



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

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D-178488

June 21, 1973

Mr. Vincent H. Andrasko
Headquarters, U. S. Army Aviation
Systems Command
Department of the Army
Post Office Box 209
St. Louis, Missouri 63166

Dear Mr. Andrasko:

We refer further to your letter of April 18, 1973, with enclosures, concerning your request for back pay for 4 years and related adjustments in your personnel records as an employee of the Department of the Army.

The material submitted with your claim shows that you filed a grievance within your agency during July 1972 alleging you were detailed to higher grade duties in violation of regulations and not compensated in relation to the work performed. You claim that although officially assigned as a Program Analyst, GS-9, you have been performing GS-11 level duties since August 11, 1969. In your grievance action in addition to back pay you sought to have your grade level established at grade GS-11, step rate 4, and your official personnel records show that you were in grade GS-11 since August 12, 1969.

It appears that your personnel records have been changed to show the work experience you gained while on detail during part of the period under consideration. Your claims for back pay and promotion to GS-11 were denied. You submitted a copy of letter dated March 30, 1973, from the Civil Service Commission, St. Louis Region, stating that the Commission does not review agency grievance decisions. Your letter to us in effect asks that we reverse the agency grievance decision denying your claims.

The resolution of your grievance appears to have been accomplished under the provisions of Part 771 of the Civil Service Commission Regulations, 5 CFR, which provide for employee grievances and administrative appeals. Those regulations make no provision for our review of agency decisions reached on individual grievances.

It has long been the rule of this Office and of the courts that an employee of the Government is entitled only to the compensation of the

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position to which he has been duly appointed even though he may be assigned to perform duties of a higher grade position. B-165730, January 17, 1969, and B-130200, January 18, 1957, copies enclosed. Furthermore we know of no provision of law which authorizes the retroactive promotion of an employee based upon the failure of his employing agency to promote him to a position to which he may be detailed in excess of the time specified in administrative regulations. Nor has 5 U.S.C. 3341--providing for details within the executive or military department--been viewed as authorizing retroactive pay for employees who have been detailed contrary to this provision or the regulations promulgated thereunder. B-165730, supra. In that decision we held that the back pay provisions of 5 U.S.C. 5596 are not broad enough to cover cases involving agency failure to comply with administrative requirements with regard to the detail of employees to higher level positions.

With respect to your entitlement to be placed in grade GS-11 at this time, we point out that the authority for the establishment of positions, the grading thereof, and appointment of individuals thereto, rests with the administrative agency and the Civil Service Commission.

Accordingly, your claim for back pay and the establishment of your grade level at GS-11 must be denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States