

**MEMBROT, Basilio A.**  
**CORPUZ, Percival R.**  
**VINLUAN, Aurelia T.**  
**PAGULAYAN, Imelda M.**  
**TAN, Rolando C.**

Re: Salary and Salary Differential  
(Disallowance)

x - - - - - x

**RESOLUTION NO. 01-0690**

Basilio A. Membrot and Percival R. Corpuz, Grains Operator Assistant II, Aurelia T. Vinluan, Accounts Analyst, Imelda M. Pagulayan, Accounting Clerk II and Rolando C. Tan, Cashier II, all of the National Food Authority (NFA), Cagayan Branch, appeal the disallowance dated January 7, 1992 by Teresita A. Oli, State Auditor III, Commission on Audit (COA), Cagayan, of their salaries attached to the classified plantilla position (inclusive of salary differential) for the services they rendered from July 1, 1989 up to February 27, 1992, and instead effecting payment of the minimum wage for casual employees.

In their appeal, Membrot, *et al.* represented, as follows:

*“This problem cropped up when the State Auditor of NFA Cagayan issued an order to disallow our collected salaries (as regular employees) due to the absence of our regular appointments. The disallowance amounted to an average of P30,000.00 each. It is important to note that we were compensated by the management by virtue of Special Orders issued by Regional Office and confirmed by our Central Office in accordance with the approved Salary Standardization Law (SSL) for NFA per attached Memorandum Circular No. 95 dated September 14, 1990. Upon approval of said law, the five of us then CASUALS but first grade eligibles were made to accomplish pertinent papers for the positions we were incumbent to, in line with the Position Allocations List approved by the Department of Budget and Management. Eager to be given regular*

*appointment after service with the government for an average of 14 years of continuous service, we complied the requirements within the prescribed period. Knowing that we have already submitted the required documents and aware that there are employees purposely assigned to process our appointment papers, we left the issue in the hands of our able liaison Officers. Our employees association on the other hand did all means to provide us updates on the processing of our appointments. We were informed that our appointments have already reached the Civil Service Commission (DENR Branch), but were returned because of the failure of NFA Central office to submit the Qualification Standards for unique positions which eventually were the same positions we were recommended to. The date when our appointments were returned coincided with the change in the administration of NFA from the then former Administrator Pelayo Gabaldon to Administrator Romeo G. David. The change in administration brought about a change in the thrusts of NFA and also a lull in the processing of all pending appointments. As a result, the one-month reglamentary(sic) period which CSC gave to NFA to comply with the lacking requirement lapsed. Consequently, our appointments were attested only on December 1991 and took effect on January 1992. This was COA's basis for the disallowance."*

Records show that from July 1, 1989 up to December 31, 1991, Membrot, et al. were hired as casual employees through special orders issued by the previous NFA Regional Directors Narciso L. Alano, Siegfredo A. Bravo and Provincial Manager II Ernesto D. Espinosa. Said employees were paid on a daily rate based on the salary of a casual employee. Specifically, the pertinent periods covered by the corresponding special orders are, as follows:

July 1 – September 30, 1989	–	Special Order ‘89 Number 11-06
October 1 - December 31, 1989-		Special Order ‘89 Number 11-09
January 1 - March 31, 1990	-	Special Order ‘90 Number 11-01
April 1 - June 30, 1990	-	Special Order ‘90 Number 11-03

July 1 - September 30, 1990	-	Special Order '90 Number 11-06
October 1 - December 31, 1991	-	Special Order '91 Number 11-09
January 1 - March 31, 1991	-	Special Order '90(sic) Number 11-01
April 1 - June 30, 1991	-	Special Order '90(sic) Number 11-04
July 1 - September 30, 1991	-	Special Order '91 Number 11-07

On July 1, 1989, **Republic Act No. 6758 also known as Position and Compensation Classification Act** was enacted. It was implemented in the NFA on September 25, 1990 through Special Order '90, Number 11-09. Accordingly, the salaries of the appellants were adjusted pursuant to the Organizational Structure/ Staffing Pattern approved by the Department of Budget and Management (DBM) effective July 1, 1989 to conform with the salary attached to the regular plantilla position. This is in accordance with Item d (10) wherein it provided that employees holding casual plantilla items are allocated to a new regular position subject to their qualification for appointment thereto. The pertinent portions of which read, as follows:

*“10. **Casuals.** Casual employees allocated to a new regular position shall receive differential based on the regular rate divided by 22. The process of allocation should not be construed as their automatic conversion to a permanent and regular status. All casuals will have to undergo the usual promotions process and criteria.”*

Acting in accordance with the foregoing provision and apparently because the appellants are qualified to the position, Espinosa recommended for the change of Membrot, et al.'s employment status from casual to regular effective August 1, 1991 in a Special Order '91 Number II-08 dated August 19, 1991. The regularization and the increase in salary were made retroactive to July 1, 1989, hence, Membrot, et al. were also entitled to salary differential. In the meantime, Membrot, et. al. started to collect their salaries pursuant to said

special order including salary differential payment. Instead of appointment forms, special orders were continuously issued to extend and/or renew previous special orders issued to Membrot, et al., which were about to expire on September 30, 1991.

