



Republic of the Philippines
Supreme Court
Manila

EN BANC

**NATIONAL TRANSMISSION
CORPORATION**

Petitioner,

G.R. No. 204800

Present:

SERENO, C. J.,
CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,
BRION,**
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,*** JJ.

- versus -

**COMMISSION ON AUDIT,
ATTY. JOSEPHINE A. TILAN,
Regional Cluster Director and
MR. ROBERTO G. PADILLA,
State Auditor IV,**

Respondents.

Promulgated:

October 14, 2014

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DECISION

PERALTA, J.:

Before the Court is an original action for *certiorari* under Rule 65, in relation to Rule 64 of the Rules of Court, and the 2009 Revised Rules of Procedure¹ of the Commission on Audit (COA), seeking to nullify and set

* On official leave.

** On leave.

*** No part.

¹ Rule XII, Section 1 of the COA's Revised Rules states that "any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court."

aside COA's Decision² dated May 26, 2009, which affirmed the Legal and Adjudication Office-Corporate's (*LAO-C*) Decision requiring all persons found liable in the Notice of Disallowance (*ND*) 05-037 dated July 5, 2007 to refund the amount of loyalty award received, as well as its Resolution³ dated November 26, 2009.

The facts of the case are undisputed.

In 2003, the National Power Corporation (*NPC*) underwent reorganization pursuant to Republic Act (*R.A.*) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (*EPIRA Law*), wherein *NPC* was split into two (2): the *NPC*, which became in-charge of the generation of electricity, and the National Transmission Corporation (*Transco*), which was charged with the transmission of electricity to the power customers.⁴ Consequently, *Transco* was created effective June 24, 2001 and acquired all the transmission assets of the *NPC*.⁵ Meanwhile, due to such reorganization, the services of all the employees of the *NPC* were terminated effective February 28, 2003, wherein they received their separation benefits and terminal leave pay.⁶ However, on March 1, 2003, some of the said employees were rehired by *Transco*.⁷

On February 9, 2004, the Officer-in-Charge of the Human Resources Department of *Transco*, Noli E. Pomperada, sent a query to the Civil Service Commission (*CSC*), on the entitlement to loyalty award of *Transco* employees who were previously employed with the *NPC* and who were rehired by *Transco* with no gap in service under *CSC* Memorandum Circular No. 06, series of 2002 (*CSC* Memorandum Circular), otherwise known as the Revised Policies on Grant of Loyalty Award.⁸ Section 4 of the *CSC* Memorandum Circular provides:

Effective January 1, 2002, continuous and satisfactory services in government for purposes of granting loyalty award shall include services in one or more government agencies without any gap.

Services rendered in other government agencies prior to January 1, 2002 shall not be considered for purposes of granting the loyalty award.⁹

² Penned by the Chairman Reynaldo A. Villar, with Commissioner Juanito G. Espino, Jr. and Assistant Commissioner Elizabeth S. Zosa concurring; Annex "A" to Petition, *rollo*, pp. 24-31.

³ Penned by the Chairperson Ma. Gracia M. Pulido Tan, with Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza, concurring; Annex "B" to Petition, *id.* at 32-34.

⁴ *Supra* note 2, at 24.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 24-25.

⁹ *Id.* at 25. (Underscoring omitted)

In response, CSC Assistant Commissioner Nelson L. Acevedo, in a letter¹⁰ dated March 23, 2004, clarified that –

The above-quoted policy specifies that only the entire service in the particular agency where a government personnel is employed as of January 1, 2002 shall be considered part of the 10th year loyalty award. Services rendered in other government agencies before January 1, 2002 shall not be considered for purposes of completing the required 10-year loyalty award.

To illustrate this policy, may we cite an example:

Mr. X was employed at the National Computer Center (NCC) in May 1993 and transferred to the Department of Trade and Industry (DTI) in October 1995. Mr. X shall be entitled to the 10th year in government service Loyalty Award on October 2005. His services at [the] NCC can no longer be considered for purposes of granting the loyalty award.

