



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178156

June 5, 1973

The Honorable Earl L. Butz
The Secretary of Agriculture

Dear Mr. Secretary:

Reference is made to letter dated March 2, 1973, from Mr. J. W. Dainema, Acting Chief, Forest Service, requesting our decision as to whether the Forest Service has the authority to effect retroactive temporary promotion for an employee, Mr. William D. Green, for the period July 26, 1971, through August 19, 1972.

The circumstances surrounding this request are set forth in the above-cited letter as follows:

On July 2, 1971, a position of Chief, Employee Relations Branch (Supervisory Labor Management Relations Specialist GS-230-13), was established in the Division of Personnel Management, Pacific Northwest Region, Forest Service, U. S. Department of Agriculture.

On July 26, 1971 that office requested the Washington Office, Forest Service, Washington, D. C., for a certificate of candidates to fill this position. That request also asked that Mr. William D. Green be included on the requested certificate. Mr. Green met the criteria for filling the position.

Mr. Green was at this time assigned as a Personnel Management Specialist, GS-201-12, Employment and Employee Relations Branch, Division of Personnel Management, Pacific Northwest Region.

Pending receipt of the certificate of candidates to fill the GS-13 position, Mr. Green was assigned to that position on a temporary acting basis.

Concurrent with this activity the Regional Personnel Officer was reassigned (July 11, 1971) and his successor did not report for duty until after November 1, 1971. In addition, the President's freeze on hiring and promotions was effected on August 5, 1971, and the Department of Agriculture and the

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Forest Service froze all promotions shortly thereafter. As a result of these events no action was taken to formally fill the GS-13 position, nor was Mr. Green's detail to that position formally recognized through a detail documented by a personnel action or a temporary promotion.

On March 16, 1972, the Region again requested a certificate of candidates in order to fill the Employee Relations Branch Chief position previously established on July 2, 1971. The Washington Office replied on March 22, 1972, that the position should be filled by lateral reassignment and this was done, effective August 20, 1972. Mr. Green was not selected to fill the position but continued to perform the duties of Employee Relations Branch Chief from July 1971 through August 1972.

It is further stated in the letter that as a result of his non-selection for the grade GS-13 position Mr. Green filed a formal grievance. One of his allegations was that he was unfairly treated by being detailed to a higher grade position without appropriate compensation or recognition. The Washington Office of the Forest Service concluded that "Mr. Green did function as Chief, Employee Relations Branch, for a period of time without being officially detailed or compensated." It was also found that "the Region was in violation of the spirit if not the intent of the Federal Personnel Manual, Chapter 300, Section 6-3."

Consequently, it is reported that the Grievance Examiner concluded that there was a serious breach by the Forest Service of the Civil Service Commission and the Department of Agriculture's policies and regulations concerning details, which resulted in unfair treatment to Mr. Green. Based on the above facts, the Examiner found that the Forest Service "was obligated to give Mr. Green a temporary promotion and/or have the position filled, through appropriate means, as soon as circumstances permitted." The Examiner accordingly recommended that Mr. Green's records be documented, so as to be given recognition for the entire period that he was detailed to the higher grade position. While recognizing that the regulations do not make any provisions for a retroactive temporary promotion and that such promotions may not be made, the Examiner further recommended that the Forest Service present the circumstances of Mr. Green's grievance to the Civil Service Commission and/or the Comptroller General for a ruling as to whether or not Mr. Green may

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receive a retroactive temporary promotion for the period of time he performed higher grade duties.

It is urged in the letter that the finding that Mr. Green was, in fact, acting as an incumbent of the new grade GS-13 position supports a conclusion that the failure to process a temporary promotion was an administrative error. Also, it is contended that the provisions of 5 CFR 555.201(b), providing for the payment of backpay when the employee is found to have performed as a justified or warranted personnel action, and the rationale applied in our decision 46 Comp. Gen. 258 (1956), lead to the conclusion that a retroactive temporary promotion is in order.

As a general rule a personnel action may not be affected retroactively so as to increase the right of an employee to compensation. See 40 Comp. Gen. 207 (1960). However, exceptions to this rule have been made where through administrative or clerical error a personnel action was not effected as originally intended, where an administrative error has deprived the employee of a right granted by statute or regulation, or where nonmandatory administrative regulations or policies have not been carried out. See B-172077, April 7, 1971; B-163125, October 28, 1966, copies enclosed.

It is clear from the record before us that the circumstances surrounding Mr. Green's working assignment from the period July 26, 1971, through August 19, 1972, do not fall within any of the above exceptions so as to justify a temporary promotion retroactively. Even though he may have been eligible for promotion to grade GS-13 during this period, Mr. Green had no vested right to such a promotion at any time, by statute, regulation, or otherwise. In this regard, while we recognize that the actions of the Forest Service in the present case may not have been within the intent of Subchapter 4-4, Chapter 335 of the Federal Personnel Manual (i.e., that except when the service is for a brief period, a temporary promotion should be effected where the temporary service of an employee in higher-grade position is required), there are no mandatory provisions contained therein directing that an agency promote the employee under such circumstances.

Our decision in 46 Comp. Gen. 258, supra, is clearly distinguishable from the present case. In that case when an employee's position was reclassified from grade GS-9 to grade GS-11, the agency delayed in promoting the employee to grade GS-11 for approximately 9 months after the Civil Service Commission waived the position's qualification

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requirements. We held that since the applicable regulation directed that personnel action be taken within specified time limits when a classification action had been effected, and the agency failed to take such action within the time specified, corrective action was in order. Thus, the decision clearly fell within the above-cited exception that a nondiscretionary administrative regulation had not been carried out.

In addition to the above, it is stated in the letter of March 2, 1973, that the final decision as to whether Mr. Green would be promoted to grade GS-13 rested within the discretionary authority of the Washington Office of the Forest Service. The letter indicates in this connection that it is doubtful that the Washington Office would have approved his selection, in place, to grade GS-13, in view of the management philosophy that interunit experience is important for the betterment of the organization and the development of employees, and that this view seems to be substantiated by the fact that a grade GS-13 employee from another Forest Service unit was selected for the new unit. Since it appears that Mr. Green would not have been temporarily promoted in any event, it is difficult to find a basis on which to justify a retroactive temporary promotion for the period involved, other than the fact that he had performed higher grade duties for which he received no additional compensation. With respect to this latter fact, you are advised that Federal employees are entitled only to the salaries of the positions to which they are appointed regardless of the duties they actually perform. See Dianigh v. United States, 163 C. Cls. 702 (1968); Calayan v. United States, 100 C. Cls. 41 (1949); B-175372, April 13, 1972, copy enclosed.

Accordingly, we find no basis on which the Forest Service may effect a retroactive temporary promotion for Mr. Green for the period involved.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States