



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

SMALL BUSINESS CORPORATION,
Petitioner,

G.R. No. 230628

Present:

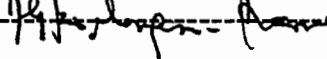
- versus -

COMMISSION ON AUDIT,
Respondent.

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GISMUNDO, *JJ.*

Promulgated:

October 3, 2017

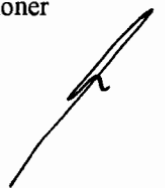
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DECISION

VELASCO, JR., J.:

For resolution of the Court is the Petition for *Certiorari* filed by petitioner Small Business Corporation (SB Corp.) dated April 7, 2017, pursuant to Rule 64, Section 1 in relation to Rule 65, Section 1 of the Rules of Civil Procedure. Petitioner assails the Decision of the Commission on Audit (COA) En Banc dated February 16, 2007,¹ which sustained the validity of Notice of Disallowance (ND) No. 14-001-401000-(13) dated August 27, 2014, disallowing the payment of merit increase to five officers of petitioner, amounting to a total of ₱759,042.41.

¹ *Rollo*, pp. 36-44. By Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito.



Factual Background

Petitioner SB Corp. is a government-owned and controlled corporation (GOCC) created under Republic Act (RA) No. 6977,² as amended by RA No. 8289. It offers a wide range of financial services for small and medium enterprises engaged in manufacturing, processing, agribusiness (except crop level production) and services (except trading). These financial services include guarantee, direct and indirect lending, financial leasing, secondary mortgage, venture capital operations, and the issuance of debt instruments.³ On May 23, 2008, RA No. 9501, the *Magna Carta for Micro, Small and Medium Enterprises (MSMEs)*, was enacted. Section 14 of the said law provides:

f). Notwithstanding the provisions of Republic Act. No. 6758 and Compensation Circular No. 10, Series of 1989 issued by the Department of Budget and Management, the Board shall have the authority to provide for the organizational structure, staffing pattern of SB Corporation and extend to the employees and personnel thereof salaries, allowances, and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institutions.

On June 1, 2009, the Board of Directors (BOD) of SB Corp. passed Board Resolution (BR) No. 1610, Series of 2009,⁴ approving its Revised Organizational Structure, Staffing Pattern, Qualification Standards and Salary Structure, pursuant to Sec. 11-A(f) of RA 6977.

Meanwhile, President Benigno S. Aquino III issued Executive Order (EO) No. 7 on September 8, 2010, which provides a moratorium on increases in salaries, allowances, and other benefits of GOCC officers and employees:

SECTION 9. Moratorium on Increases in Salaries, Allowances, Incentives, and Other Benefits – Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives, and other benefits, except salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010 are hereby imposed until specifically authorized by the President.

Soon after EO No. 7, on June 6, 2011, RA No. 10149⁵ was enacted, creating the Governance Commission for GOCCs (GCG), the central advisory, monitoring, and oversight body with the authority to formulate, implement, and coordinate policies concerning GOCCs.⁶

On October 28, 2011, SB Corp.'s BOD approved BR No. 1863, Series of 2011⁷ setting the guidelines and procedures on the implementation of SB Corp.'s revised salary structure. This sets the guidelines and rules on the implementation of BR No. 1610.⁸ Among those guidelines set forth in BR No. 1863 is the grant of

² Also known as *Magna Carta for Small Enterprises*.

³ Corporate profile. <http://www.sbgfc.org.ph/about-us/corporate-profile>. Last accessed on October 3, 2017.

⁴ *Rollo*, pp. 46-67.

⁵ Also known as *GOCC Governance Act of 2011*.

⁶ *Id.*, Section 5.

⁷ *Rollo*, pp. 74-81.

⁸ *Id.* at 5.

step increment to qualified employees, which carries with it the corresponding adjustment to the qualified employee's basic salary. The pertinent provisions read:

15. Definition. Step increment is a lateral adjustment of an employee's basic salary from one salary step to the next higher salary step.