However, even if X employee again transfers from DTI to another government agency on May 2004, she/he will still be entitled to receive the 10th year loyalty award by July 2005 since his services in DTI from October 1995 shall be considered. The entire service in the agency where a government personnel is employed as of January 1, 2002 shall be considered part of the 10th year loyalty award or 5th year milestone loyalty award.

Based on the sample service record you cited, said Transco employee is entitled to receive the 10th year loyalty award effective April 1, 2003 and Transco, where she/he is presently employed is obliged to pay said personnel. However, services rendered at DENR and Congress can no longer be considered for purposes of granting the loyalty award. Thus, on April 1, 2008, she/he will again be entitled to 5,000 Loyalty Award for completing the 15th year service in government.

On the other hand, if the grantee had already been paid by NPC of the 10-year Loyalty Award last October 3, 1998, Transco will only pay for the 5-year milestone Loyalty Award on October 3, 2003.¹¹

On the basis of the foregoing CSC clarification, Transco Circular No. 2004-37 dated June 24, 2004 was issued, granting loyalty award to qualified Transco employees in the aggregate amount of ₱670,000.00, taking into account the services of said employees in the NPC prior to their re-employment by Transco.¹²

On November 18, 2004, Transco North Luzon Operations & Maintenance (*NLO&M*) received an observation¹³ from Mr. Roberto G. Padilla, State Auditor IV of the COA, pertaining to the legality of the grant of loyalty award, *viz.*:

¹⁰ Annex "D" to Petition, *id.* at 37-38.

¹¹ *Id.* at 38. (Underscoring in the original)

¹² *Supra* note 2, at 25.

¹³ Annex "F" to Petition, *rollo*, pp. 44-47.

The above transaction clearly violated the provisions of the above-mentioned EPIRA law and CSC Memorandum Circular. The attached schedule presents the total amount of loyalty award paid to NL-TRANSCO employees. *Since the services of these retired employees were already terminated effective February 28, 2003 and received their separation benefits, they are considered new in the government service.* Hence, for purposes of computing the rendition of continuous and satisfactory service for the grant of loyalty award, the same shall be reckoned from the date of reemployment which is March 1, 2003.

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The foregoing CSC Primer on Loyalty Award provides that services rendered prior to the reemployment of an employee who was separated from the service with separation benefits with or without gaps are not included for purposes of the grant of Loyalty Award. This is because such separation partakes of retirement. A retired government official or employee is considered to have already severed his relationship with the government. Thus, for purposes of computing the rendition of continuous and satisfactory service for the grant of Loyalty Award, the same shall be reckoned from the date of reemployment.¹⁴

The aforequoted observations were purportedly gathered from the opinion¹⁵ of the CSC CAR Director, dated September 14, 2004, in reply to COA's query on the loyalty award, which reads as follows:

Is a retired/resigned government employee entitled to loyalty award?

No. A retired/resigned government employee shall no longer be entitled to the grant of loyalty award since he has already severed his relationship with the Government (CSC Letter dated February 26, 1993 to Irene F. Bahian)

Could an official or employee who retired/resigned but was reinstated or reemployed later in the service be entitled to the award?

Yes. The computation of length of service shall reckon from the date of reinstatement/reemployment in the particular agency granting the award. (CSC Letter February 4, 1993 to Pablo S. Sayson)

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Are the services rendered prior to the reemployment of an employee who was separated from the service with separation benefits, *with or without gaps*, considered for purposes of the grant?

No. Said separation from the service partakes the nature of retirement. (CSC Letter dated October 14, 1993 to Antonio R. Dizon)¹⁶

¹⁴ *Id.* at 45-47. (Emphasis supplied)

¹⁵ *Id.* at 46.

¹⁶ Emphasis supplied.

In a letter dated November 22, 2004, Transco, through its Assistant Vice-President Fernando S. Abesamis, submitted its reply¹⁷ and justified the grant of the loyalty award on the following grounds:

1. The release of the subject award was made in compliance with Transco Circular No. 2004-37;
2. The CSC letter dated March 23, 2004 allowed the grant of the loyalty award to Transco employees who were previously employed with the NTC; and
3. There was no gap in the service of Transco employees when their services were severed from NPC since they were rehired the next day.

