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Report : Memorial of H. Miller

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IN THE SENATE OF THE UNITED STATES.

APRIL 22, 1852.

Ordered to be printed.

Mr. BRODHEAD made the following

R E P O R T :

The Committee of Claims, to whom was referred the memorial of Hezekiah Miller, report :

The memorialist represents that, in 1828, he was a clerk in the Bureau of Indian Affairs, at a salary of \$1,000 per annum. At that time a clerk who had been receiving \$1,400 per annum resigned, and on application to the Secretary of War, the vacant salary was assigned to the memorialist; but for some reason, which does not appear, he did not receive the additional salary until 1833, when it appears to have been duly assigned to him, and which he has received ever since.

He now asks that Congress will authorize the payment of the difference between the amount actually paid him, and the amount he would have received, had the increased salary been allowed him from the period of the resignation of Mr. Fenner, in 1828, up to the time when he obtained it in 1833, amounting to \$1,358 44, with interest from 1st January, 1833.

It does not appear that any claim was made for the additional salary at the time, or that any dissatisfaction was expressed with the amount received. It would be strange if a considerable portion of an employee's salary, to which he was clearly entitled, and for which the money was duly appropriated, should be withheld by the head of the department for a series of years without complaint or remonstrance; and still more, that no demand should be made for its payment until the lapse of twenty years. Besides, in this case there is no evidence, other than the allegation of the memorialist, that the Secretary ordered the promotion; and it is not to be presumed, if he had done so, that he would have withheld the compensation ordered by himself.

Colonel McKenney, then at the head of the bureau, in a letter dated 27th February, 1850, in answer to inquiries of the memorialist, says, "I believe both these (the time and amount) to be as you state them;" but he appeals to the records as the proper authority, and it is not alleged that the records of the department show any such facts. It is proper, however, to remark, that the present Commissioner of Indian Affairs states, that he learns that the representations of the memorialist in regard to his appointment, the amount of pay which he was entitled to receive, and the amount which he did actually receive, are correct. But the Commissioner does not give the grounds upon which his opinion is based, unless it be that "the memorialist is incapable of asserting a claim which he does not believe to be just." The committee have no disposition to question the entire respectability of

the petitioner; but they are of opinion, that after a lapse of twenty years, without the assignment of any reason why the payment was not sooner demanded, Congress should require the most satisfactory evidence before interposing special legislation.

It is well known that clerks in the departments are often assigned to higher grades of duty, in anticipation of the assignment of the salary usually attached to such duty. This is usually very satisfactory to the clerk, as it compliments his capacity or industry, and is an indication that the salary will follow at a proper time, provided his ability shall prove adequate to the duty. And this advantage seems to have been realized by the memorialist, who shortly after received the increased salary, which he has continued to enjoy.

The committee recommend the adoption of the following resolution:

Resolved, That the memorialist is not entitled to relief.