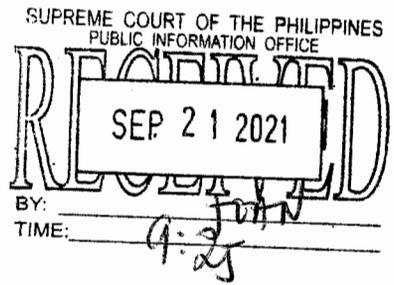




Republic of the Philippines  
Supreme Court  
Manila



EN BANC

**SOCIAL SECURITY SYSTEM, G.R. No. 231391**  
*Petitioner,*

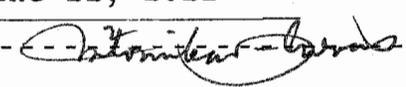
Present:

GESMUNDO, C.J.,  
PERLAS-BERNABE,  
LEONEN,\*  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
DELOS SANTOS,  
GAERLAN,  
ROSARIO, and  
LOPEZ, J., JJ.

- versus -

**COMMISSION ON AUDIT,**  
*Respondent.*

Promulgated:  
June 22, 2021

X -----  ----- X

**DECISION**

**INTING, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 64 of the Rules of Court seeking to annul and set aside Decision No. 2015-280<sup>2</sup> dated November 23, 2015 and Notice No. 2017-014<sup>3</sup> dated April 11, 2017 of the Commission on Audit (COA) Proper which affirmed the Notice of Disallowance No. (ND) 2010-004 (2006-2009)<sup>4</sup>

\* On official leave.

<sup>1</sup> *Rollo*, pp. 3-19.

<sup>2</sup> *Id.* at 21-25; signed by Chairperson Michael G. Aguinaldo and Commissioners Heidi L. Mendoza and Jose A. Fabia; and attested by Director III and Commission Secretariat Bresilo R. Sabaldan.

<sup>3</sup> *Id.* at 26.

<sup>4</sup> *Id.* at 38-39.

dated October 11, 2010 amounting to ₱2,108,213.36 against the Social Security System (SSS) officials and employees who are not members of the collective negotiation unit.<sup>5</sup>

### *The Antecedents*

The Social Security Commission (SSC) passed Resolution No. 259 dated July 6, 2005 granting the following: *first, Collective Negotiation Agreement (CNA) incentives* to each member of Alert and Concerned Employees for Better SSS (ACCESS), the collective negotiation unit representing the rank and file employees of the SSS; and *second, Counterpart CNA Incentives* to other SSS officers and employees, including: (a) confidential, coterminous, and contractual employees; (b) lawyers; (c) executives; and (d) members of the SSC.<sup>6</sup>

Pursuant to this resolution, the SSS paid *Counterpart CNA Incentives* from 2006 to 2009 amounting to ₱2,108,213.36. Subsequently, in ND 2010-004 dated October 11, 2010, the COA Supervising Auditor disallowed the payment for being contrary to Section 3(b)<sup>7</sup> of Administrative Order No. (AO) 103,<sup>8</sup> *viz.:*

SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council [PSLMC] Resolutions No. 04, s. 2002

<sup>5</sup> Amount not indicated in the notice of disallowance. See Decision dated November 23, 2015 of the Commission on Audit (COA), *id.* at 24; Decision dated September 24, 2012 of the COA, *id.* at 36.

<sup>6</sup> *Id.* at 38, 56.

<sup>7</sup> Section 3 of Administrative Order No. (AO) 103, Series of 2004 provides:

SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

x x x x

<sup>8</sup> Entitled, "Directing the Continued Adoption of Austerity Measures in the Government," approved on August 31, 2004.

and No. 2, s. 2003; and (ii) those expressly provided by presidential issuance;

x x x x

AO 103 allowed the grant of *CNA Incentives*, as an exception to the executive directive suspending the grant/payment of additional benefits to GOCC officials in view of the government's adoption of austerity measures, *provided that the grant complies with the relevant PSLMC resolutions.*

The payees thereof were held liable for the disallowance.<sup>9</sup>

This prompted petitioner to appeal the disallowance in behalf of the payees to the COA Corporate Government Sector Cluster A – Financial (COA-CGS).