On July 5, 2005, the Legal and Adjudication Sector (*LAS*) of the Commission on Audit, Cordillera Administrative Region (*COA-CAR*), La Trinidad, Benguet, through its Regional Cluster Director, Atty. Josephine A. Tilan, issued ND No. 05-037,¹⁸ disallowing the payment of loyalty award to Transco NLO&M employees, on the ground that they had not met the 10-year continuous government service required under the CSC Memorandum Circular, and therefore, is without legal basis and considered irregular under COA Circular 85-55A,¹⁹ thus:

The separated employees were considered legally terminated when they availed the benefits and separation pay prescribed under said Act. (Sec. 3b (i), Rule 33 of the Implementing Rules and Regulation). Thus, when these separated employees were rehired either by NPC or TRANSCO, they are reconsidered as new. This is the main gist of Section 3c, Rule 33 of the same IRR which expressly provides that:

“xxx The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees as NEW EMPLOYEES who start their service for such position and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.”

This express provision of the IRR negated Item 4.4 of MC No. 06, S. 2002 which provides that the continuous and satisfactory service in government for purpose of granting loyalty award shall include services in one or more government agencies without any gap.²⁰

¹⁷ Annex “G” to Petition, *rollo*, pp. 51-52.

¹⁸ Annex “H” to Petition, *id.* at 53-57.

¹⁹ *Id.* at 54.

²⁰ *Supra* note 18, at 53-54.

Transco's Appeal Memorandum dated January 6, 2006 and its Motion for Reconsideration dated March 20, 2007 were both denied in LAO-C Decision No. 2007-007 dated February 27, 2007 and LAO-C Decision No. 2007-056 dated July 13, 2007, respectively.²¹

Aggrieved, Transco elevated its Appeal to the COA, raising the following arguments: (1) the separation benefits availed of by the NPC employees in accordance with the EPIRA Law did not include the rights of these employees that had already accrued by reason of continuous service to the government at the time of their separation from NPC; (2) the purpose or intent of the EPIRA Law and its implementing rules and regulations was only to limit the claim of separation benefits of employees who may be absorbed or re-hired by any government agency or government-owned or controlled corporation; (3) the reason behind the formulation of CSC Memorandum Circular No. 06, s. 2002 is to recognize the dedication of individuals who preferred to work as government employees, and as a token thereof, loyalty pay is awarded; (4) the grant of loyalty pay was in accordance with the CSC Director's letter dated March 23, 2004, interpreting CSC Memorandum Circular No. 06, s. 2002 *vis-a-vis* the situation of the Transco employees; and (5) Transco Management was guided by the CSC letter dated March 23, 2004 before it granted the loyalty award to deserving Transco employees, hence, said payment is considered in good faith.²² The *fallo* of its Decision²³ dated May 26, 2009 reads:

WHEREFORE, foregoing premises considered and finding the instant petition to be devoid of merit, the same is hereby **DENIED**. Accordingly, this Commission affirms LAO-Corporate Decision Nos. 2007-056 and 2007-007 dated July 13, 2007 and February 27, 2007, respectively, and all persons found liable in ND No. 05-037 dated July 5, 2005 should refund the loyalty award received.²⁴

Despite petitioner's Motion for Reconsideration,²⁵ the COA maintained the aforequoted ruling.

Hence, the instant petition.

Petitioner alleged that the COA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it:

²¹ *Id.*

²² *Supra* note 2, at 27-28.

²³ *Id.* at 24-31.

²⁴ *Id.* at 30-31. (Emphasis in the original)

²⁵ Annex "L" to Petition, *rollo*, pp. 85-96.