16. Types of step increment. Step increment may be granted on the basis of merit or length of service.

16.1 *Merit.* Step increment based on merit (otherwise known as "merit increase") shall be given annually to deserving employees based on their individual performance and contribution to unit and corporate performance. The determination of officers and employees entitled to merit increase shall be based on the performance calibration as provided under **Item 11** of this Office Order.

16.2. *Length of Service.* A **1-step increment** shall be given to employees for every three (3) years of continuous satisfactory service in their present positions: *Provided*, that only those who have not received merit increase for the last 3 years shall be entitled to step increment based on length of service.⁹

On April 12, 2013, SB Corp. granted and paid merit increases to five officers occupying Job Level 6, namely: Charles Albert G. Belgica, Rowena G. Betia, Dida M. Delute, Evelyn P. Felias, and Victor M. Hernandez. On June 25, 2014, the President and CEO of SB Corp. wrote the GCG requesting confirmation to proceed with the grant of merit increase. The pertinent portions of the letter read:

This is to inform and request confirmation to proceed with Small Business Corporation's merit increase Program for 2013 based on 2012 performance. We look up to GCG as the proper authority to confirm our request prior to implementation which we intend to effect by July 15, 2014. The Corporation has in-placed guidelines and procedures in the administration of the Corporation's salary structure duly approved by its Board of Directors.

Your granting of our merit increase is without prejudice to all future requests to the Commission of the same nature. The merit increase is consistent with the program of other GFIs namely, Land Bank of the Philippines and Development Bank of the Philippines, which sit in our Board, and GSIS[,] to name a few.¹⁰

On July 8, 2014, the GCG denied the request with finality. The GCG cited Sec. 9 of EO No. 7, and pointed out that the moratorium provided thereunder is still in effect. It also noted that there is no rationale to recommending the approval of SB Corp.'s merit increase, which is apart from the Compensation and Position Classification System (CPCS).¹¹

⁹ Id. at 77.

¹⁰ Id. at 98.

¹¹ Id. at 99-100.

Thus, on August 27, 2014, the State Auditor, again citing Sec. 9 of EO No. 7, issued ND No. 14-001-401000-(13), disallowing the merit increase given to the five officers. The State Auditor reasoned:

We have examined and evaluated the payment of Merit Increase to five [SB Corp.] Officers for the period September 1, 2012 to March 31, 2013 totaling ₱257,560 under DV No. 1029457 dated April 11, 2013 paid [through] Land Bank of the Philippines Debit Advice (LDA) No. 2013-04044 dated April 12, 2013 is disallowed in audit in accordance with Governance Commission for Government Owned and/or Controlled Corporations (GCG) Memorandum dated July 8, 2014 which denied with finality [SB Corp.'s] two requests for confirmation to proceed with its merit increase program x x x.

x x x x

x x x In addition, payments [through] payroll of the said merit increase from April 1, 2013 to August 31, 2014 including adjustment to other benefits due to the increase in rates totaling ₱501,482.41 (gross) are also disallowed. The total disallowance of the said merit increase from September 1, 2012 to August 31, 2014 amounted to ₱759,042.41 (Annex A). Discontinuance of the merit adjustments to concerned personnel on the next payroll period is hereby advised.

The following persons have been determined to be liable for the transactions:

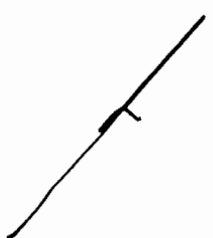
Name	Position/Designation	Nature of Participation in the Transaction
1. Mr. Melvin E. Abanto	Head, SPCO	For approving the payment
2. Ms. Heide M. Vega	Department Manager II, CG	For signing for Mr. Alfredo S. Dimaculangan, Head, CG certifying for the availability of funds and certifying that expenses are necessary and lawful
3. Mr. Alfredo S. Dimaculangan	Head, CG	For authorizing Ms. Heide M. Vega to sign on his behalf
4. [SB Corp.] Officers	Payee	Receipt of payment

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under Section 48 and 51 of Presidential Decree (PD) No. 1445.¹²

The Ruling of the COA Cluster Director

Aggrieved, petitioner appealed ND No. 14-001-401000-(13) to the Office of the Cluster Director, Cluster II – Social Security Services and Housing. In its

¹² Id. at 101-102.



