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AURE...**

G.R. No. 153266. March 18, 2010

Ponente: ABAD, J.

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ABAD, J.:

These consolidated cases question the inclusion of certain allowances and fringe benefits into the standardized salary rates for offices in the national government, state universities and colleges, and local government units as required by the Compensation and Position Classification Act of 1989 and implemented through the challenged National Compensation Circular 59 (NCC 59).

The Facts and the Case

Congress enacted in 1989 Republic Act (R.A.) 6758, called the Compensation and Position Classification Act of 1989 to rationalize the compensation of government employees. Its Section 12 directed the consolidation of allowances and additional compensation already being enjoyed by employees into their standardized salary rates. But it exempted certain additional compensations that the employees may be receiving from such consolidation. Thus:

Section 12. Consolidation of Allowances and Compensation. -- All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Pursuant to the above, the Department of Budget and Management (DBM) issued NCC 59 dated September 30, 1989,[1] covering the offices of the national government, state universities and colleges, and local government units. NCC 59 enumerated the specific allowances and additional compensations which were deemed integrated in the basic salaries and these included the Cost of Living Allowance (COLA) and Inflation Connected Allowance (ICA). The DBM re-issued and published NCC 59 on May 3, 2004.[2]

The DBM also issued Corporate Compensation Circular (CCC) 10 dated October 2, 1989,[3] covering all government-owned or controlled corporations and government financial institutions. The DBM re-issued this circular on February 15, 1999[4] and published it on March 16, 1999. Accordingly, the Commission on Audit (COA) disallowed the payments of honoraria and other allowances which were deemed integrated into the standardized salary rates. Employees of government-owned or controlled corporations questioned the validity of CCC 10 due to its non-publication. In *De Jesus v. Commission on Audit*,[5] this Court declared CCC 10

ineffective because of such non-publication. Until then, it ordered the COA to pass on audit the employees' honoraria which they were receiving prior to the effectivity of R.A. 6758.

Meanwhile, the DBM also issued Budget Circular 2001-03 dated November 12, 2001,[6] clarifying that only the exempt allowances under Section 12 of R.A. 6758 may continue to be granted the employees; all others were deemed integrated in the standardized salary rates. Thus, the payment of allowances and compensation such as COLA, amelioration allowance, and ICA, among others, which were already deemed integrated in the basic salary were unauthorized. The Court's ruling in subsequent cases involving government-owned or controlled corporations followed the De Jesus ruling.

On May 16, 2002 employees of the Office of the Solicitor General filed a petition for certiorari and mandamus in G.R. 153266, questioning the propriety of integrating their COLA into their standardized salary rates. Employees of other offices of the national government followed suit. In addition, petitioners in G.R. 159007 questioned the disallowance of the allowances and fringe benefits that the COA auditing personnel assigned to the Government Service Insurance System (GSIS) used to get. Petitioners in G.R. 173119 questioned the disallowance of the ICA that used to be paid to the officials and employees of the Insurance Commission.

The Court caused the consolidation of the petitions and treated them as a class suit for all government employees, excluding the employees of government-owned or controlled corporations and government financial institutions.[7]

On October 26, 2005 the DBM issued National Budget Circular 2005-502[8] which provided that all Supreme Court rulings on the integration of allowances, including COLA, of government employees under R.A. 6758 applied only to specific government-owned or controlled corporations since the consolidated cases covering the national government employees are still pending with this Court. Consequently, the payment of allowances and other benefits to them, such as COLA and ICA, remained prohibited until otherwise provided by law or ruled by this Court. The circular further said that all agency heads and other responsible officials and employees found to have authorized the grant of COLA and other allowances and benefits already integrated in the basic salary shall be personally held liable for such payment.

The Issues Presented

The common issues presented in these consolidated cases are:

1. Whether or not the COLA should be deemed integrated into the standardized salary rates of the concerned government employees by virtue of Section 12 of R.A. 6758;
2. Whether or not the ICA may still be paid to officials and employees of the Insurance Commission;
3. Whether or not the GSIS may still pay the allowances and fringe benefits to COA auditing personnel assigned to it;
4. Whether or not the non-publication of NCC 59 dated September 30, 1989 in the Official Gazette or newspaper of general circulation nullifies the integration of the COLA into the standardized salary rates; and
5. Whether or not the grant of COLA to military and police personnel to the exclusion of other government employees violates the equal protection clause.