- A. MISINTERPRETED CSC MEMORANDUM CIRCULAR 06, SERIES OF 2002 (MC 06), AND ERRONEOUSLY STATED THAT AN EMPLOYEE IS ENTITLED TO LOYALTY AWARD ONLY IF HE HAS CONTINUOUSLY RENDERED THE TEN-YEAR SERVICE IN ONE PARTICULAR GOVERNMENT AGENCY.
- B. MISTAKENLY RULED THAT THE CONTINUITY OF THE SERVICE OF EMPLOYEES SEPARATED FROM SERVICE DUE TO REORGANIZATION, IS RECOGNIZED ONLY WHEN THE SEPARATION PACKAGE PROVIDED UNDER THE EPIRA IS NOT CLAIMED.²⁶

Anent the first issue, it is worthy to note that in its Comment,²⁷ respondents denied having stated in its decision that an employee is entitled to loyalty award only if he has rendered his service in one particular agency.²⁸ Moreover, respondents did not dispute, and in fact, categorically declared that there was no “gap” in the services of the NPC employees who were terminated on February 28, 2003 but rehired by Transco the following day or on March 1, 2003, to wit:

x x x. This Office agrees that NPC employees did not incur any “gap” after being separated from NPC on February 23, 2003 since they were rehired by TRANSCO immediately the following day or on March 01, 2003. x x x²⁹

The main contention of respondents is, therefore, centered on the claim that employees who availed of the separation benefit under the EPIRA Law are considered to have retired. Consequently, upon re-hiring, they are considered new employees; and thus, not entitled to loyalty award.³⁰

In view of the foregoing, it would appear that the issue left for this Court’s resolution is whether or not the NPC employees who were separated from the service because of the reorganization of the electric power industry and who received their separation pay under the EPIRA Law are still entitled to receive loyalty awards under the CSC Memorandum Circular.

We rule in the affirmative.

Under Section 35, Chapter 5, Subtitle A, Title I, Book V of Executive Order (*E.O.*) No. 292, 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 CSC. Accordingly, the CSC Memorandum Circular was

²⁶ *Rollo*, p. 9.

²⁷ Comment to Petition, *id.* at 105-122.

²⁸ *Id.* at 112.

²⁹ Annex “J” to Petition, *id.* at 71.

³⁰ *Id.* at 118.

issued setting forth the terms and conditions for granting loyalty awards, to wit:

Pursuant to CSC Resolution No. 02-0295 dated Feb. 26, 2002, the Commission amends the policies on the grant of loyalty award. These policies were formulated to recognize the continuous and satisfactory service rendered in the government by officials and employees for a period of ten years. The revised policies are as follows:

1. A loyalty award is granted to all officials and employees, in the national and local governments, including those in the state colleges and universities (SUCs) and government-owned and controlled corporations (GOCCs) with original charter, ***who rendered ten (10) years of continuous and satisfactory service in the government.***
2. The particular agency where the employee or official completed the ten (10) years of continuous and satisfactory service shall grant the award.
3. An official or employee who incurred an aggregate of not more than 50 days authorized vacation leave without pay within the 10-year period shall be considered as having rendered continuous service for purposes of granting the loyalty award.

In the same way, an official or employee who incurred an aggregate of not more than twenty five (25) days authorized vacation leave without pay within the 5-year period may qualify for the 5-year milestone loyalty award.

4. ***Effective January 1, 2002, continuous and satisfactory services in government for purposes of granting loyalty award shall include services in one or more government agencies without any gap.***

Services rendered in other government agencies prior to January 1, 2002 shall not be considered for purposes of granting the loyalty award.³¹

The rules are well-defined. What appears to be contended is the definition of “continued service,” which respondents aver was interrupted when the subject employees were terminated from their posts in NPC and received their separation package under the EPIRA Law. On the other hand, petitioner posits that said separation benefits did not include the rights of these employees that had already accrued by reason of continuous service to the government at the time of their separation from NPC,³² such as the assailed grant of loyalty award.

We agree with petitioner.

While Section 63 of the EPIRA Law provides that those who avail themselves of the separation pay shall start their government service anew if

³¹ Emphasis supplied.

³² *Supra* note 2, at 27.

absorbed by any government-owned successor company, the “reset” relates only to any and all separation benefits due to an employee once he is terminated or if he retires from service. As correctly pointed out by petitioner, what is avoided is a situation wherein an employee who was separated from service and availed himself of the separation package under the EPIRA Law, would still use the accrued years of service in NPC for purposes of computing their future separation benefits to be settled by the absorbing government agency or government-owned successor corporation.