The recommendation to regularize the casual employees were not timely acted upon as no appointments were issued to Membrot, et al. Subsequently, the permanent appointments of Membrot and Corpuz to the position of Grains Operator Assistant II, Pagulayan as Accounting Clerk III, and Vinluan as Accounts Analyst, issued on February 28, 1992, January 19, 1992, January 1, 1992, and February 28, 1992, respectively, were submitted to the CSC - Department of Environment and Natural Resources (DENR) Field Office, beyond the fixed period of thirty (30) days. There is no record showing that the appointment of Tan was also subsequently issued.

The reason for the delayed issuance of appointment was explained by the appellants in their appeal. It is represented that their appointments were submitted to the CSC-DENR Field Office but were subsequently returned to the NFA in view of the lacking requirements necessary for the attestation of the appointment, e.g., Qualification Standards of the position of Grains Operator Assistant, a position unique in the NFA. Apparently, it took some time before the requirement was complied with on account of the change of the Administrator of their office. Also, the appointments of Pagulayan and Vinluan, though not to the questioned position, apparently suffered the same fate.

In view of the fact that the appointments were dated from January to February 1992 and after the appellants have already collected the corresponding salary and salary differential provided in the Act, Teresita A. Oli, State Auditor III, Commission on Audit, Cagayan, in a letter dated January 7, 1992, disapproved the salary and salary differential received by Membrot, et al., citing the following reasons:

*“As to the second issue, we take cognizance that the casual employees have been in the service for around ten (10) to fourteen (14) years and have been considered as regular employees as their salaries have been subjected to mandatory deductions like the GSIS, Pag-ibig by the NFA council and their employment was evidenced by the issuance of a Special Order. It bears emphasis that upon the implementation of RA 6753(sic), all positions as classified by the Wage and Position Classification Office are considered regular. To entitle an employee to a salary attached to such position, he must have been issued regular appointment attested by the Civil Service Commission or notice of position allocation and salary adjustment as the case may be.*

*“Evaluating the status of casual employees has considered many transitional changes, hence a moratorium for two years has been granted to come up with necessary documents with the approval of the same. However, the moratorium granted has already prescribed and this office was never furnished of any document that could serve as basis in the audit of casual claims.*

*“With due consideration to the above, this Office has again made a final stand to disallow in audit all differential claims collected by casual employees effective July 1, 1989(sic) and thereafter, and shall only entitle them to receive the minimum wage for casual employee at the rate of P90.80 per day.*

*“In summary, we are recommending the following in view of our stand on the above issues:*

*“2. Refrain from giving casual employees the salaries attached to the classified plantilla position and effect the minimum wage for casual employees at the rate of P90.00 per day.”*

In a letter dated February 14, 1992, Eduardo A. Damian, Provincial Manager, appealed the disallowance by Oli. In said appeal, Damian requested the latter from implementing her recommendation and for an extension of time until June 30, 1992 within which to correct the grounds of the disallowance. The appeal was forwarded to the COA Regional Director. The records do not show that the appeal was acted upon.

In a letter dated March 11, 1996, Henry H. Tristeza and Alejandro R. Paguila, Provincial Manager of Northwestern Cagayan - Apayao and San Gabriel Village, Tuguegarao, NFA, respectively, forwarded to this Commission the appeal of Membrot, *et al.*

The case presents the following issues:

1. Whether Membrot, *et al.* are entitled to receive the salaries attached to the classified plantilla position and salary differential from July 1, 1989 up to the time appellants were issued appointments or whether they are merely entitled to the minimum wage for casual employees.
2. Whether or not this Commission can take cognizance of the appeal despite another appeal filed by the appellants and

pending with the COA.

3.

4.