The Court's Ruling

One. Petitioners espouse the common theory that the DBM needs to promulgate rules and regulations before the COLA that they were getting prior to the passage of R.A. 6758 can be deemed integrated in their standardized

salary rates. Respondent DBM counters that R.A. 6758 already specified the allowances and benefits that were not to be integrated in the new salary rates. All other allowances, DBM adds, such as COLA, are deemed integrated into those salary rates.

At the heart of the present controversy is Section 12 of R.A. 6758 which is quoted anew for clarity:

Section 12. Consolidation of Allowances and Compensation. -- All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

As will be noted from the first sentence above, "all allowances" were deemed integrated into the standardized salary rates except the following:

- (1) representation and transportation allowances;
- (2) clothing and laundry allowances;
- (3) subsistence allowances of marine officers and crew on board government vessels;
- (4) subsistence allowances of hospital personnel;
- (5) hazard pay;
- (6) allowances of foreign service personnel stationed abroad; and
- (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

But, while the provision enumerated certain exclusions, it also authorized the DBM to identify such other additional compensation that may be granted over and above the standardized salary rates. In *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*,^[9] the Court has ruled that while Section 12 could be considered self-executing in regard to items (1) to (6), it was not so in regard to item (7). The DBM still needed to amplify item (7) since one cannot simply assume what other allowances were excluded from the standardized salary rates. It was only upon the issuance and effectivity of the corresponding implementing rules and regulations that item (7) could be deemed legally completed.

Delegated rule-making is a practical necessity in modern governance because of the increasing complexity and variety of public functions. Congress has endowed administrative agencies like respondent DBM with the power to make rules and regulations to implement a given legislation and effectuate its policies.^[10] Such power is, however, necessarily limited to what the law provides. Implementing rules and regulations cannot extend the law or expand its coverage, as the power to amend or repeal a statute belongs to the legislature. Administrative agencies implement the broad policies laid down in a law by "filling in" only its details. The regulations must be germane to the objectives and purposes of the law and must conform to the standards prescribed by law.^[11]

In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/additional compensation that are deemed integrated:

- (1)
Cost of Living Allowance (COLA);
- (2)

Inflation connected allowance;

(3)

Living Allowance;

(4)

Emergency Allowance;

(5)

Additional Compensation of Public Health Nurses assigned to public health nursing;

(6)

Additional Compensation of Rural Health Physicians;

(7)

Additional Compensation of Nurses in Malacañang Clinic;

(8)

Nurses Allowance in the Air Transportation Office;

(9)

Assignment Allowance of School Superintendents;

(10)

Post allowance of Postal Service Office employees;

(11)

Honoraria/allowances which are regularly given except the following:

a.

those for teaching overload;

b.

in lieu of overtime pay;

c.

for employees on detail with task forces/special projects;

d.

researchers, experts and specialists who are acknowledged authorities in their field of specialization;

e.

lecturers and resource persons;

f.

Municipal Treasurers deputized by the Bureau of Internal Revenue to collect and remit internal revenue collections; and

g.

Executive positions in State Universities and Colleges filled by designation from among their faculty members.

(12)

Subsistence Allowance of employees except those authorized under EO [Executive Order] 346 and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police;

(13)

Laundry Allowance of employees except those hospital/sanitaria personnel who attend directly to patients and who by the nature of their duties are required to wear uniforms, prison guards and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; and

(14)

Incentive allowance/fee/pay except those authorized under the General Appropriations Act and Section 33 of P.D. 807.

The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case,[12] needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.