It could not have been the intendment of the EPIRA Law to impair the employees’ rights to loyalty award, which have already accrued prior to its promulgation. Stated differently, before the EPIRA Law was enacted, the NPC employees had a fixed right to the loyalty award under the terms and conditions then obtaining. They could not therefore be excluded from its enjoyment just because they have received separation pay for the termination of their services in view of the reorganization, without violating basic precepts of fairness and due process.

Indeed, the payment or non-payment of separation pay was never made a condition for the grant of loyalty awards to these employees. The CSC Memorandum Circular neither distinguishes nor imposes a qualification for the grant of loyalty award except that: (1) effective January 1, 2002, the services are rendered in one or more government agencies without any gap; and (2) services rendered in other government agencies prior to January 1, 2002 shall not be considered. Adding the qualification of non-payment of separation pay would in effect be expanding the law inappropriately without due process.

This was highlighted in *Betoy v. The Board of Directors, National Power Corporation*,³³ wherein we delved into the spirit of the EPIRA Law in granting separation benefits to the employees affected by the reorganization, thus:

Even in the deliberations of Congress during the passage of R.A. No. 9136, it was manifest that it was not the intention of the law to infringe upon the vested rights of NPC personnel to claim benefits under existing laws. To assure the worried and uneasy NPC employees, Congress guaranteed their entitlement to a separation pay to tide them over in the meantime. More importantly, to further allay the fears of the NPC employees, especially those who were nearing retirement age, Congress repeatedly assured them in several public and congressional hearings that on top of their separation benefits, they would still receive their retirement benefits, as long as they would qualify and meet the requirements for its entitlement.

³³ G.R. Nos. 156556-57, October 4, 2011, 658 SCRA 420..

The transcripts of the Public Consultative Meeting on the Power Bill held on February 16, 2001, disclose the following:

x x x x

THE CHAIRMAN (SEN. J. OSMENA). Well, the other labor representation here is Mr. Anguluan.

MR. ANGULUAN: Yes, Your Honor.

THE CHAIRMAN (SEN. J. OSMENA). Okay. Will you present your paper?

MR. ANGULUAN: We have prepared a paper which we have sent to the honorable members of the Bicam. x x x.

THE CHAIRMAN (SEN. J. OSMENA). **I don't think anyone is going to deprive you of your rights under the law. You will enjoy all your rights. You will receive retirement benefits, separation pay, and all of the rights that are provided to you by law.** What we have objected to in the Senate is retirement benefits higher than what everybody else gets, like 150 percent or subject to the approval of the board which means sky is the limit. So, we have objected to that. But what you are entitled to under the law, you will get under the law and nobody will deprive you of that.

A year later, on February 12, 2002, the Joint Congressional Power Commission was held. The transcripts of the hearing bare the following:

x x x x

THE CHAIRMAN (REP. BADELLES). They will still be subject to the same conditions. Meaning, NPC has the discretion whether to reabsorb or hire back those that avail of the separation benefits.

SEN. OSMENA (J). No. But they are not being - - the plants are not being sold, so they are - but what we are giving them is a special concession of retiring early.

No, okay. You consider . . .

THE CHAIRMAN (REP. BADELLES). We are not speaking of retirement here, we are speaking of their separation benefits . . .

SEN. OSMENA (J). Okay, separation benefits.

THE CHAIRMAN (REP. BADELLES). Precisely, if they are considered terminated.

SEN. OSMENA (J). All right. Separation . . .

THE CHAIRMAN (REP. BADELLES). ***A retirement plan is a different program than separation.***

SEN. OSMENA (J). Separation benefits, okay.

THE CHAIRMAN (REP. BADELLES). All right.³⁴

While the foregoing pertains to the grant of retirement pay under R.A. No. 660, Presidential Decree (P.D.) No. 1146, R.A. No. 8291, and other GSIS and social security laws, on top of the separation pay already granted under the EPIRA Law, the intent of the lawmakers in awarding the separation pay can be easily ascertained from the aforequoted deliberations. Clearly, the purpose or intent of the EPIRA Law and its implementing rules and regulations was only to limit the claim for future separation benefits of employees who may be absorbed or re-hired by any government agency or government-owned or controlled corporation. It was not meant to curtail the grant of loyalty awards to employees who decided to work for the government for more than ten (10) years, but were unfortunately terminated in between due to reorganization.

