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

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B-178794

AUG 6 1973

Mr. Wesley W. Browder
RR #3 LR 28006 Edenville Road
Chambersburg, Pennsylvania 17201

Dear Mr. Browder:

We refer further to your letter of April 29, 1973, wherein you request review of the disallowance of your claim for additional compensation representing the difference in pay between steps 7 and 10 of GS-13 incident to your change to a lower grade after termination of a temporary promotion as an employee of the Department of the Army. Your claim was disallowed for the reasons stated in Settlement Certificate of November 13, 1972, from our Transportation and Claims Division.

The record before us shows that on March 29, 1970, you were given a noncompetitive temporary promotion not to exceed July 18, 1970, from GS-13, step 7, $20,114 a year to GS-14, step 4, $21,608 a year. On June 7, 1970, after 70 days, your temporary promotion was terminated and you were returned to your former position and grade in accordance with the terms of the temporary promotion.

You feel that the highest previous rate rule should have been applied when you were demoted and accordingly you contend your pay should have been set at step rate 10 of GS-13 ($21,791) after demotion.

The regulations pertaining to the application of the so-called "highest previous rate," 5 CFR 531.203(c), provide in effect, that when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay the employee at any rate of his grade which does not exceed his highest previous rate.

The administrative report on your claim indicates that the basis for setting your salary at the time you were returned to grade GS-13 was paragraph 2-5d of Army Civilian Personnel Regulation P3 which is as follows:

> d. When an employee is reduced to a lower grade following temporary limited promotion as authorized in CPR 331.4-2a, his salary will be fixed at that rate to which he would have progressed by means of within grade increases had he not been assigned to the higher grade.

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You urge that the "temporary limited promotion" referred to above no longer exists and that a temporary limited promotion must be defined as being one of 90 days or less. Although it appears that CPR N1.4-2a was no longer in effect at the time of your temporary promotion, we note that effective from April 23, 1969, the applicable agency regulations--CPR 335.1--provided under the heading "Temporary or Limited Promotion" that when a temporary promotion is effected it will be for a specified period of not more than 1 year. This accords with the civil service regulations found in 335.102(f). Since the Department had authority to make temporary appointments at the time in question the fact that the appropriate citation was not inserted in CPR P3.2-6d would not affect the applicability of that regulation to temporary appointments made while that provision was in force.

Further, the Department of the Army has advised us that any promotion with a specific time limitation constitutes a temporary limited promotion and that, with respect to setting salary, there would be no difference between a temporary promotion and a temporary limited promotion where the factual situations are similar. This conclusion is supported by the wording of CPR 335.1.

Additionally you feel that the decision in 35 Comp. Gen. 370 (1955) supports your claim. In that decision, which was cited in the Settlement Certificate, it was held that a salary rate applicable during an employee's temporary promotion could be used in establishing his salary upon demotion under the highest previous rate rule provided the higher salary was received for a regular tour of duty under an appointment not limited to 90 days or less. That decision does not, however, require an agency to apply the highest previous rate rule in any specific case nor does it require the benefits of the highest previous rate rule to be applied to individuals demoted after temporary promotions not limited to 90 days or less.

As pointed out in the settlement of November 13 an agency's authority to fix higher rates of pay under the highest previous rate rule is permissive and in cases such as yours the agency exercised its discretion through issuance of the agency regulation quoted above. Since your salary rate upon your demotion was set in accordance with the applicable agency regulation the action disallowing your claim is sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States