Decision¹³ dated April 29, 2015, however, the Cluster Director denied the appeal, and upheld the validity of the ND. The Cluster Director ruled that SB Corp. is estopped from questioning the applicability of EO No. 7 because they asked for authorization from the GCG for the implementation of the merit increase. This, according to the Cluster Director, is an acknowledgment of GCG's authority over the implementation of the merit increase. Otherwise, petitioner would not have thought of the need to ask GCG for endorsement if there was no need for it. Hence, the Cluster Director dispositively held:

WHEREFORE, foregoing premises considered, the appeal for the Notice of Disallowance to be reversed and set aside and subject merit increase be allowed in audit is hereby denied. This Office affirmed the Notice of Disallowance No. 14-001-401-000-(13) dated August 27, 2014.¹⁴

The Ruling of the COA En Banc

Undaunted, petitioner elevated the matter to the COA En Banc via a Petition for Review. In the presently assailed COA Decision dated February 16, 2017, however, the COA En Banc denied the Petition for Review, and upheld the validity of the ND. The COA En Banc first observed that, despite the provision in the petitioner's charter exempting it from the coverage of the Salary Standardization Law and authorizing the BOD to fix the organizational and compensation structures of its officers and employees, this does not give SB Corp. an absolute financial independence.¹⁵ The COA En Banc then went on to rule that Sec. 9 of EO No. 7 applied to the petitioner's grant of merit increases to the five officers, because EO No. 7 was already in effect when the merit increases were granted.

Moreover, the COA En Banc noted the June 25, 2014 letter of petitioner to the GCG, and held that the letter is tantamount to petitioner's recognition not only of GCG's jurisdiction over it but also an acknowledgment that petitioner has no authority to solely grant the merit increase. Hence, the COA En Banc held:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, Commission on Audit Corporate Government Sector Cluster 2 Decision No. 2015-005 dated April 29, 2015 sustaining Notice of Disallowance No. 14-001-401000-(13) dated August 27, 2014 on the payment of merit increase to five officers of Small Business Corporation for the period of September 1, 2012 to August 31, 2014, in the total amount of ₱759,042.41, is **AFFIRMED**.¹⁶

Hence, the present Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court.

In its Comment dated September 8, 2017, respondent COA, through the Office of the Solicitor General, argues that petitioner is estopped from denying GCG's authority over it, and from questioning the applicability of EO No. 7 to the

¹³ Id. at 103-106.

¹⁴ Id. at 106.

¹⁵ Id. at 40.

¹⁶ Id. at 43.

merit increases subject of the present controversy. Respondent cites the letter dated June 25, 2014 to GCG, which, to the COA, is a clear indication that petitioner sought approval of GCG to implement the merit increases.¹⁷ Moreover, respondent contends that there was no retroactive application of EO No. 7 because the June 1, 2009 staffing pattern did not yet grant or implement the questioned merit increases but merely revised the organizational structure, staffing pattern, qualification standards, and salary structure of petitioner. The moratorium imposed by EO No. 7 was only applied to the merit increases granted on April 12, 2013.¹⁸

The Issues

Petitioner posits the following issues in the present Petition:

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE BOARD OF DIRECTORS OF SB CORPORATION DID NOT HAVE THE AUTHORITY TO GRANT A MERIT INCREASE TO ITS EMPLOYEES

RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER THAT EXECUTIVE ORDER NO. 7 HAS ONLY PROSPECTIVE APPLICATION BECAUSE A RETROACTIVE APPLICATION WOULD IMPAIR VESTED AS WELL AS CONTRACTUAL RIGHTS