Anent petitioner's argument that the reason behind the formulation of the CSC Memorandum Circular is to recognize the dedication of individuals who preferred to work as government employees, and as a token thereof, loyalty pay is awarded,³⁵ we find the same impressed with merit.

The grant of the loyalty award under the CSC Memorandum Circular and of the separation benefits under the EPIRA Law should be distinctly and separately treated. Such distinction is imperative because they have different legal bases, different sources of funds, and different intents.³⁶

On one hand, the loyalty award is granted pursuant to Section 35, Chapter 5, Subtitle A, Title I, Book V of E.O. No. 292, as well as Section 7(e), Rule 10 of the Omnibus Civil Service Rules and Regulations Implementing Book V of E.O. No. 292, which provides that all members of the government workforce shall receive incentive awards, including the grant of loyalty award based on continuous and satisfactory service. The particular agency where the employee or official completed the required years of service, which in this case is Transco, is responsible for granting the award. With respect to the purpose thereof, as correctly pointed out by petitioner, the CSC Memorandum Circular aims to reward employees who have efficiently served the government for more than a decade, and opted to serve the government instead of taking employment elsewhere. It is a valuable component of an organization's overall employee recognition efforts – to reward long and dedicated service.

³⁴ *Betoy v. The Board of Directors, National Power Corporation, supra*, at 461-462. (Emphasis supplied)

³⁵ *Supra* note 2, at 27.

³⁶ *Betoy v. The Board of Directors, National Power Corporation, supra* note 33, at 463.

On the other hand, the separation pay under the EPIRA Law was a consequence of the restructuring of the electric power industry or privatization of NPC assets and was based on the restructuring plan as approved by the NPC Board.³⁷ Accordingly, the source of funds came from NPC. In effect, the payment of separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment.³⁸

On this score, our ruling in *Betoy*³⁹ is instructive and may be applied analogously to the present case, to wit:

In the case of *Santos v. Servier Philippines, Inc.*, citing *Aquino v. National Labor Relations Commission*, **We declared that the receipt of retirement benefits does not bar the retiree from receiving separation pay.** Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer. A separation pay is given during one's employable years, while retirement benefits are given during one's unemployable years. Hence, they are not mutually exclusive.

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Thus, **it is clear that a separation pay at the time of the reorganization of the NPC and retirement benefits at the appropriate future time are two separate and distinct entitlements.** Stated otherwise, a retirement plan is a different program from a separation package.

There is a whole of a difference between R.A. No. 1616 and C.A. No. 186, together with its amendatory laws. **They have different legal bases, different sources of funds and different intents.**⁴⁰

Based on the foregoing legal precepts, the grant of loyalty award and the separation pay are not inconsistent with each other and they have distinct noble purposes. In fact, the entitlement of a qualified employee to both loyalty award and separation pay is not proscribed by the 1987 Constitution. Section 8 of Article IX (B) of the 1987 Constitution reads:

SEC. 8. No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

³⁷ Section 3(b)(i), Rule 33, Implementing Rules and Regulations (IRR) of the EPIRA Law.

³⁸ *Betoy v. The Board of Directors, National Power Corporation*, *supra* note 33, at 461.

³⁹ *Supra* note 33.

⁴⁰ *Id.* at 460-463. (Emphasis supplied)

*Pensions or gratuities shall not be considered as additional, double, or indirect compensation.*⁴¹

Thus, entitlement to separation pay does not disqualify the separated employee who is likewise qualified to receive loyalty award pursuant to the CSC Memorandum Circular. Verily, when an employee has complied with the statutory requirements for the grant of loyalty award under the CSC Memorandum Circular, his right to receive what is due him by virtue thereof becomes vested and may not thereafter be revoked or impaired.

