



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

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B-173815

April 18, 1973

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Miss Ethel deTurck  
Room 235, United States Court House  
Foley Square  
New York, New York 10007

04373  
New York: [Signature] 412

Dear Miss deTurck:

Reference is made to your letter of March 1, 1973, appealing a decision by your agency that the salary rate at which you were initially appointed was proper.

In January 1970 while working as a secretary for the United States Attorney's Office, you were approached by the Honorable Asa S. Herzog, Referee in Bankruptcy for the United States District Court for the Southern District of New York, with an offer to join his staff at grade level JSP-8, step 9, which offer you accepted. However, when Referee Herzog requested your appointment by letter of January 22, 1970, to the Chief, Division of Personnel, Administrative Office of the United States Courts, it was specifically requested that your appointment be made at grade level JSP-8, step 7. The pertinent part of the aforementioned letter is quoted below:

The purpose of this letter is to call to your attention that Miss DeTurck, presently employed by the U. S. Attorney's office in this District, is in JSP7(10) at a salary of \$9,934. I am requesting that she be placed in the seventh (7th) step of Grade 8 at a salary of \$10,041, which is the lowest step that will not, in effect, demote her so far as salary is concerned.

You accepted the appointment at JSP-8, step 7, and began work on January 26, 1970. Approximately 20 months later on September 13, 1971, Referee Herzog wrote another letter to the Chief, Division of Personnel, Administrative Office of the United States Courts and requested a determination as to whether he had made an error in requesting appointment in step 7 instead of step 9, as follows:

I am now informed that I was in error in asking that Miss de Turck be put in the 7th step of this Grade, and

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that under the Civil Service Rules and Regulations, she should have been placed in the 9th step.

Since this will have a very important effect upon her retirement income, I would ask that you look into this and if, indeed, it was an error to place her in the 7th step, that that error be now rectified retroactively.

The record indicates the Administrative Office of United States Courts then made a determination that, although you could have been appointed in step 9, there was no requirement that this be done and that the specifically requested step 7 was entirely appropriate. Accordingly, the office charged with the responsibility of fixing your compensation pursuant to 28 U.S.C. 604(a)(5), has denied that your step 7 appointment constituted an administrative error, thereby precluding retroactive adjustment. You now appeal the decision of your agency in regard to this matter.

We have consistently and repeatedly held that in the absence of a showing of administrative error at the time the initial salary rate is fixed in the new position or grade when an employee is reemployed, transferred, reassigned, promoted, repromoted or demoted, there is no authority to change such initial rate either retroactively or prospectively. We have construed administrative error as the failure of an agency to carry out written administrative policy of a nondiscretionary nature or to comply with administrative regulations having mandatory effect. 21 Comp. Gen. 15 (1951); 34 id. 380 (1955); 39 id. 550 (1960).

Under the circumstances, it cannot be said that an administrative error was made in fixing your salary and accordingly there is no legal basis to retroactively adjust your salary rate.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

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