It argued that the subject payment (a) was made pursuant to the SSC's power to fix the compensation of SSS personnel,<sup>10</sup> as provided under Section 3(c) of Republic Act No. (RA) 1161,<sup>11</sup> and (b) was merely denominated as *Counterpart CNA Incentives*. However, these were not *CNA Incentives per se* borne out of a CNA. Thus, AO 103 does not apply.<sup>12</sup> Further, having acted in good faith, the recipients of the subject payment cannot be made liable for the disallowance.<sup>13</sup>

#### *Ruling of the COA Director*

In its Decision No. 2012-15<sup>14</sup> dated September 24, 2012, Angelina B. Villanueva, Director IV, COA-CGS, upheld the disallowance.

AO 103 only allowed the grant of *CNA Incentives* to the extent that these complied with PSLMC Resolutions Nos. 04, S. 2002, and 02, S. 2003. However, SSC granted and paid the subject *CNA Incentives* to confidential, cotermious and contractual employees, lawyers, executives, and SSC members, who were also not members of the negotiating unit (non-rank and file employees and non-ACCESS

<sup>9</sup> See Notice of Disallowance No. 2010-004 (2006-2009), *rollo*, pp. 38-39.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> Social Security Act of 1954, approved on June 18, 1954.

<sup>12</sup> *Rollo*, p. 32.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 31-36; penned by Director IV Angelina B. Villanueva.

members). This directly contravened applicable laws, rules, and regulations,<sup>15</sup> particularly PSLMC Resolution No. 02, S. 2003, which provide that only rank and file employees are entitled to *CNA Incentives*.<sup>16</sup>

The Director rejected the assertion of the SSS that the payments represented *Counterpart CNA Incentives*, not *CNA Incentives per se*. This showed that SSC had known that payments of CNA Incentives to non-rank and file employees (such as the recipients of the disallowed amount) are clearly prohibited.<sup>17</sup>

Further, she explained that while the SSC is empowered to fix reasonable compensation, allowances, and other benefits of its personnel,<sup>18</sup> this authority does not exempt the SSC from complying with relevant administrative issuances, such as Presidential Decree No. (PD) 1597, and AO 103,<sup>19</sup> which “prescribed the approval of the President of the Philippines before [certain] benefits x x x may be given.” Citing *Intia, Jr. v. COA*<sup>20</sup> (*Intia*) and *Phil. Retirement Authority (PRA) v. Buñag*<sup>21</sup> (*Buñag*), she stressed that prior executive approval under these issuances is a condition precedent to the grant of certain benefits,<sup>22</sup> including the *Counterpart CNA Incentives*.

Finally, the Director did not find merit in the SSS’s defense of good faith. She pointed out that the COA already disallowed similar *Counterpart CNA Incentives* paid in previous years. “It would have been more prudent for SSS management to suspend the granting of the questioned benefits x x x.”<sup>23</sup>

<sup>15</sup> E.g., Section 2 of AO 135,2 Department of Budget and Management (DBM) Budget Circular No. 2006-13 dated February 1, 2006, and Section 14 of PSLMC Resolution No. 02, S. 2003.

<sup>16</sup> *Rollo*, pp. 33-34.

<sup>17</sup> *Id.* at 34.

<sup>18</sup> Section 3(c), Republic Act No. 1161 provides:

SECTION 3. *Social Security System*. — x x x x

(c) The Commission, upon the recommendation of the Administrator shall appoint an actuary, medical director, and such other personnel as may be deemed necessary; shall fix their compensation; prescribe their duties and establish such methods and procedures as may insure the efficient, honest and economical administration of the provisions and purposes of this Act.

<sup>19</sup> *Rollo*, p. 35.

<sup>20</sup> 366 Phil. 273 (1999).

<sup>21</sup> 444 Phil. 859 (2003).

<sup>22</sup> Other than those allowed under relevant government issuances.

<sup>23</sup> *Rollo*, p. 36.

Aggrieved, petitioner elevated the matter to the COA Proper.

*Ruling of the COA Proper*

In the assailed Decision No. 2015-280, the COA Proper affirmed the Director's ruling.<sup>24</sup> It also denied petitioner's subsequent motion for reconsideration.<sup>25</sup>

Hence, petitioner filed the present petition.

In compliance with the Resolution<sup>26</sup> dated August 8, 2017 of the Court, respondent filed its Comment [re: Petition for *Certiorari* dated May 19, 2017].<sup>27</sup> Petitioner filed its Reply to Comment dated October 23, 2017.<sup>28</sup>

*Issues*

In deciding whether or not the COA Proper committed grave abuse of discretion in upholding the subject disallowance, We shall consider the following questions:

(a) Are payments denominated as *Counterpart CNA Incentives* the same as *CNA Incentives* granted as a result of a valid CNA?

