Republic of the Philippines
Supreme Court
Manila

EN BANC

ROBERTO B. REBLORA,
Petitioner,

G.R. No. 195842

Present:

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

ARMED FORCES OF THE PHILIPPINES,
Respondent.

Promulgated:

JUNE 18, 2013

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DECISION

PEREZ, *J*:

This is an appeal via a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated 20 January 2010 and Resolution[3] dated 31 January 2011

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1 Under Rule 45 of the Rules of Court. *Rollo*, pp. 3-22.

2 COA Decision No. 2010-009, id. at 92-96. The Decision was signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

of the Commission on Audit (COA), which denied the petitioner's claim for additional retirement benefit.

The facts are as follows:

Petitioner's Service Background

The petitioner is a retired Captain of the Philippine Navy.[4] He was born on 22 May 1944.[5]

Prior to entering military service, the petitioner rendered civilian government service as a Barrio Development Worker at the Department of the Interior and Local Government (DILG) from 6 January 1969 to 20 July 1974.[6]

On 21 May 1973, the petitioner entered military service as a Probationary Ensign in the Philippine Navy. He was called to active duty effective 26 August 1974.[7]

On 25 January 1996, the Armed Forces of the Philippines (AFP) officially confirmed the incorporation of petitioner's civilian government service at the DILG with his length of active service in the military[8] pursuant to Section 3 of Presidential Decree (PD) No. 1638,[9] as amended by PD No. 1650,[10] which provides:

> *Section 3.* **For purposes of this Decree active service of a military person shall mean active service rendered by him as a commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines and service rendered by him as a civilian official or employee in the Philippine government prior to the date of his separation or**

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3 COA Decision No. 2011-014, id. at 27-31. The Resolution was signed by Chairman Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

4 Id. at. 4.

5 Id. at 33

6 Id.

7 Id.

8 Per Special Orders No. 18, id. at 35.

9 Entitled "*Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and for Other Purposes*"

10 Entitled "*Amending Sections 3 and 5 of Presidential Decree No. 1638 entitled 'Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and for Other Purposes'*"

> **retirement from the Armed Forces of the Philippines**, for which military and/or civilian service he shall have received pay from the Philippine Government and/or such others as may hereafter be prescribed by law as active service; **Provided, That for purposes of retirement, he shall have rendered at least ten (10) years of active service as an officer or enlisted man in the Armed Forces of the Philippines; and Provided further, That no period of such civilian government service longer than his active military service shall be credited for purposes of retirement**. Service rendered as a cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines may be credited for retirement purposes at the option of the officer or enlisted man concerned, subject to such rules and regulations as the Minister of National Defense shall prescribe. (Emphasis supplied)

On 22 May 2003, at the age of 59 and after a total of thirty-four (34) years of active service, the petitioner was compulsorily retired from the military by virtue of General Order No. 142.[11] He was, at that time, already ranked as a Commander in the Philippine Navy.[12]

Claim of Retirement Benefit

After his retirement, petitioner claimed retirement benefits under Section 17 of PD No. 1638, as amended *viz*:

> *Section 17.* When an officer or enlisted man is retired from the Armed Forces of the Philippines under the provisions of this Decree, he shall, at his option, receive a gratuity equivalent to one (1) month of base and longevity pay of the grade next higher than the permanent grade last held for every year of service payable in one (1) lump sum or a **monthly retirement pay equivalent to two and one-half percent (2 1/2%) for each year of active service rendered, but not exceeding eighty-five percent (85%) of the monthly base and longevity pay of the grade next higher than the permanent grade last held**: Provided, That an officer retired under Section 11 or 12 shall be entitled to benefits computed on the basis of the base and longevity pay of the permanent grade last held: Provided, further That such retirement pay shall be subject to adjustment on the prevailing scale of base pay of military personnel in the active service: Provided, furthermore, **That when he retires, he shall be entitled, at his option, to receive in advance**

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11 Issued on 31 January 2003, *rollo* p. 48.