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT THE CLEAR INTENT OF EXECUTIVE ORDER NO. 7 IN RELATION TO SEC. 11 OF [RA] NO. 10149 IS THAT IT MUST BE APPLIED PROSPECTIVELY

PETITIONER WAS AUTHORIZED TO IMPLEMENT THE SUBJECT MERIT INCREASES PURSUANT TO ITS APPROVED SALARY STRUCTURE AND THE SAID MERIT INCREASES HAD ALREADY BEEN APPROVED BY THE CIVIL SERVICE COMMISSION AND THE SECRETARY OF TRADE AND INDUSTRY [AS] AN ALTER EGO OF THE PRESIDENT¹⁹

In fine, the petition posits that the grant of merit increases to the five officers is not in contravention of the moratorium established in EO No. 7, and that the COA En Banc committed grave abuse of discretion in disallowing the said merit increases.

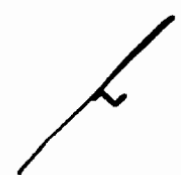
The Court's Ruling

The petition lacks merit. Hence, it must be dismissed.

¹⁷ Id. at 132.

¹⁸ Id. at 132-136.

¹⁹ Id. at 10-11.



Discussion

The remedy of *certiorari* is unavailing to petitioner. Article IX-A, Section 7 of the Constitution provides that decisions, orders or rulings of the COA may be brought to the Supreme Court on *certiorari* by the aggrieved party. Meanwhile, Rule 64, Section 2 of the 1997 Rules of Civil Procedure provides that judgments or final orders of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. In *Reyes v. Commission on Audit*, this Court clarified:

The judgments and final orders of the Commission on Audit are not reviewable by ordinary writ of error or appeal via *certiorari* to this Court. Only when the Commission on Audit acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for *certiorari* under Rule 65. Hence, a petition for review on *certiorari* or appeal by *certiorari* to the Supreme Court under Rule 44 or 45 of the 1964 Revised Rules of Court is not allowed from any order, ruling or decision of the Commission on Audit.²⁰

For a writ of *certiorari* against an unfavorable COA Decision to issue, there must be a showing that the respondent Commission acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Unlike an ordinary appeal or an appeal via review on *certiorari*, the petitioner must show that the Commission committed grave errors of jurisdiction and not mere errors of judgment. Any error of judgment cannot be remedied by *certiorari*.²¹

Unfortunately for petitioner, in its petition now before the Court, it utterly failed to show that the COA acted with grave abuse of discretion in sustaining the Notice of Disallowance dated August 27, 2014.

The resolution of the present controversy rests squarely on the applicability of the moratorium established in Sec. 9 of EO No. 7 to the petitioner's grant of merit increases to five of its officers. Petitioner argues that the grant given to the five officers does not fall under the moratorium. The Court holds that the moratorium is applicable and that petitioner did not have authority to grant the merit increases. Thus, the respondent did not commit grave abuse of discretion in sustaining the validity of the Notice of Disallowance. Petitioner's arguments will be addressed *in seriatim*.

EO No. 7 is applicable to the grant of merit increase to the five officers of petitioner

For the Court to determine whether the moratorium imposed in EO No. 7 is applicable to merit increases as implemented by petitioner, an examination of the nature of such merit increases is in order.

²⁰ G.R. No. 125129, March 29, 1999, 305 SCRA 512, 517.

²¹ *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 73.

There is no dispute that merit increases, as provided for in petitioner's BR No. 1863, are part of the basic salary of the employee or officer receiving them. This is in consonance with Department of Budget and Management (DBM) Corporate Compensation Circular No. 10-99,²² which defines actual salary as the sum total of actual basic salary including the Cost of Living Allowance (COLA) granted to GOCCs. BR No. 1863 itself recognizes that the step increments form part of the basic salary, when it defines them as "the increase in basic salary from step to step within the salary rate ranges authorized for each job level."²³ Merit increases take the form of step increment, which, under Clause 10 of BR No. 1863 itself, is an "[adjustment] in salary."²⁴ There is no shadow of doubt, therefore, that when merit increases are granted to employees, the result is that the amount of their basic salary increases. Even petitioner does not contest this fact.

