

Mr. Browne
16026

DECISION



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

FILE: B-200748

Request For

DATE: February 3, 1981

MATTER OF:

Barbara A. Ralston -- Retroactive Temporary Promotion

DIGEST:

A GS-1411-06 library technician requests retroactive promotion for performing duties of GS-1410-11 professional librarian. Claim is denied as employee did not meet CSC Handbook X-118 qualification requirements for promotion to GS-1410 position, and an employee is not entitled to a retroactive temporary promotion unless he or she is eligible for permanent promotion to the position. Neither may retroactive temporary promotion be granted on basis that position to which employee was detailed should have been reclassified to position series and grade for which she was eligible.

By a letter dated September 22, 1980, Ms. Barbara A. Ralston appealed the action of our Claims Group, FGMSD, in Settlement Certificate No. Z-2805842, issued August 14, 1980, which disallowed her claim for a retroactive promotion. We affirm the disallowance of Ms. Ralston's claim, since an employee of the Federal Government is not entitled to a retroactive temporary promotion unless he or she is eligible for a permanent promotion to the position.

The facts of this case are as follows. On July 20, 1976, Ms. Ralston, an employee of the Defense Logistics Agency (DLA), *AGC* requested a retroactive temporary promotion and backpay between grades GS-6 and GS-11 under the rationale of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 *id.* 427 (1977). This claim was based on the grounds that Ms. Ralston, a GS-1411-06 library technician, had assumed the duties of a GS-1410-11 professional librarian on or about September 29, 1974.

Ms. Ralston's claim for a retroactive promotion was denied by DLA on February 24, 1978, on the grounds that she did not meet either the requirements of CSC Handbook X-118 for the GS-1410-11 librarian position or the time-in-grade (Whitten Amendment) requirements. On June 23, 1978, Ms. Ralston requested review of her claim by the General Accounting Office. The claim was forwarded to our Claims Division (now Claims Group, AFMD) on August 8, 1978. The Claims Division returned Ms. Ralston's claim

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to DLA on February 1, 1979, for settlement based on Comptroller General decision B-189690, February 16, 1978, as modified by B-190174, April 21, 1978. These decisions held that an employee detailed two or more grades above the appointed position is entitled to a retroactive temporary promotion to the highest grade to which he or she could have been promoted under the Whitten Amendment and other applicable requirements. The Claims Division further advised DLA to return the claim to GAO for adjudication if other doubtful questions of law or fact were involved.

On August 15, 1979, DLA returned the claim with an administrative report which detailed Ms. Ralston's excellent performance in the librarian position and recommended a temporary promotion. However, the report also noted that Ms. Ralston did not meet the requirements of Handbook X-118 for promotion to the GS-1410-11 position. Based on the report, the claim was denied in Settlement Certificate No. Z-2805842, issued April 14, 1980. We affirm the action of August 14, 1980, for the reasons stated below.

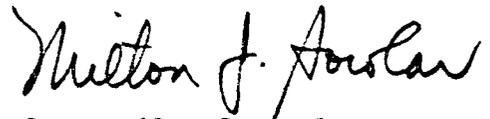
In our Turner-Caldwell decisions, supra, on which Ms. Ralston bases her claim, we held that an employee had to satisfy the requirements for a retroactive temporary promotion before the remedial action authorized by those decisions could be granted. The Civil Service Commission (CSC) (now Office of Personnel Management) promulgated implementing instructions for our Turner-Caldwell decisions in CSC Bulletin 300-40, dated May 25, 1977. In paragraph 8c of the Bulletin, the CSC emphasized that an employee has to satisfy both statutory requirements and the CSC's regulatory requirements in order to be promoted, and it listed examples of requirements that are applicable, including the minimum CSC qualification standards for competitive position as set forth in CSC qualification standards Handbook X-118 and X-118C. Thus, in Matter of Glen D. Miller, B-195139, March 4, 1980, and Matter of Leola Y. Harris, B-187032, November 30, 1977, we denied retroactive temporary promotions and backpay to employees because they did not meet the minimum requirements in CSC Handbook X-118 for promotion to the position to which they had been detailed.

In order for Ms. Ralston to be eligible to be retroactively promoted to the GS-1410-11 position, she must have been eligible for permanent promotion to that position, as is required by our

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decisions Miller and Harris and CSC regulations. However, Ms. Ralston did not meet the requirements contained in CSC Handbook X-118 for promotion to the GS-11 librarian position. While DLA has stated that management erred in failing to more promptly abolish the professional librarian position and establish and classify Ms. Ralston's position as library chief, that failure is a classification matter which does not provide a basis for payment of backpay. United States v. Testan, 424 U.S. 372 (1976).

Accordingly, Ms. Ralston's claim for a retroactive temporary promotion is denied, and the action of the Claims Division is sustained.



For The Comptroller General
of the United States