12 Id.

> **and in lump sum his annual retirement pay for the first three (3) years and thereafter receive his annual retirement pay payable in equal monthly installment as they accrue**: Provided, finally, That if he dies within the three-year period following his retirement and is survived by beneficiaries as defined in his Decree, the latter shall only receive the derivative benefits thereunder starting the first month after the aforecited three-year period. Nothing in this Section shall be construed as authorizing adjustment of pay, or payment of any differential in retirement pay to officers and enlisted men who are already retired prior to the approval of this Decree as a result of increases in salary of those in the active duty may have their retirement pension adjusted based on the rank they hold and on the prevailing pay of military personnel in the active service, at the time of the termination of their recall to active duty. (Emphasis supplied)

Petitioner chose to avail of the **monthly retirement pay** with the option to receive in advance and in **lump sum an amount equivalent to three (3) years worth thereof** for the first three years after his retirement.

The AFP granted petitioner's claim of retirement benefits and immediately paid the latter the sum of ₱722,297.16 as advance lump sum.[13]

In computing for petitioner's retirement benefit, however, the AFP did not include petitioner's civilian government service at the DILG.[14] The AFP only considered petitioner's *actual* military service *i.e.*, covering the period between 21 May 1973 up to 22 May 2003 or a period of only thirty (30) years.

The petitioner disagreed with computation of the AFP. He insisted that the computation of his retirement benefit should include the period of his civilian government service at the DILG immediately before he entered military service, i.e. from 6 January 1969 up to 20 May 1973, or for a total of four (4) years and five (5) months. It is argued that the computation of the AFP does not reflect the true length of his military service of thirty-four (34) years and that it is, in fact, a full four (4) years short. Petitioner thus claims that he is entitled to ₱135,991.81 in additional retirement benefit.[15]

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13 Id. at 92.
14 Id.
15 Id.

After an unsuccessful bid to obtain a favorable legal opinion from the AFP Judge Advocate General, the petitioner requested assistance from the COA for the collection of his claimed additional retirement benefit.[16]

Decision of the COA and this Petition

On 20 January 2010, the COA rendered a Decision denying petitioner's claim.

In substance, the COA agreed with the petitioner that his civilian service at the DILG should and ought to be included as part of his active service in the military for purposes of computing his retirement benefits under PD No. 1638. However, since his civilian service should be included as part of his active service in the military, the COA opined that petitioner should also have been considered as compulsorily retired on 22 May 2000 and not on 22 May 2003.

The COA explained that as of 22 May 2000, petitioner has already reached the age of fifty-six (56) with a total of thirty-one (31) years in active service, inclusive of his four years in the DILG, which fulfilled the conditions for compulsory retirement under Section 5(a) of PD No. 1638, as amended.[17] Verily, the COA found that, applying the provisions of PD No. 1638 as amended, petitioner was not actually underpaid but was rather overpaid his retirement benefit in the amount of ₱77,807.16.[18] The COA thus disposed:

> WHEREFORE, premises considered, this Commission is of the view that the applicable law in the case of Captain Reblora is PD No. 1638 as amended by PD No. 1650 and not RA No. 340 as the latter law applies only to those who retired prior to September 10, 1979. Thus, the limitation on the term of service of 56 years of age or upon

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16 Id. at 9-10.

17 Id.

18 Id. at 95. The COA held that petitioner's benefits should be computed based on the pay scale for the year 2000 (per National Budget Circular No. 468) instead of the year 2003. Thus recomputed, petitioner's benefits would be as follows:

Base Pay	₱ 15,400.00
Add: Longevity Pay	7,700.00
	23,100.00
Multiply by (31 yrs x 2.5%)	77.5%
	17,902.50
Multiply by 3 years (in months)	36
Adjusted Lump Sum	**644,490.00**

Since petitioner was able to receive ₱722,297.16 as his advanced lump sum, he actually received an excess of **₱77,807.16** (₱722,297.16 less 644,490.00).

> accumulation of 30 years of satisfactory active service as provided under the said law should be complied with. Accordingly, the payment of his retirement benefit should be in accordance with PD No. 1638.

The petitioner filed a motion for reconsideration, but the COA remained steadfast in its Resolution dated 31 January 2011.

Aggrieved, petitioner questioned the Decision and Resolution of the COA *via* the present Rule 45 petition before this Court.

OUR RULING

We deny the petition.