Next, an examination of the nature and entitlement to merit increases is proper. Merit increases under BR No. 1863 are awarded to those qualified employees who meet the standards determined by petitioner's Performance Evaluation Review Committee (PERC) under its own Performance Calibration System. "It is a system which determines the appropriate distribution of salary increases among officers and employees on the basis of performance and demonstrated competencies."²⁵ The grant of merit increases does not involve any vertical nor horizontal movement in the petitioner's job classification framework.

A horizontal movement,²⁶ as provided in petitioner's job classification framework, is a progression within petitioner's three competency levels, namely: developmental level (generally described as a "rookie" in the position), natural level (generally described as a "veteran"), and expanded level (generally described as an "expert").²⁷ The transfer from one competency level to another necessarily involves a lateral or horizontal transfer of that employee in petitioner's salary structure, and carries with it a corresponding adjustment in basic salary.²⁸ When one is granted a merit increase, however, that employee retains his/her position in the job classification framework, and only the amount of basic salary is adjusted.

Neither does the grant of a merit increase involve a vertical movement in petitioner's salary structure. Promotion, as BR No. 1863 itself defines it, is a vertical progression that carries with it "an advancement of an employee from one position to another with an increase in duties and responsibilities and usually accompanied by an increase in salary."²⁹ Again, this is not similar to the case of an employee given a merit increase, whose salary is increased, but whose duties and responsibilities remain the same.

²² Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed Under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCs) and Financial Institutions (GFIs). Issued on February 15, 1999.

²³ *Rollo*, p. 70.

²⁴ *Id.* at 76.

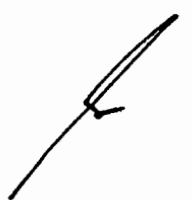
²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 78.

²⁹ *Id.* at 79.



The reasonable conclusion, therefore, is that the grant of a merit increase is not a personnel movement. The grant of a merit increase only carries with it the increase in the recipient employee's basic salary, and does not involve any horizontal or vertical movement in petitioner's job classification framework. The employee's position, insofar as petitioner's hierarchy is involved, does not change; only the amount of salary received by the employee changes. The entitlement to merit increase is nothing but petitioner augmenting the salary of the employee given the merit increase.

Third, an examination of the nature of the moratorium imposed by EO No. 7 is in order. At the risk of being repetitive, Section 9 of EO No. 7 is again quoted hereunder:

Sec. 9. Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits. – Moratorium on **increases in the rates of salaries**, and the grant of new increases in the rates of allowances, incentives and other benefits, **except** salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed **until specifically authorized by the President.** (emphasis added)

The moratorium imposed is on the following: (1) increase in the rate of salary, and (2) grant of new increases in the rates of allowances, incentives, and other benefits. The prohibition is so broadly worded as to include any and all increases in the salary rate of employees and officials of GOCCs. As discussed above, the merit increases granted to the five officers partake of the nature of increase in salary rate.

Sec. 9 provides only one exception to the prohibition: when the increase of salary is pursuant to the implementation of the first and second tranches of the Salary Standardization Law (SSL) 3.³⁰ Petitioner, by express provision of law, is exempt from the application of the Salary Standardization Law.³¹ Thus, it is beyond question that the exception does not apply to it, because the first exception applies only to GOCCs which are within the application of the Salary Standardization law.


The last clause of the provision, "until specifically authorized by the President," is not in the nature of an exception. On the contrary, it provides for the situation where the President, under the same authority by which the moratorium is imposed, deems it proper to lift the said moratorium. The use of the preposition "until" before the phrase "specifically authorized by the President" denotes that the intention of the provision is for the moratorium to continue up to a particular point

³⁰ Executive Order No. 811 implements the first tranche of adjustments provided for in Joint Resolution No. 4, Series of 2009, in relation to Republic Act No. 6758, or the Salary Standardization Law, while Executive Order No. 900 implements the second tranche of adjustments.

