority under the aforesaid memorandum must be consistently implemented with the procedural guidelines and be subjected to the conditions imposed under DBM Budget Circular No. 2006-1.

From the submissions of the parties, the issues to be resolved by the Court could be summarized as follows: (1) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA Incentive; and (2) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it adjudged certain DPWH IV-A officers, including Cuaresma, liable for the amount of the disallowance, while passive recipients were not ordered to share in the liability.

¹⁴ Id. at 95-109.

The Court's Ruling

The petition is partly meritorious.

The COA did not commit any grave abuse of discretion when it disallowed the subject CNA incentive.

In the discharge of its constitutional mandate, the COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.¹⁵ The 1987 Constitution has expressly made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the exclusive authority to define the scope of its audit and examination, establishing the techniques and methods for such review, and to promulgate accounting and auditing rules.¹⁶

The grant of CNA Incentive in favor of the employees in the NGAs, such as the DPWH, is governed by PSLMC Resolution No. 4, Series of 2002, A.O. No. 135, Series of 2005, and DBM Budget Circular No. 2006-1.

PSLMC Resolution No. 4, Series of 2002, authorized the grant of CNA Incentive for employees in the NGAs, SUCs, and LGUs. It states that CNA Incentive may be provided in the CNAs between the government agency and the employees association therein in recognition of the joint efforts of labor and management to achieve all planned targets, programs, and services approved in the budget of the agency at a lesser cost.¹⁷ The resolution also provided guidelines which must be followed in the grant of of CNA Incentive to employees in NGAs, SUCs, and LGUs. Among these is Section 1 which mandated that only the savings generated after the signing of the CNA may be used for the CNA Incentive;¹⁸ and Section 2 which required the inclusion of provisions on cost-cutting measures and systems improvement that will be undertaken by both the management and the labor organization to ensure that savings will be generated after the signing of each CNA.¹⁹

¹⁵ *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, G.R. No. 195105, November 21, 2017, citing *Sanchez v. Commission on Audit*, 575 Phil. 428, 444-445 (2008).

¹⁶ *Id.*, citing *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010).

¹⁷ PSLMC Resolution No. 4, Series of 2002, Section 1.

¹⁸ *Id.*

¹⁹ *Id.* at Section 2.

A.O. No. 135, Series of 2005, confirmed the grant of CNA Incentive under PSLMC Resolution No. 4, Series of 2002. It reiterated that CNA Incentive shall be sourced solely from the savings generated during the life of the CNA,²⁰ and that there must be provisions on cost-cutting measures in the CNA.²¹ It further clarified that CNA Incentive may be extended to rank-and-file employees only.²²

Finally, DBM Budget Circular No. 2006-1 provided limitations and conditions for the grant of CNA Incentive. Among these is Item No. 7, which specified the fund from which the CNA Incentive may be sourced.

7.0 Funding Source

7.1 **The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review**, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

7.1.3 Such savings shall be net of the priorities in the use thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personnel benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred; and

7.1.4 The basic rule that augmentation can be done only if there is deficiency in specific expenditure items, should be strictly observed. (Emphasis supplied)

Clear from the foregoing is that CNA Incentive may not be allocated out of the savings of any fund. To be valid, the CNA Incentive must be released from the savings of the MOOE. In this case, there is no dispute that the subject CNA Incentive was paid out of the savings from the EAO. The violation of the provisions of DBM Budget Circular No. 2006-1 is glaring. Thus, the COA correctly affirmed ND No. 09-01-101-(09) as there are factual and legal justifications therefor.

²⁰ Administrative Order No. 135, Series of 2005, Section 4.

²¹ Id. at Section 3.

²² Id. at Section 2.

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Cuaresma, however, insists that savings from the EAO may be used to pay CNA Incentive considering that EAO and MOOE serve the same purpose. She pointed out that DPWH's MOOE was reduced because its EAO may be used to cover for the department's administrative expenses. She cited the following exchange during the budget deliberation before the Committee on Appropriations hearing on September 22, 2010 in support of her argument:

REP. ACHARON:

x x x x

No, you reported that the budget, as I've seen it, [is] really declining from 2009 to x x x last year x x x including the other operating expenses in different regional offices. Is that correct? So how will you appropriate this money when you reduce it by almost 55 percent. You mean to say that other regional offices will no longer have electricity or water? How's that?