Petitioner Availed of Wrong Remedy

This Court can very well dismiss the instant petition on account of it being the wrong remedy. Decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, as is the present petition, but thru a special civil action of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. Section 2 of Rule 64, which implements the mandate of Section 7 of Article IX-A of the Constitution,[19] is clear on this:

> Section 2. Mode of Review.—A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

The distinction between an appeal under Rule 45 and a special civil action under Rule 64 in relation to Rule 65 could not be anymore overstated in remedial law—the most profound of which, arguably, is the difference of one to the other with respect to the permissible scope of inquiry in each. Indeed, by restricting the review of judgments or resolutions of the COA only thru a special civil action for *certiorari* before this Court, the

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[19] Section 7 of Article IX-A of the Constitution provides:

> *Section 7.* x x x. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof**. (Emphasis supplied)

Constitution and the Rules of Court precisely limits the permissible scope of inquiry in such cases only to errors of jurisdiction or grave abuse of discretion. Hence, unless tainted with grave abuse of discretion, simple errors of judgment committed by the COA cannot be reviewed—even by this Court.

That is where the present petition patently fails. It alleges neither grave abuse of jurisdiction nor any jurisdictional error on the part of the COA. It, in fact, contented itself with imputations of errors on the part of the COA and the AFP as to how they interpreted or applied PD No. 1638 to the petitioner's case. For all intents and purposes, the present petition is, on that account, an improper invocation of this Court's power of review over the judgments and resolutions of the COA.

Nevertheless, No Grave Abuse of Discretion on the Part of COA; COA Decision and Resolution Correct

Nevertheless, even if this Court should take a liberal appreciation of the present petition as one that is filed under Rule 65, such petition would still fail. We have taken an extra step and scoured the established facts vis-à-vis the allegations of the instant petition in search of any vestiges of grave abuse of discretion on the part of the COA, but we found none. What we did find, on the other hand, is that the assailed COA Decision and Resolution was rendered in accord with law.

The main controversy in this case is the computation of petitioner's retirement benefits under PD No. 1638, as amended. From the facts, we can see that the petitioner, the AFP and the COA each offered contrasting solutions to this query:

a. Petitioner, for his part, advocates for a computation of his retirement benefits that would include his four (4) years of civilian service at the DILG and his thirty (30) years of actual military service.

b. The AFP, on the other hand, advances a computation of retirement benefits that only covers the petitioner's thirty (30) years of actual military service *i.e.*, 21 May 1973 up to 22 May 2003. Petitioner's four (4) years of civilian service at the DILG is excluded.

c. The COA, meanwhile, advances a computation of petitioner's retirement benefits that covers the latter's four (4) years of civilian service at the DILG *plus* his years in actual military service but only up to 22 May 2000. Petitioner should be considered compulsorily retired on 22 May 2000 pursuant to Section 5(a) of PD 1638, as amended.

Of these three, this Court finds that the computation of COA is the one that is supported by PD No. 1638. The other two simply finds no basis in law.

PD No. 1638, as amended, is the law that governs the retirement and separation of military officers and enlisted personnel. With respect to the retirement of military officers and enlisted personnel, the law provides for two kinds: *compulsory retirement* and *optional retirement*. Both kinds of retirements contemplate the satisfaction of a certain age or length of service requirement by, or the fulfillment of some other conditions on the part of, a military officer or personnel. Retirement, however, is deemed *compulsory* if, upon the satisfaction of the conditions prescribed by law, retirement of the concerned officer takes place by operation of law; while retirement is deemed *optional* if, despite the satisfaction of such conditions, retirement would only take place when elected by the officer himself.

Sections 5 and 7 of PD No. 1638, as amended, identifies the instances of *compulsory retirement* in the military service:

> **Section 5** (a). **Upon attaining fifty-six (56) years of age or upon accumulation of thirty (30) years of satisfactory active service, whichever is later, an officer or enlisted man shall be compulsorily retired**; Provided, That such officer or enlisted-man who shall have attained fifty-six (56) years of age with at least twenty (20) years of active service shall be allowed to complete thirty (30) years of service but not beyond his sixtieth (60th) birthday; Provided, however, That such military personnel compulsorily retiring by age shall have at least twenty (20) years of active service: Provided, further, That the compulsory retirement of an officer serving in a statutory position shall be deferred until completion of the tour of duty prescribed by law; and, Provided, finally, That the active service of military personnel may be extended by the President, if in his opinion, such continued military service is for the good of the service.
> (b) Notwithstanding the provisions of Section 5 (a), military personnel in the active service, who otherwise will retire compulsorily under Section 1 (b) of Republic Act Numbered