³¹ Sec. 11-A, Republic Act No. 6977, as amended by Republic Act No. 9501:

x x x x

f) Notwithstanding the provisions of Republic Act No. 6758 and Compensation Circular No. 10, Series of 1989 issued by the Department of Budget and Management, the Board shall have the authority to provide for the organizational structure and staffing pattern of SB Corporation and to extend to the employees and personnel thereof salaries, allowances and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institution.



in time, i.e., when the President authorizes anew the grant of the prohibited increases. This is not in the nature of an exception, which, by its plain meaning, applies to particular cases where the rule does not apply.

The Court then takes judicial notice of the fact that the President has never issued any further issuance to lift the moratorium imposed under Sec. 9 of EO No. 7.

There is no merit to the petitioner's contention, therefore, that the granted increase bears the imprimatur of the President when the Civil Service Commission (CSC) approved its BR No. 1610. The argument that the CSC's approval of BR No. 1610 takes precedence over the moratorium imposed by EO No. 7 holds no water because the CSC's approval was given only on April 12, 2011, well after the moratorium imposed by EO No. 7 was put in place.

The CSC has no authority to carve out an exception to EO No. 7, when the EO itself doesn't provide for it. It is of no moment, therefore, that the CSC approved petitioner's Performance Evaluation System, as contained in BR No. 1610, after the issuance of the moratorium.³² Petitioner would have this Court rule that the approval of the CSC, knowing that the moratorium was already in place, can overturn the express mandate of the President of the Philippines to prohibit the grant of salary increases. That, the Court cannot do. Neither is the CSC empowered to alter, modify, or contravene the express mandate of EO No. 7.

Petitioner's reliance on *Ting v. Court of Appeals*³³ is severely misplaced, specifically the portion in which this Court emphasized the value of construction given by an administrative agency charged with the interpretation of a statute. Unlike the case in *Ting*, the CSC is not empowered to interpret EO No. 7, precisely because the words of EO itself and the prohibition it imposed is clear. The CSC cannot overturn this policy established by the President himself.

Respondent COA, therefore, did not commit grave abuse of discretion when it said that "petitioner cannot claim that the payment of merit increase has already been previously approved. The prior approval which petitioner refers to is merely its own BOD's approval of [SB Corp.'s] revised salary structure, and not an approval from the Office of the President, or the GCG."³⁴

Given the foregoing, the Court can only conclude that the merit increase granted to the five officers falls squarely within the moratorium imposed by Sec. 9 of EO No. 7.

Respondent Commission did not apply EO No. 7 retroactively

EO No. 7 was issued on September 8, 2010. The merit increases, meanwhile, were granted only on April 12, 2013, and were applied to salaries earned from the

³² *Rollo*, p. 20.

³³ G.R. No. 109216, October 27, 1994, 237 SCRA 797.

³⁴ *Rollo*, p. 41.

period September 1, 2012 to August 31, 2014. During this period, the moratorium established in EO No. 7 was already in effect since September 8, 2010.

A plain reading of the wording in Sec. 9 of EO No. 7 would reveal that the clear directive is to halt the grant of additional salaries and allowances to employees and officers of GOCCs. The rationale behind this moratorium can be gleaned from the first and third whereas clauses of the issuance:

WHEREAS, transparency, accountability, and prudence in government spending are among the core governance policies being adopted by this administration;

x x x x

WHEREAS, there is a need to strengthen supervision over the compensation levels of GOCCs and GFIs, in order to control the grant of excessive salaries, allowances, incentives, and other benefits.

From the very broad wording of the prohibition, taking into context the whereas clauses, it can be deduced that the intention of the moratorium is to curb the excessive amounts given to employees and officers of GOCCs and GFIs. The prohibition is to bar the further increase of salaries, allowances, incentives, and other benefits.

