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DECISION



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

FILE: B-203622

DATE: January 19, 1982

MATTER OF: Donald J. Tate

- DIGEST:**
1. Employee filed grievance with his agency alleging that his rating for promotion should have been higher. Agency denied grievance and employee alleges that agency violated grievance procedures primarily by not abiding by time limitations. Matters relating to grievances are not for the General Accounting Office, but are for the employing agency and Office of Personnel Management both of which considered the employee's complaints and found them to be without merit.
 2. Employee claims that delays in grievance procedures are adequate bases to give him backpay and a rate of pay upon promotion above that he is entitled to based on his actual status. Backpay may only be paid if a statutory basis exists for the entitlement, and a delay in a grievance which denies the relief sought by the grievant does not fall under any statute authorizing backpay. Since employee is not entitled to backpay, his rate of pay upon promotion must be based on his status when promoted.
 3. Employee claims that his rate of pay upon promotion should have been higher to reflect a promotion to a different position he did not receive since he was entitled to promotion and even if he was not, that delay in handling his grievance entitles him to this. Employee is entitled to higher rate of pay only if the denied promotion was one that he was entitled to under statute or a nondiscretionary agency policy. Since employee was not entitled to the denied promotion, the rate of pay upon the subsequently granted promotion was correct.

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Mr. Donald J. Tate, a civilian employee of the Navy, appeals the Claims Group's denial of his claim for a higher rate of pay upon promotion and backpay. Since the record is devoid of any factual or legal basis upon which Mr. Tate is entitled to the higher rate of backpay, we affirm the action of the Claims Group.

In January of 1978, Mr. Tate, who is and was employed at the Naval Air Station, North Island, San Diego, California, applied for the position of Aircraft Mechanic and received a rating which placed him in the highly qualified group of applicants. While rated highly qualified, Mr. Tate's rating was not high enough for him to be among the final candidates to be selected for the position.

In March of 1978, Mr. Tate filed an appeal of his rating. On May 30, 1978, he was informed by an appropriate official that a review of his file and application provided no basis to upgrade his rating. Mr. Tate next filed a formal grievance on June 12, 1978. The basis of the claimant's grievance was that he was "rated low" in several areas and particularly in his knowledge of the trade.

By memorandum of August 4, 1978, a member of the Industrial Relations Department forwarded Mr. Tate's grievance to the Department of the Navy, Director, Office of Civilian Personnel, Western Field Division, for adjudication. Apparently, Mr. Tate was unaware of this action since he complained of the delay in sending out his grievance for adjudication by a memorandum of August 8, 1978, wherein, among other things, he complained that his agency violated the grievance procedures. His specific complaint was that the Navy had not complied with time limitations in the grievance procedure and he then filed a grievance regarding this.

On August 24, 1978, Mr. Tate was selected to fill the position of Aircraft Mechanic Leader, effective September 10, 1978. Because of this, on September 6, 1978, Mr. Tate declined interest in being considered for the position of Aircraft Mechanic when such consideration was offered to him.

The selection to his new position of Aircraft Mechanic Leader did not dissuade Mr. Tate from continuing his grievance.

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His reason was that he believed that, had he been initially selected to Aircraft Mechanic, he would have received an initial raise and subsequent step increase which would have increased his starting salary for the Aircraft Mechanic Leader position from \$7.73 (WL-10, step 1) an hour to \$8.37 an hour (WL-10, step 3).

On October 3, 1978, the grievance examining entity recommended that the claimant's grievance be denied since, based on his case file he had been given appropriate ratings for each element and a maximum rating for job training, the area of which he initially complained. By memorandum of October 31, 1978, Mr. Tate was formally notified that his grievance was denied. On November 5, 1978, pursuant to grievance procedure, he appealed the denial of his grievance to the commanding officer of his facility. Mr. Tate primarily alleged undue delay as the basis of his appeal. On February 26, 1979, the commanding officer denied the grievance appeal. As explained to Mr. Tate, the delay was unavoidable and, more important, his rating was correct.