Anent the first issue, the appellants are entitled to receive the salary and salary differential from July 1, 1989 up to the time they were issued appointments for they rendered and were allowed to render work during said period. This holds true notwithstanding the fact that they were issued special orders instead of the prescribed plantilla appointment form. On the other hand, the government cannot be required to pay their salary and salary differential because there is no evidence that they were employed therein for there is no appointment issued to them. As between the appellants and the government, on one hand, and the NFA officials who hired them without appointment on the other hand, the law mandates that the latter are personally liable for said amounts. This is pursuant to **Section 65, Chapter 10, Book V of the 1987 Revised Administrative Code** which reads, as follows:

*“Sec. 65. **Liability of Appointing Authority.** - No person employed in the Civil Service in violation of the Civil Service Law and rules shall be entitled to receive pay from the government; but the appointing authority responsible for such unlawful appointment shall be personally liable for the pay that would have accrued had the employment been lawful and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable.”* (Underlining ours)

Thus, Regional Directors Alano and Bravo, Provincial Manager Espinosa and Administrator Pelayo Gabaldon are personally liable for the payment of the disallowed salary differentials of Membrot, *et al.* from July 1, 1989 up to February 27, 1992. As shown from the records, the appellants were allowed to work in the NFA without issuing them the prescribed plantilla appointment form but only on the strength of special orders. The practice of hiring casual employees through job orders or special orders has no legal basis (**Memorandum Circular No. 46, s. 1990**). Their regularization in 1990 through special orders is also violative of the rules.

The Commission failed to see any valid reason to excuse the NFA from issuing the appointment. Change of leadership in the NFA from Administrator Gabaldon to Administrator David is of no moment. This is because the law requiring issuance of appointment before an individual may be allowed to render service in the government is absolute and does not vary or change with the change of the head of office. Concomitantly, the responsibility to ensure compliance with said law does not change.

We believe, therefore, that not only was there an administrative oversight but also inexcusable negligence on the part of the concerned officials in permitting the appellants to discharge the functions of their positions without the corresponding appointments.



For this negligence, the appellants should not be made to suffer and should not be required to restate the amount already received by them. This is based on the principle of justice and equity.

In a similar case, the Commission, in **CSC Resolution No. 94-7095 (Blas, Arcadio, et al. dated December 28, 1994)** ruled, as follows:

*“WHEREFORE, the Commission hereby rules that Blas, et al. are entitled to salary differentials for the period from August 6, 1990 to October 24, 1994. However, the appointing authority and other responsible officials of PNR who allowed Blas, et al. to assume the duties and functions of the position of Train Driver A without issuing them appointments are personally liable for the said salary differential.”*

On the second issue, the Commission will not encroach upon the jurisdiction of the COA, a co-equal constitutional office, to disallow the payment of the salary and salary differentials claimed by the appellants. Although the subject of the instant appeal is not the decision of the COA Central Office but only of its Cagayan Office, the Commission deems it proper to rule thereon. This is because the basis of the disallowance was the absence of appointments, a violation of civil service law, hence, the Commission must necessarily take cognizance of the appeal.

**WHEREFORE**, the appeal of Basilio A. Membrot, Percival R. Corpuz, Aurelia T. Vinluan and Imelda M. Pagulayan is hereby GRANTED. Accordingly, Membrot, Corpuz, Vinluan, and Pagulayan are entitled to receive their salary and salary differentials from July 1, 1989 up to the time their pertinent appointments were issued to be advanced by the National Food Authority. However, such salary and salary differentials are the personal liability of former Administrator Pelayo Gabaldon, Regional Directors Narciso L. Alano, Siegfredo A. Bravo and Provincial Manager II Ernesto D. Espinosa for having allowed Membrot, *et al.* to work without the appointments.

As to appellant Rolando Tan, the Commission cannot pass upon his appeal. The records submitted do not show that he was appointed to any position. Hence, there is no sufficient basis for the Commission to rule on the same. Until such records are submitted, the Commission cannot take cognizance of his appeal.

Quezon City, **March 29, 2001**

**(SIGNED)**

**JOSE F. ERESTAIN, JR.**

Commissioner

**(SIGNED)**

**KARINA CONSTANTINO-DAVID**

Chairman

**(SIGNED)**

**J. WALDEMAR V. VALMORES**

Commissioner

Attested by:

**(SIGNED)**

**ARIEL G. RONQUILLO**

Director III

*OLA/MVM/X3/X8/(disk33)/nmn*

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## **OMISSIONS**

In addition, the Commission cannot just stand by and allow any blatant disregard of the civil service rules go unnoticed. Neither can it allow injustice



to said employees who actually rendered service and were required to refund the salaries received by them due to the negligence of its officials.

In sum, the COA has the right to disallow the salary and salary differential collected by the appellants for, obviously, the government should not pay the salaries and salary differential of individuals without the required appointments. But the same should be recovered from the officials who allowed them to work *sans* appointments.