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DECISION



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

FILE: B-198983.2

DATE: November 19, 1980

MATTER OF: Panama Canal Commission Pilots --
[Entitlement to Retroactive Promotions]

DIGEST: Panama Canal Commission Pilots' promotions were delayed due to absence of clerk responsible for forwarding promotion papers to agency official authorized to approve promotions. Although pilots were issued higher-level marine licenses and began to perform higher-level duties at time they became eligible for promotions, they are entitled only to the salary of the positions to which appointed regardless of the duties they may perform. Administrative or clerical delay or omission in processing promotion requests prior to approval of promotions by authorized official does not entitle employees to retroactive promotion.

D. P. McAuliffe, Administrator, Panama Canal Commission (Commission), has requested an opinion as to whether the Commission may retroactively adjust the promotion dates of Panama Canal pilots where there was a delay in the approval of their promotions. Under the circumstances, we find no authority to give retroactive effect to the promotions in question.

The Administrator advises that at the time of appointment Panama Canal pilots are placed in wage level CP-2 positions, limited to handling up to 225-foot vessels. After a period of 29 or more weeks, the trainee is promoted to wage level CP-3, limited to handling up to 526-foot vessels. Lastly, pilots are promoted to wage level CP-4 after 52 or more weeks and such pilots are authorized to handle ships of any size. Upon appointment to CP-2 positions and upon qualification for promotion to the two higher grade levels pilots are issued appropriate marine licenses designating the size vessel they are authorized to handle.

The promotions of six pilots from either wage level CP-2 to CP-3 or from CP-3 to CP-4 were delayed

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for periods ranging from 14 to 33 days beyond the date they became eligible for promotion. This delay was due to the absence, on emergency leave, of the clerical employees responsible for preparing and sending the necessary papers to the official in the Commission's Marine Bureau who was authorized to approve the promotions.

In urging that the promotion dates be retroactively adjusted, the Administrator points out that the pilots were issued the appropriate marine licenses entitling them to handle larger vessels on the dates that their promotions should have been made effective and that from the date of the intended promotions, these pilots began to be assigned to perform pilotage duties commensurate with their higher level of marine licenses.

Generally, the granting of promotions from grade to grade is a discretionary matter primarily within the province of the administrative agency involved. See Tierney v. United States, 168 Ct. Cl. 776 (1964); Weinberg v. United States, 192 Ct. Cl. 24 (1970).

As a general rule a personnel action may not be made retroactive so as to increase the right of an employee to compensation. We have recognized exceptions to this rule where clerical or administrative error occurred that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulation or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy. We have held that the above-stated exceptions to the general rule prohibiting retroactively effective personnel actions may constitute "unjustified or unwarranted personnel actions" under the Back Pay Act, 5 U.S.C. § 5596. 55 Comp. Gen. 42 (1975).

In cases involving approval of retroactive promotions on the basis of administrative or clerical delay or omissions in the processing of promotion

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actions, the delay or omission must have occurred after approval of the promotion by the official having delegated authority to approve the promotion. Where the delay or omission occurs prior to the approval by such responsible official the intent of the agency to promote at any particular time cannot be established. See B-180046, April 11, 1974, and Janice Levy, B-190408, December 21, 1977. Accordingly, the delay in forwarding the six pilots' promotion papers to the agency official authorized to promote does not provide a basis for a retroactive promotion.

Similarly, we are unable to find that the issuing of higher-level marine licenses to the six pilots prior to their promotions provides a basis to retroactively effect those promotions. Within the Commission, authority to issue marine licenses apparently is vested in an individual other than the official having authority to approve promotions. While coordination between the licensing and promoting authorities is contemplated, the two authorities are distinct. Each is called upon to exercise approval or disapproval authority in his particular area and the granting of a license does not constitute that exercise of discretion necessary to effect promotions. Compare 58 Comp. Gen. 51 (1978).

While the pilots may have qualified for and performed higher-level duties prior to the effective dates of their promotions, the general rule is that an employee is entitled only to the salary of the position to which he has been appointed regardless of the duties he may perform. See Coleman v. United States, 100 Ct. Cl. 42 (1943). Dianish v. United States, 183 Ct. Cl. 702 (1968); and Patrick L. Peters, B-189663, November 23, 1977. An employee who is performing duties of a grade level higher than that of the position to which he is appointed is not entitled to the salary of a higher level position unless and until he is promoted to it. See 55 Comp. Gen. 515 (1975).

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In view of the above, there is no basis to retroactively promote any of the pilots.

Harry R. Jan Cleva
For the Comptroller General
of the United States