In any event, the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*,[13] the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common--they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.[14]

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty.[15] As defined, cost of living refers to "the level of prices relating to a range of everyday items"[16] or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." [17] Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

Two. Petitioning officials and employees of the Insurance Commission question the disallowance of their ICA on the ground that it is a benefit similar to the educational assistance granted by the Court in *National Tobacco Administration*[18] based on the second sentence of Section 12 of R.A. 6758 that reads:

Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

In *National Tobacco Administration*, the Court interpreted this provision as referring to benefits in the nature of financial assistance, or a bonus or other payment made to employees in addition to guaranteed hourly wages, as

contradistinguished from the allowance in the first sentence, which cannot, strictly speaking, be treated as a bonus or additional income. In financial assistance, reimbursement is not necessary, while in the case of allowance, reimbursement is required.[19]

To be entitled to the financial assistance under this provision, the following requisites must concur: (1) the recipients were incumbents when R.A. 6758 took effect on July 1, 1989; (2) they were in fact, receiving the same, at the time; and (3) such additional compensation is distinct and separate from the excepted allowances under CCC 10, as it is not integrated into the standardized salary rates.[20]

In this case, ICA, like COLA, falls under the general rule of integration. The DBM specifically identified it as an allowance or additional compensation integrated into the standardized salary rates. By its very nature, ICA is granted due to inflation and upon determination that the current salary of officials and employees of the Insurance Commission is insufficient to address the problem. The DBM determines whether a need for ICA exists and the fund from which it will be taken. The Insurance Commission cannot, on its own, determine what allowances are necessary and then grant them to its officials and employees without the approval of the DBM.

Moreover, ICA does not qualify under the second sentence of Section 12 of R.A. 6758 since the employees failed to show that they were actually receiving it as of June 30, 1989 or immediately prior to the implementation of R.A. 6758. The Commissioner of the Insurance Commission requested for authority to grant ICA from the DBM for the years 1981[21] and 1984[22] only. There is no evidence that the ICA were paid in subsequent years. In the absence of a subsequent authorization granting or restoring ICA to the officials and employees of the Insurance Commission, there can be no valid legal basis for its continued grant from July 1, 1986.

Three. Petitioners COA auditing personnel assigned to the GSIS question the disallowance of their allowances and fringe benefits based on the allowances given to GSIS personnel, namely:

5.6. Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, x x x shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds..

They alleged that since CCC 10 was declared ineffective, the disallowance should be lifted until the issuance was published on March 16, 1999.

But, although petitioners alleged that the subject benefits were withheld from them on the basis of CCC 10, it is clear that the benefits were actually withheld from them on the basis of Section 18 of R.A. 6758, which reads:

Section 18. Additional Compensation of Commission on Audit Personnel and of Other Agencies. - In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, and government-owned and controlled corporations, and government financial institution, except those compensation paid directly by the COA out of its appropriations and contributions.

Government entities, including government-owned or controlled corporations including financial institutions and local government units are hereby prohibited from assessing or billing other government entities, government-owned or controlled corporations including financial institutions or local government units for services rendered by its officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees.

As aptly pointed out by the COA, Section 18 of R.A. 6758 was complete in itself and was operative without the aid of any supplementary or enabling legislation.[23]. The implementing rules and regulations were necessary only for those provisions, such as item (7) of Section 12, which requires further clarification and interpretation.

Thus, notwithstanding the initial non-publication of CCC 10, the disallowance of petitioners' allowances and fringe benefits as COA auditing personnel assigned to the GSIS was valid upon the effectivity of R.A. 6758.

In *Tejada v. Domingo*,^[24] this Court explained that COA personnel assigned to auditing units of government-owned or controlled corporations or government financial institutions can receive only such salaries, allowances or fringe benefits paid directly by the COA out of its appropriations and contributions. The contributions referred to are the cost of audit services which did not include the extra emoluments or benefits, such as bank equity pay, longevity pay, amelioration allowance, and meal allowance, which petitioners claim. The COA is further barred from assessing or billing government-owned or controlled corporations and government financial institutions for services rendered by its personnel as part of their regular audit functions for purposes of paying additional compensation to such personnel.

In upholding the disallowance, the Court ruled in *Villareña v. Commission on Audit*^[25] that valid reasons exist to treat COA officials differently from other national government officials. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. To be able to properly perform their constitutional mandate, COA officials need to be insulated from unwarranted influences, so that they can act with independence and integrity.

Rightly so, the disallowance in this case is valid.