> Three Hundred Forty, as amended, during the first, second, third, fourth, fifth, and sixth calendar years of the effectivity of this Decree, shall be retired compulsorily under this Decree on the dates they shall complete and additional period of service of one, two, three, four, five, and six years, respectively; Provided, That such additional period of service shall not extend beyond their fifty-sixth (56th) birthday or completion of thirty (30) years of active service, whichever is later. Provided, further, That such military personnel who have attained fifty-six (56) years of age but have not completed thirty (30) years of active service on the effectivity of this Decree shall be allowed to complete thirty (30) years of active service but not beyond their sixtieth (60th) birthday: Provided, finally, That such military personnel should have completed at least fifteen years of active service.
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> x x x
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> **Section 7.** An officer or enlisted man who, having accumulated at least twenty (20) years of active service, incurs total permanent physical disability in line of duty shall be compulsorily retired. (Emphasis supplied)

Section 5(a) of PD No. 1638 explicitly provides that a military officer or enlisted personnel who has reached the **age of fifty-six (56)** or who has rendered **thirty (30) years of active service**, whichever comes later, shall be compulsorily retired. The term "**active service**" as used in Section 5(a) of PD No. 1638 is defined by Section 3 of the same law.

Section 3 of PD No. 1638, as amended, defines "**active service**" of an officer or enlisted personnel as "*service rendered by him as a commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee in the Armed Forces of the Philippines*" **and** "*service rendered by him as a civilian official or employee in the Philippine government prior to the date of his separation or retirement from the Armed Forces of the Philippines…no[t]…longer than his active military service.*"

Applying the foregoing provisions of PD No. 1638 to the circumstances surrounding petitioner's military service, this Court discerns that the COA was correct in holding that petitioner should be considered as compulsorily retired on 22 May 2000 for purposes of computing his retirement benefits under the same law.

In the assailed Decision and Resolution, the COA correctly held that for purposes of computing his retirement benefits under PD No 1638, as

amended, petitioner should have been considered compulsorily retired as of 22 May 2000 per Section 5(a) of the same law.[20] This is so because it was on 22 May 2000 that petitioner reached the age of fifty-six (56) after a total of thirty-one (31) years in active service—fulfilling thereby the conditions for compulsory retirement under the said section.[21] In coming up with such a conclusion, the COA most certainly reckoned the beginning of petitioner's active service in the military from his stint as civilian worker at the DILG. The inclusion of petitioner's civilian government service at the DILG in the computation of his length of active service in the military, on the other hand, is only but proper in light of Section 3 of PD No. 1638, as amended.

We agree.

It thus becomes clear that the petitioner's claim for additional retirement benefits corresponding to his civilian service at the DILG is actually quite misplaced when made as against the COA. While the COA denied petitioner's claim, it did not actually conform *in toto* with the earlier computation made by the AFP. The clear import of the assailed COA Decision and Resolution is that petitioner's civilian service at the DILG should be included in his active military service for the purpose of computing his retirement benefits under PD No. 1638 *only that* **the services he rendered after 22 May 2000, for reasons explained above, should also be excluded from the same computation**.

The COA denied petitioner's claim for additional retirement benefit because when petitioner was considered as compulsory retired as of 22 May 2000 pursuant to PD No. 1638, instead of 22 May 2003, it found that petitioner was not underpaid but was actually overpaid his retirement benefits in the amount of ₱77,807.16.[22] This is what was being referred to by the COA when it disposed that, even if so, the payment of petitioner's retirement benefits "*should be in accordance with PD No. 1638*."[23] We find that the COA made no error of judgment, much less committed any error of jurisdiction or grave abuse of discretion, in disposing so.

A final note. It was not unnoticed by this Court that much of the instant controversy resulted from the inability of the AFP to observe the compulsory retirement scheme under PD No. 1638 by allowing petitioner to render service well beyond 22 May 2000. In hindsight, this case could have been avoided had the AFP just been more circumspect in applying the law as

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20 *Rollo*, p. 95.
21 Id.
22 Id. See note 18 for computation.
23 Id. at 96.

it was clearly written. The qualm of petitioner is certainly understandable. While we cannot sanction this error as we are duty-bound to uphold the application of PD No. 1638 to this case, this Court feels that the AFP should nevertheless be reminded that it needs to be more cautious and circumspect in observing the retirement law amongst its ranks.

WHEREFORE, in light of the foregoing premises, the instant petition is **DENIED**. The Decision dated 20 January 2010 (Decision No. 2010-009) and Resolution dated 31 January 2011 (Decision No. 2011-014) of the Commission on Audit are **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P.A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DECASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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