MR. SINGSON: Your Honor, there is also what we call engineering administrative overhead, that is between 3 and 3.5 percent that is provided for the various regions and districts for overhead expenses and operating expenses, Your Honor.

REP. ACHARON: Okay, so you charge it to the indirect cost of the project. Okay. So I hope that there will be no complaints from regional offices that they can no longer pay their x x x.²³

The Court is not convinced.

In the first place, the cited exchange does not have any material relation to the issue at hand. The Court notes that the subject hearing before the Committee on Appropriations on September 22, 2010 was for the purpose of enacting the 2011 GAA. On the other hand, the issue in this case involves the disallowance of a disbursement of a fund from the 2008 GAA.

Moreover, nothing in the cited exchange would support Cuaresma's conclusion that savings from the EAO may be used to pay the CNA Incentive in lieu of the savings from the MOOE. While former DPWH Secretary Rogelio Singson explained that the EAO fund may be used for the administrative expenses of the DPWH and its regional offices, he never suggested that savings from the EAO may also be the source of the CNA Incentive. Thus, the Court concurs with the COA's observation:

Further, the TSN shows that Secretary Singson proposed the reduction of DPWH's MOOE considering that there were other sources

²³ *Rollo*, pp. 9; 64.

of funds to cover DPWH administrative expenses such as the EAO. The House of Representatives only confirmed the proposed budget of DPWH for 2011 and did not, in any way, declare that EAO can be used as a source of CNA incentive in lieu of MOOE. The approval of the proposed budget of DPWH is not a blanket authority to use the EAO fund without complying with the existing laws and regulations.²⁴

Cuaresma also faults the COA for allegedly being selective when it disallowed the subject CNA Incentive. She claims that there were other departments and regional offices which sourced their respective CNA Incentive from the EAO but the COA allowed their releases. Thus, she alleges violation of the equal protection clause.

This argument is misplaced.

In *People v. Dela Piedra*,²⁵ the Court declared that an erroneous performance of statutory duty – such as an apparent selective enforcement of the statute – could not be considered a violation of the equal protection clause, unless the element of intentional or purposeful discrimination is shown. In that case, the Court ruled that there is no violation of the equal protection of the laws in prosecuting only one of the many equally guilty persons. This lone circumstance would not be sufficient to uphold the claim of denial of the equal protection clause. Absent a clear showing of intentional discrimination, the prosecuting officers shall be presumed to have regularly performed their official duties. Thus:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. **Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws.** The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. *But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."* Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.²⁶ (Emphasis supplied; citations omitted; italics in the original)

²⁴ Id. at 71.

²⁵ 403 Phil. 31 (2001).

²⁶ Id. at 54-55.

Like the prosecution which has been given the discretion to prosecute whoever it believes to have committed a crime, depending on its sound assessment of the evidence, the COA has the authority to disallow disbursements of public funds if, in its judgment, they were utilized in violation of its intended purpose. Consequently, it is up to the person who claims to have been the victim of selective enforcement to prove that the same was made for a discriminatory purpose.

In this case, aside from her allegation that DPWH IV-A was among those singled out by the COA concerning the disallowance of the CNA Incentive, Cuaresma failed to present even a single evidence to show that the disallowance of the subject CNA Incentive was made pursuant to a discriminatory purpose. Clearly, no violation of equal protection clause for selective enforcement could be attributed to the COA as Cuaresma failed to prove that there was intentional discrimination.

Neither could the alleged allowance by the COA of the CNA Incentive for calendar year 2007 be sufficient reason to conclude that the commission is guilty of grave abuse of discretion. Suffice it to state that the State cannot be put in estoppel by the mistakes or errors of its officials or agents.²⁷ The supposed error by the COA in allowing DPWH IV-A's CNA Incentive for calendar year 2007, allegedly similarly sourced from the savings from the EAO, is insufficient justification to uphold the validity of the CNA Incentive in question. A contrary ruling would compel the COA to contravene its constitutional duty as the guardian of public funds.

The COA erred when it absolved the DPWH IV-A employees who received the benefit from any liability.

The Court concurs with the COA's pronouncement that Cuaresma, as well as the other certifying and approving officers of DPWH IV-A, must be held liable for the amount of the disallowance.

In *Manila International Airport Authority v. Commission on Audit*,²⁸ the Court held that officers of the Manila International Airport Authority (MIAA) were not in the position to approve and certify the funding for the CNA Incentive without assuring themselves that the conditions imposed by PSLMC Resolution No. 2, Series of 2003, are complied with. PSLMC Resolution No. 2 is the resolution governing the grant of CNA Incentive to

²⁷ *Republic v. Intermediate Appellate Court*, 284-A Phil. 528, 540 (1992); *Republic v. Go Bon Lee*, 111 Phil. 805, 809 (1961); *Development Bank of the Philippines v. Commission on Audit*, 301 Phil. 207, 212 (1994).

²⁸ 681 Phil. 644 (2012).

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employees in Government Financial Institutions and Government-Owned and Controlled Corporations, such as the MIAA.

In this case, Cuaresma, as one of the certifying officers of DPWH IV-A, was duty-bound to ensure compliance with the conditions and limitations imposed in PSLMC Resolution No. 4, Series of 2002, in relation to DBM Budget Circular No. 2006-1, before she could issue certification on the availability of funds for the subject CNA Incentive. Unfortunately, she failed in this regard considering the non-observance with the limitation that savings from MOOE shall be the sole source of CNA Incentive. Hence, she must be held liable for the amount of the disallowance.

Nevertheless, although the CNA Incentive released by the DPWH IV-A was properly disallowed, the COA erred when it ruled that the DPWH IV-A employees who benefited from the incentive need not refund the amounts they received. The Court holds that the DPWH IV-A employees are obliged to return the amounts they received under the principle of unjust enrichment.

Jurisprudence holds that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that “[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.”

The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another’s expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.²⁹

The conditions set forth under Article 22 of the Civil Code are present in this case.

It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or

²⁹ *Car Cool Philippines, Inc. v. Ushio Realty & Development Corp.*, 515 Phil. 376, 384 (2006); *Cabrera v. Ameco Contractors Rental, Inc.*, G.R. No. 201560, June 20, 2012 (Minute Resolution); *Government Service Insurance System v. Commission on Audit*, 694 Phil. 518, 526 (2012).

justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.

The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered.

It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must first be negotiated, approved, and implemented. On the negotiation and approval of CNAs, Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, provides:

RULE XII
COLLECTIVE NEGOTIATIONS

Section 1. Subject of negotiation. – Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.

Section 2. Negotiable matters. – The following concerns may be the subject of negotiation between the management and the accredited employees' organization:

x x x x

(m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003; and

(n) such other concerns which are not prohibited by law and CSC rules and regulations.

x x x x

Section 4. Effectivity of CNA. – **The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.** (Emphasis supplied)

x x x x

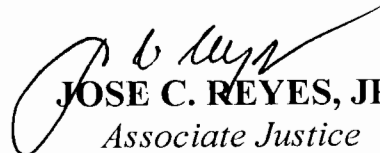
From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: *first*, the negotiation between the government agency and the employees' collective negotiation representative; and *second*, the approval by the majority of the rank-and-file employees in the

negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA Incentive. Verily, when they received the subject benefit, they must have known that they were undeserving of it.


WHEREFORE, the Decision No. 2016-377 dated November 10, 2016 and the Resolution No. 2017-458 dated December 27, 2017, both of the Commission on Audit, are hereby **AFFIRMED with MODIFICATION**. The certifying and approving officers, as well as all the employees of the DPWH IV-A who received the subject CNA Incentive, are liable for the amount of the disallowance. They must reimburse the amounts they received through salary deduction, or through whatever mode of payment the COA may deem just and proper under the circumstances.


SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

(On Official Business)
LUCAS P. BERSAMIN
Chief Justice

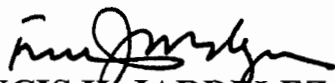

ANTONIO T. CARPIO
Acting Chief Justice



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

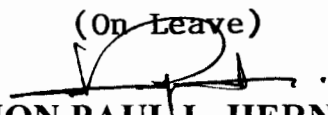

MARVIC M.V. F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

(On Leave)

RAMON PAUL L. HERNANDO
Associate Justice

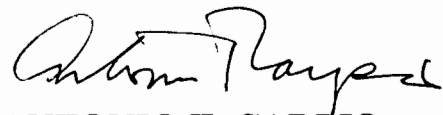

ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

✓

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



ANTONIO T. CARPIO

Actng Chief Justice

APK: [illegible]
[illegible]
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