Next, the claimant complained to the Merit Systems Protection Board, San Francisco, California. This culminated in a response from the area office of the Office of Personnel Management explaining to the claimant that there appeared to be no violation of law. However, he was advised that, if he felt there had been a violation of merit principles, he should submit a claim with documentation to support it. There is no indication in the file that the claimant did this.

Finally, by memorandum of December 4, 1979, the commanding officer of the claimant's facility indicated that he had had the claimant's case reviewed by a qualification rating examiner at the Naval Air Rework Facility, in Norfolk, Virginia, who found the initial rating which precipitated this dispute to have been correct.

The claimant's final action was to submit the case to our Claims Group which denied the claim since the claimant's rate of pay upon promotion was correct.

In his letter seeking reconsideration, the claimant complains that the Claims Group failed to address the violations alleged in his original letter of May 15, 1980,

which submitted his claim. We have examined this letter of May 15, 1980, and the letter seeking reconsideration and find that the claimant's basis of appeal is the delay in the grievance procedure. Indeed, the claimant indicates in the May 15, 1980 letter that he is owed backpay because the grievance was not resolved before he was permanently promoted above the level of Aircraft Mechanic.

Thus, the basis of Mr. Tate's claim is that the agency violated its grievance procedures in that time requirements were ignored. We have no jurisdiction to inquire into matters relative to a grievance. Such matters are for the employing agency and the Office of Personnel Management. Mildred B. Anderson, B-197981, May 8, 1981; B-173255, July 14, 1971; and 5 C.F.R. §§ 771.201-771.304 (1980). As the facts amply demonstrate, the claimant's agency and the Office of Personnel Management have inquired into the matter.

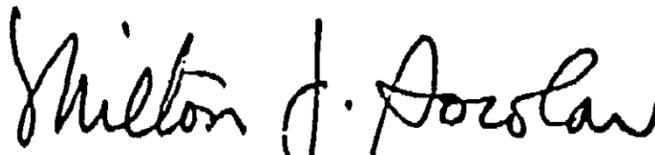
We would note, however, that even if there had been a violation of agency grievance procedures, this would not entitle the claimant to the higher rate of pay he seeks. As the claimant recognizes and does not dispute, his rate of pay upon promotion was correctly set on the basis of his status at that time. His contention is that the alleged delay in the consideration of his grievance entitles him to receive the backpay and higher rate upon promotion. Such a notion is unfounded in law, as mere delay in the adjudication of an unmeritorious grievance is not a basis for the relief Mr. Tate seeks nor for any other type of monetary relief.

For Mr. Tate to receive the claimed backpay and higher salary rate upon promotion, he initially would have had to have been promoted to the position of Aircraft Mechanic; but there is no basis to retroactively promote the claimant to this position. An individual who is given a high rating for promotion purposes, as was Mr. Tate, acquires no entitlement to the promotion nor to subsequent step increases in pay as a result of not receiving the promotion. See Earl H. Carter, B-196638, July 10, 1980. Rather, an administrative change in salary may not be made retroactively effective in the absence of specific statutory authority. Retroactive promotions are permitted only in cases where an administrative or clerical error caused a personnel action not to be

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effected as originally intended, where an agency has failed to carry out nondiscretionary regulations or policies, where an administrative error has deprived the employee of a right granted by statute or regulation, or where the agency has through a collective bargaining agreement vested in the employee the right to be promoted after a specified period of time. Lawrence Brown, Jr., B-199843, April 29, 1981, citing Ruth Wilson, 55 Comp. Gen. 836 (1976); and William Scott, B-182565, May 29, 1975. Mr. Tate's situation does not come within one of the above bases for a retroactive promotion. His salary rate upon promotion was set correctly and he has no entitlement to backpay.

Accordingly, the denial of the claim is sustained.



Acting Comptroller General
of the United States