



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

092164

B-179207

November 21, 1973

40213

Miss Sara L. Deese
315 Burton Street
Marianna, Florida 32446

Dear Miss Deese:

We refer further to your letter of June 19, 1973, wherein you ask for a review of the disallowance of your claim for additional compensation as an employee of the Department of Commerce as set forth in the Settlement Certificate issued by our Transportation and Claims Division on September 25, 1972.

The pertinent facts in your case as stated in the claim settlement read as follows:

"The record shows that you were employed as an Industry Economist with the Department of Commerce until your retirement on June 26, 1970. You were a GS-14 during most of the period of your claim, but you are claiming compensation at the GS-15 level for the periods February 1965 to February 1966 and December 1966 to June 26, 1970. In October 1967, a personnel management audit was made of your position and the duties associated with it were determined to be properly allocated at GS-14. In November 1969, at your request, your position was again audited and you were found to be performing at the GS-15 level. Since there was some indication that a GS-15 economist was expected to be assigned to your office, a temporary promotion to GS-15 was recommended for you. A temporary promotion was effected on January 11, 1970, not to exceed April 10, 1970, which was later extended not to exceed June 27, 1970, which was the day after your effective date of retirement."

We have reviewed the information in your claim of June 21, 1972, as supplemented on September 28, 1972, together with your letter of June 19, 1973, as supplemented June 20, 1973. In summary you assert that management changed your work assignment so that you in fact performed duties allocable to the GS-15 level during the period of your claim. You state that it was administrative error on the part of management not to have

BEST DOCUMENT AVAILABLE

[Review of Claim for Additional Compensation]

716246

B-179207

officially assigned you to such duties prior to January 11, 1970, the effective date of your temporary promotion to GS-15. You state that the determination of the personnel management audit of October 1967--which concluded your position was graded properly at GS-14--was in error. You urge that the audit of your position in November 1969 which led to your temporary promotion to GS-15 shows the incorrectness of the grade determination reached in 1967. Since the action to promote on January 11, 1970, had prospective effect only you feel your claim for backpay is valid.

Federal employees are entitled only to the salaries of the positions to which they are appointed regardless of the duties actually performed. Thus where employees of an agency believed themselves entitled to promotion to a higher grade and were ultimately successful in so persuading the Civil Service Commission, their entitlement to the pay of the higher grade did not commence until they were actually promoted to that grade in accordance with the determination of the Commission, there being no authority to make such promotions retroactively effective. Dianish et al. v. United States, 183 C. Cls. 702 (1968).

Similarly we have held consistently that an employee of the Government is entitled only to the compensation of the position to which he has been duly appointed. This is so even though the employee may be officially or unofficially assigned to perform duties of a higher grade position. We are unaware of any provision of law which authorizes the retroactive promotion of an employee based upon the failure of his employing agency to promote him to a position to which he may be detailed contrary to regulations. Nor has the authority providing for details within the executive or military departments--5 U.S.C. 3341--been viewed as authorizing retroactive pay for employees who have been detailed contrary to this provision or the regulations promulgated thereunder. B-165730, January 17, 1969, and B-130200, January 18, 1957, copies enclosed. Additionally we point out that the establishment of positions, the grading thereof, and appointment of individuals thereto, rests with the administrative agency and the Civil Service Commission. See Tierney v. United States, 168 C. Cls. 77 (1964); Nordstrom v. United States, 177 C. Cls. 818 (1966).

With respect to administrative error we have construed it to consist of the failure of an agency to carry out written administrative policy of a nondiscretionary nature or to comply with administrative regulations

B-179207

having mandatory effect. We have held that in the absence of such error, when an employee is promoted, there is no authority to make such promotion retroactively effective so as to increase the right of an employee to compensation. 31 Comp. Gen. 15 (1951); 34 id. 380 (1955); 39 id. 550 (1960); 40 id. 207 (1960); 52 id. _____, B-173976, April 4, 1973. On the record it cannot be said that an administrative error as defined above occurred in establishing the date of your promotion.

Accordingly, we can only sustain the disallowance of your claim.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States

cc: Department of Commerce
Bureau of Domestic Commerce
Washington, D.C. 20230

BEST DOCUMENT AVAILABLE