Four. Petitioners argue that since CCC 10 dated October 2, 1989 covering all government-owned or controlled corporations and government financial institutions was ineffective until its re-issuance and publication on March 16, 1999, its counterpart, NCC 59 dated September 30, 1989 covering the offices of the national government, state universities and colleges, and local government units should also be regarded as ineffective until its re-issuance and publication on May 3, 2004. Thus, the COLA should not be deemed integrated into the standardized salary rates from 1989 to 2004. Respondents counter that the fact that NCC 59 was not published should not be considered as an obstacle to the integration of COLA into the standardized salary rates. Accordingly, Budget Circular 2001-03, insofar as it reiterates NCC 59, should not be treated as ineffective since it merely reaffirms the fact of consolidation of COLA into the employees' salary as mandated by Section 12 of R.A. 6758.

It is a settled rule that publication is required as a condition precedent to the effectivity of a law to inform the public of its contents before their rights and interests are affected by the same.^[26] Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.^[27]

Nonetheless, as previously discussed, the integration of COLA into the standardized salary rates is not dependent on the publication of CCC 10 and NCC 59. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration--"all allowances."

More importantly, the integration was not by mere legal fiction since it was factually integrated into the employees' salaries. Records show that the government employees were informed by their respective offices of their new position titles and their corresponding salary grades when they were furnished with the Notices of Position Allocation and Salary Adjustment (NPASA). The NPASA provided the breakdown of the employee's gross monthly salary as of June 30, 1989 and the composition of his standardized pay under R.A. 6758.^[28] Notably, the COLA was considered part of the employee's monthly income.

In truth, petitioners never really suffered any diminution in pay as a consequence of the consolidation of COLA into their standardized salary rates. There is thus nothing in these cases which can be the subject of a back pay since the amount corresponding to COLA was never withheld from petitioners in the first place.^[29]

Consequently, the non-publication of CCC 10 and NCC 59 in the Official Gazette or newspaper of general circulation does not nullify the integration of COLA into the standardized salary rates upon the effectivity of R.A. 6758. As the Court has said in *Philippine International Trading Corporation v. Commission on Audit*,^[30] the validity of R.A. 6758 should not be made to depend on the validity of its implementing rules.

Five.. Petitioners contend that the continued grant of COLA to military and police personnel under CCC 10 and NCC 59 to the exclusion of other government employees violates the equal protection clause of the Constitution.

But as respondents pointed out, while it may appear that petitioners are questioning the constitutionality of these issuances, they are in fact attacking the very constitutionality of Section 11 of R.A. 6758. It is actually this provision which allows the uniformed personnel to continue receiving their COLA over and above their basic pay, thus:

Section 11. Military and Police Personnel. - The base pay of uniformed personnel of the Armed Forces of the Philippines and the Integrated National Police shall be as prescribed in the salary schedule for these personnel in R.A. 6638 and R.A. 6648. The longevity pay of these personnel shall be as prescribed under R.A. 6638, and R.A. 1134 as amended by R.A. 3725 and R.A. 6648: Provided, however, That the longevity pay of uniformed personnel of the Integrated National Police shall include those services rendered as uniformed members of the police, jail and fire departments of the local government units prior to the police integration.

All existing types of allowances authorized for uniformed personnel of the Armed Forces of the Philippines and Integrated National Police such as cost of living allowance, longevity pay, quarters allowance, subsistence allowance, clothing allowance, hazard pay and other allowances shall continue to be authorized.

Nothing is more settled than that the constitutionality of a statute cannot be attacked collaterally because constitutionality issues must be pleaded directly and not collaterally.^[31]

In any event, the Court is not persuaded that the continued grant of COLA to the uniformed personnel to the exclusion of other national government officials run afoul the equal protection clause of the Constitution. The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.^[32]

To be valid and reasonable, the classification must satisfy the following requirements: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.^[33]

It is clear from the first paragraph of Section 11 that Congress intended the uniformed personnel to be continually governed by their respective compensation laws. Thus, the military is governed by R.A. 6638,^[34] as amended by R.A. 9166^[35] while the police is governed by R.A. 6648,^[36] as amended by R.A. 6975.^[37]

Certainly, there are valid reasons to treat the uniformed personnel differently from other national government officials. Being in charged of the actual defense of the State and the maintenance of internal peace and order, they are expected to be stationed virtually anywhere in the country. They are likely to be assigned to a variety of low, moderate, and high-cost areas. Since their basic pay does not vary based on location, the continued grant of COLA is intended to help them offset the effects of living in higher cost areas.^[38]

WHEREFORE, the Court GRANTS the petition in G.R. No. 172713 and DENIES the petitions in G.R. 153266, 159007, 159029, 170084, 173119, 176477, 177990 and A.M. 06-4-02-SB.

