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DECISION



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

FILE: B-101472

DATE: May 17, 1978

**MATTER OF: Lewis A. Cope - Retroactive Temporary
Promotion**

DIGEST: Employee claims retroactive promotion, backpay, and within-grade adjustment on basis of alleged detail to higher grade position from October 1, 1966, to May 1, 1968. Portion of claim before August 16, 1971, is barred by 31 U.S.C. § 71a (Supp. V, 1975) because claim was not received in GAO until August 16, 1977. Remainder of claim is disallowed. Employee could not have been temporarily promoted during period of alleged detail since higher grade position had not been classified and established in his office at that time and, therefore, his pay rate was properly set at time of his promotion to higher grade.

Through his attorney, Mr. Lewis A. Cope appealed Certificate of Settlement No. Z-2769137, issued January 20, 1978, by our Claims Division, which disallowed his claim for a retroactive temporary promotion with backpay and an adjustment of his within-grade step. The detail allegedly occurred from October 1, 1966, to May 1, 1968, while Mr. Cope was employed by the Department of the Navy in the Non-Destructive Test Division of the Quality and Reliability Assurance Department of Charleston Naval Shipyard, Charleston, South Carolina.

The Claims Division held that Mr. Cope's claim for a temporary promotion and backpay incident to the alleged detail and that portion of his claim for a within-grade step prior to August 16, 1971, was barred by 31 U.S.C. § 71a (Supp. V, 1975). The claim for a retroactive adjustment of his within-grade step for the period beginning August 16, 1971, was disallowed as the position to which Mr. Cope states he was detailed had not been classified at the time of the detail and, thus, there was no position to which he could have been promoted.

The position to which Mr. Cope was allegedly detailed from October 1, 1966, to May 1, 1968, was that of Production Controller (Ships), GS-9. In his appeal Mr. Cope states that the position had been classified at the time of his detail, and he has provided a copy of a Standard Form 50, Notice of

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Personnel Action, promoting an individual to such position at the Charleston Naval Shipyard on April 19, 1967, i.e., during the time of his detail. He further states that the loss of additional pay from the failure to receive a retro-active promotion is a continuing one not barred by the statute of limitations.

Pursuant to 31 U.S.C. § 71a (Supp. V, 1975), any claim or demand against the United States is barred unless it is presented to the General Accounting Office within 6 years from the date such claim accrues. Since Mr. Cope's claim was not received in our Claims Division until August 16, 1977, all elements of his claim accruing before August 16, 1971, are barred. B-189384, September 22, 1977; B-185766, November 17, 1977.

The Standard Form 50 forwarded by Mr. Cope shows that the employee promoted to the position of Production Controller (Ships), GS-9, was employed by the Laboratory Division of the Quality and Reliability Assurance Department of the Shipyard. The record shows that Mr. Cope was employed by the Non-Destructive Test Division, not the Laboratory Division. In its administrative report on Mr. Cope's claim, the Department of the Navy indicated that the position of Production Controller (Ships) was not established in the Non-Destructive Test Division until August 22, 1968, or after Mr. Cope's alleged detail had terminated. Thus, at the time Mr. Cope was performing duties similar to those of Production Controller, there was no established classified position of Production Controller in the Non-Destructive Test Division to which he could have been promoted.

This Office has consistently held that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. Thus, in a reclassification situation, an employee performing duties of a grade level higher than the position to which he is appointed is not entitled to salary of the higher level position unless and until the position is classified to the higher grade and he is promoted to it. 55 Comp. Gen. 515 (1975).

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The position of Production Controller (Ships), GS-9, was classified and established in Mr. Cope's division on August 22, 1968, after his alleged detail had terminated. Although he was subsequently promoted to that position, there was no GS-9 position to which Mr. Cope could have been promoted at the time he was performing duties similar to those performed by the Production Controller (Ships), GS-9, in the Laboratory Division. Since Mr. Cope did not meet the requirements for a temporary promotion to GS-9 during the period of the alleged detail, it follows that his pay rate was properly set when he was promoted to GS-9. Therefore, he is not entitled to a within-grade adjustment and additional pay beginning August 16, 1971.

Accordingly, the action of the Claims Division is sustained.


Deputy Comptroller General
of the United States