Petitioner argues that, as applied to the grant of merit increases to the five officers, COA gave EO No. 7 retroactive effect. Petitioner argues that its salary structure had been in existence since June 1, 2009, well before the imposition of the moratorium. It asseverates that:

The merit increases do not fall within the x x x enumeration. There is no increase in the rates of salaries after the issuance of E.O. No. 7. Nor was there any grant of new allowances, incentives, and other benefits. Petitioner's salary structure and the rates of increases by step increments had been [in] existence as early as 1 June 2009 or much earlier than E.O. No. 7. The merit increases subject of the disallowances were merely the implementation or the logical progression of petitioner's Salary Structure approved on 1 June 2009. In petitioner's approved Salary Structure, an employee holding a certain Job Level may progress horizontally through competency levels by step increments due to meritorious performance or length of service, with increase in salaries corresponding to each competency level and step increment. The salary increases by competency levels or step increments were already provided for in petitioner's approved Salary Structure.³⁵

What petitioner does not dispute, however, is that it was only on April 12, 2013 that it actually granted merit increases to the five officers involved in the present case. At that time, EO No. 7 was already in effect. The moratorium on the grant of increased salary rates was already in full force and effect.

Petitioner's interpretation of the alleged retroactive application of EO No. 7, therefore, is too restrictive as to give EO No. 7 any effect. Following petitioner's

³⁵ Id. at 13.



argument, it is the date of the passing and approval of a GOCC's salary structure which should be the reckoning period of when the salary rate increase is given. In effect, petitioner's interpretation would mean that the moratorium is only on the approval of salary structures with increased salary rates, and not the actual granting thereof.

There is no question that EO No. 7 does not provide for any retroactive application. However, petitioner's interpretation of which acts are prohibited by the moratorium runs contrary to the plain wording of EO No. 7 when it imposed the moratorium on "increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits." The E.O. did not prohibit merely the grant of increased salary rates in corporate salary structures; it also intended to halt the actual giving of increased salary rates.

As discussed above, the grant of merit increases to the five officers falls squarely within the phrase "[increase] in the rates of salaries." This interpretation is more in keeping with the spirit of the issuance, as enunciated in the whereas clauses. To hold otherwise is to disregard the clear intention of promoting transparency, accountability, and prudence in government spending.

The issue of retroactivity, as posited by the petitioner, is not actually one of retroactive application, but an issue of which particular acts are prohibited. The Court holds that the moratorium is imposed on the actual grant of increased salary rates, allowances, incentives, and other benefits, regardless of the date of approval of the salary structure, irrespective of when the GOCC's/GFI's salary structure was approved. There is no merit, therefore, in petitioner's argument that COA effectively gave EO No. 7 retroactive effect. It is the date of the actual giving of the increased salary rate that is material insofar as determining whether the moratorium imposed by EO No. 7 is applicable or not.


***Petitioner is within the jurisdiction
of the GCG***

Finally, petitioner argues that it is not estopped from questioning GCG's jurisdiction over it, despite writing a letter to GCG on June 25, 2014 to request authority to implement the merit increase. Petitioner wrote:

This is to inform and request confirmation to proceed with Small Business Corporation's merit increase Program for 2013 based on 2012 performance. **We look up to GCG as the proper authority to confirm our request prior to implementation** which we intend to effect by July 15, 2014. The Corporation has in-placed guidelines and procedures in the administration of the Corporation's salary structure duly approved by its Board of Directors.³⁶ (Emphasis added)

In the present Petition, petitioner argues that the letter should not be interpreted as an acceptance of GCG's authority over it. Citing the minutes of the Board Meeting that resulted in the writing of the letter to GCG, petitioner argues

³⁶ Id. at 98.



that the COA gravely abused its discretion in concluding that the letter is an acceptance of GCG's authority over it.