Otherwise, it would be ridiculous, if not deleterious, to deprive employees who were forced to relinquish their livelihood, of an award they have duly earned throughout their service in the government, simply because they accepted the separation pay due them from the separation or displacement. After all, being terminated from service as a consequence of the restructuring of the electric power industry or privatization of NPC assets was not their choice, but staying in the government despite that, is. Thus, not unless the loyalty award was considered in the computation of the separation pay, the same should not be withdrawn from the employees enumerated in the ND.

At any rate, it would be tenacious to disregard the conscientious efforts undertaken by petitioner before implementing the CSC Memorandum Circular, as told in its petition, thus:

It is irrefutable that before TRANSCO issued its internal guidelines on the grant of the Loyalty Award, it first sought and awaited the CSC's advice on the interpretation of applicable MC 06 provisions and the entitlement of separated NPC employees. It only issued its internal guidelines after the receipt of the CSC's opinion on the matter. TRANSCO prudently observed the necessary measures to implement CSC MC 06. It also ensured that the recipients of the Award are qualified.⁴²

As can be gleaned from the foregoing, petitioner's distribution of the loyalty award was guided by the CSC letter dated March 23, 2004, which categorically allowed the grant of loyalty award to qualified employees who were dismissed by NPC but were immediately rehired by Transco the next day, to wit:

Based on the sample service record you cited, *said Transco employee is entitled to receive the 10th year loyalty award effective April 1, 2003 and Transco, where she/he is presently employed is obliged to pay said personnel.* However, services rendered at DENR and Congress can no longer be considered for purposes of granting the loyalty award.

⁴¹ Emphasis supplied.

⁴² *Rollo*, p. 14.

Thus, on April 1, 2008, she/he will again be entitled to 5,000 Loyalty Award for completing the 15th year service in government.⁴³

It cannot be gainsaid, therefore, that petitioner was of the honest belief that Transco Circular No. 2004-37 was valid and enforceable in accordance with the aforesaid CSC letter. Accordingly, the Court sustains the allowance of the loyalty awards granted to the qualified employees of Transco in accordance with the CSC Memorandum Circular.

At any rate, even assuming that the payment of loyalty award is unwarranted, as to the employees who received the same without participating in the approval thereof, they cannot be said to be either in bad faith or grossly negligent in so doing.⁴⁴ The imprimatur given by the approving officers on such award certainly gave it a color of legality from the perspective of these employees.⁴⁵ Being in good faith, they cannot, following *Blaquera v. Alcala*,⁴⁶ be compelled to refund the benefits already granted to them,⁴⁷ to wit:

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. *The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.*⁴⁸

WHEREFORE, the Court **GRANTS** the petition and **SETS ASIDE** the Decision of the Commission on Audit in Decision No. 2009-037 dated May 26, 2009, as well as its Resolution dated November 26, 2012 in Decision No. 2012-221.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

⁴³ *Id.* at 38. (Emphasis supplied.)

⁴⁴ *Casal v. The Commission on Audit*, 538 Phil. 634, 645 (2006).

⁴⁵ *Id.*

⁴⁶ 356 Phil. 678 (1998).

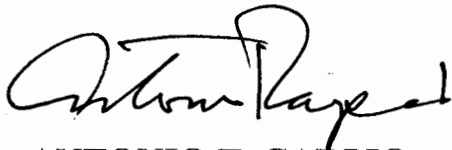
⁴⁷ *Casal v. The Commission on Audit*, *supra* note 43.

⁴⁸ *Blaquera v. Alcala*, *supra* note 45, at 765-766. (Emphasis supplied)

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

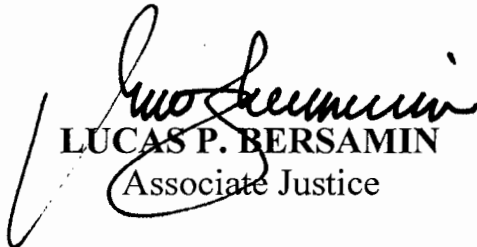


ANTONIO T. CARPIO
Associate Justice

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice



LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Estela M. Berlas-Bernabe
ESTELA M. BERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice