

DECISION



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

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FILE: B-193834

DATE: June 13, 1979

MATTER OF: Clem H. Gifford--Claim for retroactive promotion and backpay

DIGEST: 1. Grade NM-09 civilian employee of the Department of the Army in the Panama Canal Zone, who between November 1976 and November 1977 was assigned additional duties which were not contained in his position description and which involved the supervision of another grade NM-09 employee, is not entitled to a retroactive promotion with backpay based on the additional supervisory duties performed, since a Federal employee is entitled only to the salary of the position to which he is actually appointed regardless of the duties performed. United States v. Testan, 424 U.S. 392 (1976).

2. An employee "detailed" or assigned to perform additional supervisory duties did not thereby become entitled to a retroactive promotion with backpay under the principles set forth in Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), and Matter of Reconsideration of Turner-Caldwell, 56 Comp. 427 (1977), which concern the promotion of Federal employees detailed to higher grade positions, since it was not shown that the employee was actually on an official detail to an existing, established, classified, higher grade Federal position.

3. No action will be taken by the General Accounting Office on the claim of an employee of the Department of the Army that he was denied a promotion as the result of illegal racially discriminatory employment practices, since it is not within the jurisdiction of this Office to conduct investigations into or render

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decisions on claims of discrimination in employment in other agencies of the Government. 42 U.S.C. 2000e-16 (1976).

This action concerning Mr. Clem H. Gifford, 2082 Oak Park Lane, Decatur, Georgia 30032, reconsiders Settlement Certificate Z-2789692 dated November 18, 1978, issued by our Claims Division, disallowing his claim for a retro-active temporary promotion and backpay for the period March 16, 1977, to November 30, 1977, incident to his employment with the Department of the Army in the Panama Canal Zone. (PN)

Between November 1976 and November 1977, Mr. Gifford held the position of Administrative Officer, NM-341-09, in the Administrative and Management Branch, G4 Maintenance Division, 193d Infantry Brigade, Corozal, Canal Zone. The "NM" grade designation reflects classification in the Non-Manual Category of Federal employees in the Canal Zone, and it corresponds to a grade GS-09 position under the General Schedule. 35 C.F.R., chapter 1, subch. E (1977).

On November 15, 1976, Mr. Gifford was assigned the responsibility of supervising an employee who held the position of Management Analyst, NM-343-09, in the same local organization. He continued to exercise such supervisory duties until November 30, 1977, when he was reassigned to the Directorate of Industrial Operations, Fort McPherson, Georgia, in the position of Program Analyst, GS-345-09.

Mr. Gifford contended that because he was given the responsibility of supervising an employee with a grade NM-09 classification, his own position classification should have been upgraded from grade NM-09 to grade NM-11. He states that as early as November 19, 1976, he initiated inquiries about the possibility of his promotion. A Standard Form 52, "Request for Personnel Action," was submitted to the local Civilian Personnel Office on January 11, 1977, containing a written request that his position description and grade classification be upgraded to the

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NM-11 level. However, a grade NM-11 Administrative Officer position was not established pursuant to the request. Army authorities report that this was primarily due to a determination made in June 1977 that the Management Analyst position under Mr. Gifford's supervision should be transferred from the local G4 Maintenance Division to the Directorate of Industrial Operations. Mr. Gifford was subsequently advised that the management analysis functions were being transferred to the Directorate level, and that while his position would therefore not be upgraded, an entry was being made in his personnel records to show his "detail" to perform "additional duties" involving the supervision of a Management Analyst, NM-343-09, from November 15, 1976, to November 30, 1977.

By letter dated January 12, 1978, Mr. Gifford submitted a claim to the Claims Division of this Office for a retroactive temporary promotion to grade NM-11, with backpay, for the period March 16, 1977, to November 30, 1977. He suggested that he was entitled to a promotion effective the 121st day of his "detail" under Comptroller General decisions rendered in Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), and Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977).

Upon the receipt of Mr. Gifford's claim, our Claims Division requested the Department of the Army to furnish an administrative report in the matter. On October 19, 1978, the Army Finance and Accounting Center submitted a report of findings and recommendations. In the report it was noted that while Mr. Gifford had performed supervisory duties not included in his official position description, a higher graded NM-11 Administrative Officer position was not established during his tenure in the G4 Maintenance Division. It was therefore recommended that the claim be denied. As previously indicated, our Claims Division disallowed Mr. Gifford's claim in its November 18, 1978 settlement, essentially for the reason that he had not actually been detailed to a position classified at a higher grade.

Mr. Gifford has questioned the correctness of the Administrative Report. In substance, he suggests that he was, in fact, detailed to a higher grade position, as evidenced by the entry in his personnel records showing his "detail" to perform additional supervisory duties. He also generally contends that between November 1976 and November 1977 he was misclassified and improperly denied pay as the result of inordinate delays in the processing of his request for reclassification. In that connection, he asserts that he should not have been assigned in grade NM-09 to supervise another grade NM-09 employee; that in the Directorate of Industrial Operations, grade GS-09 employees have grade GS-11 supervisors; and that Army authorities improperly delayed action on his request for promotion to grade NM-11. He claims relief under regulations contained in Federal Personnel Manual Supplement 990-2, which implement the Back Pay Act, 5 U.S.C. 5596 (1976). He further suggests that his nonpromotion was the result of racial discrimination. In that regard, he asserts that caucasian Administrative Officers in the Directorate of Industrial Operations were classified at the grade GS-11 level, and that the denial of his promotion to grade NM-11 was in retaliation for his filing a discrimination complaint in 1975. He also suggests generally that he should be granted relief in accordance with the principles enunciated in Albermarle Paper Co. v. Moody, 422 U.S. 407 (1975), a case decided by the United States Supreme Court involving discrimination in employment.

There are innumerable instances in the Government service where employees of a lower classification perform duties of a higher classification, but as a general rule an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally reserved to employees in a grade level higher than the one he holds, he is not entitled to the salary of the higher grade level until such time as he is promoted to that grade. Dianish v. United States, 183 Ct. Cl. 702 (1968); Matter of Marion McCaleb, 55 Comp. Gen. 515 (1975). Furthermore, the Back Pay Act, 5 U.S.C. 5596, and the

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implementing regulations cited by Mr. Gifford, do not authorize a retroactive promotion with backpay for the period of an alleged improper classification. United States v. Testan, 424 U.S.C. 392 (1976). Also, retroactive promotions may not be awarded solely on the basis of administrative delays in the processing of personnel actions. Matter of Canal Zone Employees, 39 Comp. Gen. 583 (1960); Matter of Adrienne Ahearn et al., B-186649, January 3, 1977. Hence, Mr. Gifford may not gain entitlement to a retroactive promotion on the basis of any claims that he was misclassified; or performed duties normally reserved to employees in a higher grade classification; or experienced administrative delays in the processing of a request for reclassification.

With respect to Mr. Gifford's claim that he is entitled to a retroactive promotion on the basis of a "detail" to perform additional supervisory duties, this Office has recognized that in certain circumstances an employee may be entitled to a retroactive promotion if he is officially detailed to an existing, classified, higher graded position for an extended period. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Federal Personnel Manual, chapter 300, subch. 8. In the Comptroller General decisions referred to by Mr. Gifford, Matter of Turner-Cladwell, 55 Comp. Gen. 539, supra, and Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427, supra, it was held that employees officially detailed to established higher level positions for more than 120 days without proper sanction are entitled to retroactive temporary promotions with backpay beginning with the 121st day of the detail until the detail is terminated.

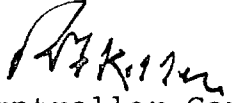
In the present case, it is indicated that no established, classified NM-11 Administrative Officer position existed in the G-4 Administrative Division between November 1976 and November 1977. It is therefore also our view that Mr. Gifford is not entitled to a retroactive promotion on the basis of the "detail" shown in his personnel records.

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See Matter of Retroactive Promotions, 57 Comp. Gen. 767 (1978); Matter of Donald P. Konrad, B-193555, January 26, 1979.

Finally, with respect to Mr. Gifford's claim of racial discrimination, it is to be noted that Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (1976), governs the claims of civilian employees of the United States who believe they are the victims of illegal discriminatory employment practices. See Brown v. General Services Administration, 425 U.S. 820 (1976). It is not within the jurisdiction of this Office to conduct investigations into or render decisions on claims of discrimination in employment in other agencies of the Government under that provision of law. Hence, we are not empowered to render any decision on Mr. Gifford's claim of racial discrimination, or to consider his contention that he is entitled to relief in accordance with Albermarle Paper Co. v. Moody, supra. Compare Matter of Elizabeth McLaughlin, B-186556, July 27, 1976.

Accordingly, the settlement of our Claims Division is sustained.


Deputy Comptroller General
of the United States