Petitioner's own argument, however, is belied by the words of the very letter in question. In it, petitioner expressly recognized that GCG is "the proper authority to confirm our request prior to implementation." Respondent COA, therefore, is correct in finding that the letter does not indicate that SB Corp. is merely "seeking clarification," but clearly reveals that it asked for authority from the GCG to implement its merit increase program. This letter is an express admission not only of GCG's jurisdiction over petitioner but also an acknowledgment that the latter has no authority to solely grant the merit increase.³⁷

Moreover, petitioner's claim is contradicted by the very minutes of the BOD meeting, to wit:

x x x [A] legal opinion from the Legal Services Group was requested by the HRMDG. LSG, in turn, opines that the adoption of merit increase does not require prior approval by GCG as, for one, there is nothing in R.A. No. 10149 which requires such prior approval.

3.11 Dir. Sarmiento commented that LBP sought GCG's approval for 2012 and 2013 merit increase. Dir. Beltran and Dir. Arjonillo were one in adding that to be safe, SBC should go to GCG. The Chairman then stated that in conformity to the suggestion, Management shall draft a letter.³⁸

The minutes reveal the position of the petitioner's BOD on the matter. But contrary to petitioner's claim, the members of the Board of Directors actually recognized that GCG had authority to approve the merit increase. It was petitioner's Legal Services Group that gave the opinion that no prior approval of GCG is needed. At least three directors named in the minutes, as well as the chairman of the BOD, were one in opining that approval from GCG must be sought.

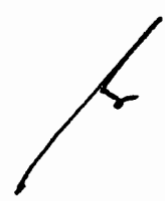
The members of the BOD, being the highest governing body of the corporation, determine the opinion of the corporation on a particular matter, and not simply its legal unit. In this case at bar, the BOD's opinion is to seek approval of the GCG prior to the implementation of the merit increases. In effect, it made its own policy stand and decided to overturn the opinion of the Legal Services Group. Otherwise, the BOD would not have instructed the writing of the letter to GCG to ask for its approval prior to the implementation of the merit increases.

Moreover, petitioner's position runs contrary to the provisions of RA No. 10149. Sec. 5 of RA No. 10149 provides that among the powers and functions of the GCG are to:

(h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain

³⁷ Id. at 41.

³⁸ Id. at 12.



talent, at the same time allowing the GOCC to be financially sound and sustainable;

x x x x

(j) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs. It shall meet at least quarterly to:


- (1) Review Strategy Maps and Performance Scorecards of all GOCCs;
- (2) Review and assess existing performance-related policies including the compensation/remuneration of Board of Directors/ Trustees and Officers and recommend appropriate revisions and actions; and
- (3) Prepare performance reports of the GOCCs for submission to the President.

Petitioner, not being exempt from the application of RA No. 10149, undoubtedly is within the jurisdiction of the GCG. By express provision of the law, its compensation and remuneration system, including the grant of merit increases under BR No. 1610, is within the jurisdiction of the GCG.

Hence, petitioner should have taken heed when the GCG responded to its June 25, 2014 letter and denied with finality the request for approval of the merit increases to the five officers.³⁹ Instead, petitioner, after recognizing GCG's authority, decided to disregard GCG's ruling that the merit increases is covered by the moratorium. Therefore, petitioner only has itself to blame for the disallowance amounting to ₱759,042.41. The Court finds no grave abuse of discretion on the part of respondent COA in disallowing such amount.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **DENIED**. The assailed Decision of the Commission on Audit En Banc, Decision No. 2017-010, dated February 16, 2017, sustaining Notice of Disallowance No. 14-001-401000-(13), is **AFFIRMED**.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

³⁹ Id. at 99.

WE CONCUR:

Maria Lourdes P. A. Sereno

MARIA LOURDES P. A. SERENO
Chief Justice

Antonio T. Carpio

ANTONIO T. CARPIO
Associate Justice

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
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Lucas P. Bersamin

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Associate Justice

Andres B. Reyes, Jr.

ANDRES B. REYES, JR.
Associate Justice

Alexander G. Gesmundo

ALEXANDER G. GESMUNDO
Associate Justice

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CERTIFICATION

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

CERTIFIED XEROX COPY;



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