(b) Is the SSC's authority to fix the compensation of SSS personnel absolute?

*Our Ruling*

The petition lacks merit.

Prefatorily, the Court's review of COA decisions *via* Rule 64

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<sup>24</sup> *Id.* at 24.

<sup>25</sup> *Id.* at 26.

<sup>26</sup> *Id.* at 47-48.

<sup>27</sup> *Id.* at 56-70.

<sup>28</sup> *Id.* at 82-91.

petitions is limited to *jurisdictional errors* or *grave abuse of discretion*.<sup>29</sup> To be sure, the Court's intervention is justified only when it is clearly shown that the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>30</sup> There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.<sup>31</sup>

In the present case, petitioner failed to prove that respondent committed grave abuse of discretion. For reference, petitioner relies on the following grounds for the allowance of the present action:

THE GRANT OF COUNTERPART INCENTIVE TO SSS OFFICIALS IS VALID AS AUTHORIZED UNDER SEC. 3(C) OF THE SS LAW, AS AMENDED<sup>32</sup>

RESPONDENT'S RELIANCE ON THE CASES OF *IRENEO V. INTIA, JR. VS. COMMISSION ON AUDIT X X X* AND *PHILIPPINE RETIREMENT AUTHORITY (PRA) VS. BUNAG X X X* AS BASIS FOR ITS DECISION IS INCORRECT<sup>33</sup>

PETITIONER, A [GOCC], WAS ALREADY IDENTIFIED AS A DISTINCT CLASS AMONG GOVERNMENT AGENCIES. PETITIONER IS GOVERNED BY THE LAW CREATING IT.<sup>34</sup>

RESPONDENT FAILED TO CONSIDER THE FAILURE OF ND NO. 2010-004 (2006-2009) TO CONFORM TO THE REGULATIONS ON THE SETTLEMENT OF ACCOUNTS (RRSA) OF COA.<sup>35</sup>

ASSUMING *EX GRATIA ARGUMENTI* THAT THE GRANT OF THE COUNTERPART CNA INCENTIVE IS UNLAWFUL, PETITIONER'S NCR OFFICIALS ACTED IN GOOD FAITH IN RECEIVING THE BENEFITS, THUS CANNOT BE HELD LIABLE FOR ITS REIMBURSEMENT.<sup>36</sup>

<sup>29</sup> See *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713 (2016).

<sup>30</sup> See *Miralles v. Commission on Audit*, 818 Phil. 380 (2017).

<sup>31</sup> *Id.* at 389-390.

<sup>32</sup> *Rollo*, p. 7.

<sup>33</sup> *Id.* at 10.

<sup>34</sup> *Id.* at 13.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 15.

These contentions are a reiteration of those raised before and passed upon by the COA Proper. More significantly, at best, these arguments raise mere *errors of judgment*, which the Court cannot review *via certiorari*.<sup>37</sup> *The petition is dismissible on this score alone.*

At any rate, even if We excuse the insufficiency of petitioner's allegations, We still uphold the COA Proper's ruling.

To recall, the disallowance was grounded on the following: *first*, that the disbursement constituted a grant of *CNA Incentives* to non-rank and file employees, in contravention of Section 3(b)(i) of AO 103, in relation to PSLMC Resolution Nos. 04, S. 2002, and 02, S. 2003; *Second*, that the disbursement was paid without the requisite executive approval Section 3(b)(ii) of AO 103, in relation to PD 1597.

The disallowance was proper. While Section 3(b)(i) of AO 103 does not apply to the subject *Counterpart CNA Incentives*, it is not supported by an executive issuance, as required under Section 3(b)(ii).

*The subject payment is not a CNA Incentive within the meaning of Section 3(b)(i) of AO 103*

Significantly, in the Resolution No. 259 dated July 6, 2005, the SSC granted two incentives, *viz.*: (1) *CNA Incentives*, paid to the members of ACCESS, and (2) *Counterpart CNA Incentives*, paid to SSS personnel who *were not members of the negotiating unit* and subject of the present controversy.

We must pay closer attention to the use of the word "counterpart" to designate the second incentive. It reveals an intention to create a category of incentives *separate* from but that closely resembles *CNA Incentives*. The resulting distinction is crucial.

Splitting the incentives into two categories was necessary for the following reasons: *first*, to accommodate two classes of employees: (a) SSS rank and file employees and ACCESS members who shall receive

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<sup>37</sup> *Fontanilla v. The Commissioner Proper, COA, supra note 29.*

*CNA Incentives per se*, and (b) non-rank and file employees and non-ACCESS members who shall receive *Counterpart CNA Incentives* instead; and *second*, to distinguish between the legal bases sought to justify the grant of each category.

On the one hand, the *first category* consisted of incentives granted by virtue of a subsisting CNA between SSS and ACCESS. Certainly, benefits may only be regarded as valid *CNA Incentives* if these arose from an agreement “entered into between the accredited employees’ organization as the negotiating unit and the employer or management.”<sup>38</sup>

In contrast, it is not disputed that SSC granted the *second category* of incentives to *non-rank and file employees and non-ACCESS members*. Thus, even a valid and subsisting CNA could not have justified the *Counterpart CNA Incentives*, having been granted in favor of individuals who were not parties to the agreement.

As keenly observed by the COA, SSC had been aware that incentives under the CNA are for the exclusive benefit of rank and file employees and ACCESS members. Thus, the SSC instead invoked its own power to fix employee compensation under Section 3(c) of RA 1161 to justify the grant of *Counterpart CNA Incentives*.

Since *Counterpart CNA Incentives* are not a product of a valid and subsisting CNA, these cannot be regarded as CNA Incentives within the contemplation of Section 3(b)(i) of AO 103. This notwithstanding, the subject payment contravenes the requirement under Section 3(b)(ii) thereof.

*The subject payment does not carry the requisite executive approval under Section 3(b)(ii)*

Petitioner repeatedly invokes that the SSC’s independent power to fix employee compensation. However, as correctly held by the COA, this authority does not exempt the SSC from seeking the requisite executive approval prior to granting benefits to SSS personnel.

<sup>38</sup> *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019, 895 SCRA 53, 73.

In this regard, the COA Director cited PD 1597, viz:

SECTION 6. *Exemptions from OCPC Rules and Regulations.*  
— Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. *Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.* (Italics supplied.)

In *Intia* and *Buñag*, the Court explained that the above-cited provision applies without qualification to government agencies that are otherwise exempted from the Salary Standardization Law (SSL). The Court elucidated in *Intia*:

*x x x It must be stressed that the Board's discretion on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, that is, its compensation system, including the allowances granted by the Board to PPC employees, must strictly conform with that provided for other government agencies under R.A. No. 6758 (Salary Standardization Law) in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the Department of Budget and Management pursuant to Section 6 of P.D. No. 1597.<sup>39</sup>(Italics Supplied)*

More importantly, the Court already pronounced that the SSC's power to fix employee compensation is not absolute, viz:

The SSS cannot rely on Sections 3(c) and 25 of the SS Law either. A harmonious reading of the said provisions discloses that the SSC may merely fix the compensation, benefits and allowances of SSS appointive employees within the limits prescribed by the SS Law. Nothing in the aforementioned provisions authorizes the SSS to grant additional benefits to its members.<sup>40</sup>

<sup>39</sup> *Intia, Jr. v. COA*, *supra* note 20 at 293.

<sup>40</sup> *Social Security System v. Commission on Audit*, 794 Phil. 387, 407 (2016).

SSS is a mere trustee of funds held for the benefit of workers and employees in the private sector.<sup>41</sup> Hence, its power to fix employee compensation must be exercised in accordance with the standards laid down by the law,<sup>42</sup> such as the presidential approval required under Section 3(b)(ii) of AO 103.

Clearly, the subject payment is not supported by any such executive approval. It is already settled that a benefit, such as the subject *Counterpart CNA Incentives*, that is “neither a CNA incentive nor authorized by a presidential issuance x x x is devoid of any legal basis.”<sup>43</sup>

#### *Liability for the disallowance*

The COA Proper held the payees of the *Counterpart CNA Incentives* liable to pay the disallowance amounting to ₱2,108,213.36.

Petitioner claims that payees acted in good faith and cannot be held personally liable for its reimbursement. However, good faith in receiving the subject incentives is irrelevant in the case.

The COA proper correctly ordered the payees to return the disallowed amount. The basic rule is a civil servant who received compensation and benefits by mistake has the *quasi-contractual* obligation to return it to the government.<sup>44</sup> In the recent case of *Madera v. COA*,<sup>45</sup> if a disallowance is upheld, the recipients are liable to return the disallowed amount respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of the services rendered, or the Court excuses them based on undue prejudice, social justice considerations, or the bona fide exceptions.<sup>46</sup>

**WHEREFORE**, the petition is **DISMISSED**. The Commission on Audit Decision No. 2015-280 dated November 23, 2015 and the

<sup>41</sup> *Id.* at 399-400.

<sup>42</sup> See *Phil. Retirement Authority (PRA) v. Buñag*, *supra* note 21.

<sup>43</sup> *De Guzman v. Commission on Audit*, G.R. No. 245274, October 13, 2020.

<sup>44</sup> See *National Transmission Corp. v. Commission on Audit*, G.R. No. 232199, December 1, 2020.

<sup>45</sup> G.R. No. 244128, September 8, 2020.

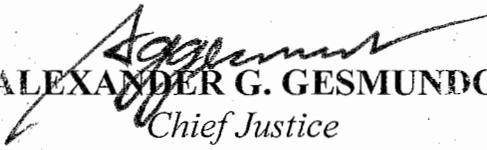
<sup>46</sup> See *Abellanos v. Commission on Audit*, G.R. No. 185806, November 17, 2020.

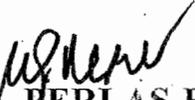
Notice No. 2017-014 dated April 11, 2017 of the Commission on Audit are **AFFIRMED**. All the recipients of the disallowed amount are liable to return them through salary deduction or any other mode which the Commission on Audit may deem just and proper. This pronouncement is without prejudice to any other administrative or criminal liabilities of the officials responsible for the illegal disbursement.

**SO ORDERED.**

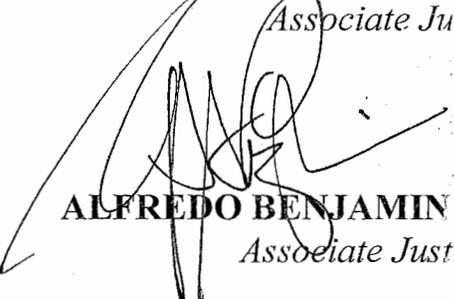
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

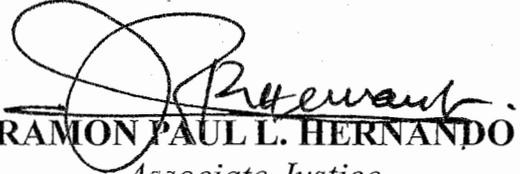
WE CONCUR:

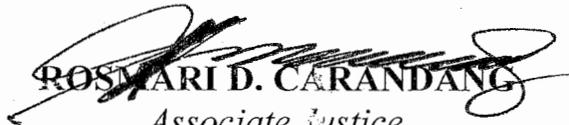
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

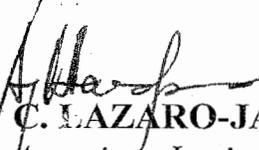
  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

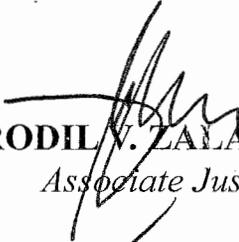
(On official leave)  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

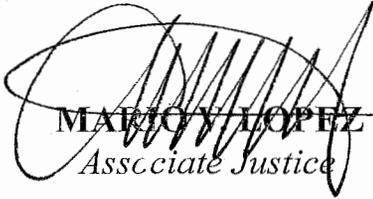
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARI D. CARANDANG**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



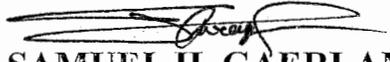
**RODIL V. ZALAMEDA**  
*Associate Justice*



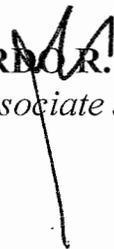
**MARIO V. LOPEZ**  
*Associate Justice*



**EDGARDO L. DELOS SANTOS**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*



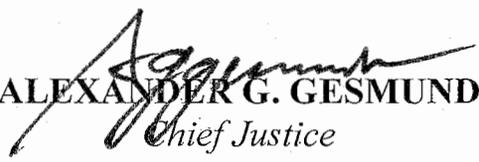
**RICARDO R. ROSARIO**  
*Associate Justice*



**JHOSEPY LOPEZ**  
*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.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*