SO ORDERED..

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Nachura and Leonardo-De Castro, JJ., no part.

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- [1] Rollo (G.R. 153266, Vol. I), pp. 47-48.
- [2] Rollo (G.R. 153266, Vol. IV), p. 3632.
- [3] Rollo (G.R. 170084, Vol. I), pp. 103-113.
- [4] Rollo (G.R. 153266, Vol. I), pp. 124-134.
- [5] 355 Phil. 584 (1998).
- [6] Rollo (G.R. 153266, Vol. I), pp. 33-34.
- [7] Rollo (G.R. 153266, Vol. XI), pp. 11421-11423.
- [8] Rollo (G.R. 153266, Vol. V), p. 4652.
- [9] G.R. No. 160396, September 6, 2005, 469 SCRA 397, 407.
- [10] Department of Agrarian Reform v. Sutton, G.R. No. 162070, October 19, 2005, 473 SCRA 392, 398.
- [11] Public Schools District Supervisors Association v. De Jesus, G.R. No. 157286, June 16, 2006, 491 SCRA 55, 71.
- [12] Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit, *supra* note 9.
- [13] 370 Phil. 793, 805 (1999).
- [14] Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit, G.R. 169815, August 13, 2008, 562 SCRA 134, 141.
- [15] *Id.*
- [16] The New Oxford American Dictionary, Oxford University Press, 2005 Edition.
- [17] Webster's Third New International Dictionary, Merriam-Webster Inc., 1993 Edition.
- [18] National Tobacco Administration v. Commission on Audit, *supra* note 13.
- [19] Philippine International Trading Corporation v. Commission on Audit, 461 Phil. 737, 747-748 (2003), citing National Tobacco Administration v. Commission on Audit, *supra* note 13.
- [20] National Tobacco Administration v. Commission on Audit, *supra* note 13, at 808-809.
- [21] Rollo (G.R. 173119), p. 22.
- [22] Rollo (G.R. 173119), p. 23.
- [23] Rollo, (G.R. 159007, Vol. I), p. 365.
- [24] G.R. No. 91860, January 13, 1992, 205 SCRA 138, 150.
- [25] 455 Phil. 908, 916-917 (2003).

- [26] Philippine International Trading Corporation v. Commission on Audit, 368 Phil. 478, 491 (1999).
- [27] Tañada v. Tuvera, 230 Phil. 528, 535 (1986).
- [28] Napocor Employees Consolidated Union v. National Power Corporation, G.R. No. 157492, March 10, 2006, 484 SCRA 396, 409-410.
- [29] Id. at 414-415.
- [30] Supra note 19, at 750.
- [31] Philippine National Bank v. Palma, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 327.
- [32] Tiu v. Court of Appeals, 361 Phil. 229, 241 (1999).
- [33] De Guzman, Jr. v. Commission on Elections, 391 Phil. 70, 79 (2000).
- [34] An Act to Establish New Rates of Base Pay of Military and Civilian Personnel of the Department of National Defense and Armed Forces of the Philippines, Appropriating Funds Therefore, Approved on November 26, 1987.
- [35] An Act Promoting the Welfare of the Armed Forces of the Philippines by Increasing the Rate of Base Pay and Other Benefits of its Officers and Enlisted Personnel and for Other Purposes, Approved on June 7, 2002.
- [36] An Act to Rationalize the Compensation Structure of Members and Civilian Employees of the Integrated National Police in the Active Service, Appropriating Funds Therefor, Approved on December 1, 1987.
- [37] An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes, Approved on December 13, 1990.
- [38] <http://www.military.com/benefits/military-pay/cost-of-living-allowance>. Last checked: March 15, 2010.

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