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Report : Petition of Soldiers in Florida

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IN THE SENATE OF THE UNITED STATES.

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JULY 25, 1854.—Ordered to be printed.
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Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 470.]

The Committee on Naval Affairs, to which was referred the petition of lieutenants in the United States Revenue Marine service, who were attached to the United States naval squadron in the West Indies, during the Florida war, in 1836, 1837, 1838, and 1839, praying to be allowed the same compensation as officers of like grade in the navy, have had the same under consideration, and report :

That Lieutenants Osmond Peters and George Clarke, lieutenants in the United States marine service, allege that they, with other officers of their corps, were placed under the orders of the Secretary of the Navy, for duty in the Gulf of Mexico during the Seminole hostilities in Florida and the Mexican war, and that they did perform, while thus detached from their own duties as revenue officers, and acting in connexion with the navy, and under the orders of its Secretary, valuable public services. That their duties, while thus detached, and acting as naval officers, entailed upon them greatly increased expenditures, and exceeded their pay.

The memorialists have heretofore appealed to Congress, and the merits of their case seem to have been thoroughly investigated. Bills for their relief were severally reported in the Senate by Mr. Davis, from the Committee on Commerce, 2d session, 26th Congress; by Mr. Woodbury, from the same committee, 2d session, 27th Congress; by Mr. Bayard, from the same committee, 1st session, 28th Congress; and by Mr. Bayard, from the same committee, 2d session, 28th Congress.

These bills were never acted upon, and the memorialists are still without relief.

Your committee is entirely satisfied that many officers of the revenue were taken from their legitimate duties, assigned to the Navy Department, and did co-operate with the navy upon the occasions referred to. The public records, official dispatches of military and naval commanding officers, &c., render this fact notorious. And it is equally satisfied that the expenses of officers while thus co-operating with the navy, at a distance from their stations and families, are ever, and must necessarily be, increased.

Under these circumstances, are the memorialists entitled to relief?

Their pay was regulated and determined with reference to their duties, which are usually performed in or about port—certainly within a collection district, and within the daily reach of their homes and families. These duties are onerous and responsible, and essential to the due protection of the revenue. Their pay was not assimilated to, or regulated by, that of naval officers, but based upon the character and sphere of their duties, which are essentially civil, and limited to the several collection districts of the country. They were not organized or designed as a branch of the naval defences of the country, nor have they ever been so regarded—receiving an appointment during good behavior from the President, without the concurrent action of the Senate; and they are not entitled to pensions, bounty lands, or other similar relief extended to the members of the two branches of our military defences.

The ninety-eighth section of the general revenue act of March 2, 1799, entitled "an act to regulate the collection of duties on imports and tonnage," United States Statutes at Large, vol. 1, page 699, in determining the number and grade of these officers, provides "that the said revenue cutters shall, whenever the President of the United States shall so direct, co-operate with the navy of the United States, during which time they shall be under the direction of the Secretary of the Navy; and the expenses thereof shall be defrayed by the agents of the Navy Department."

Though this proviso embraces the vessels only, it has ever been construed by the department to include the officers, and they have been, from time to time, assigned to duty with the navy.

The act of February 25, 1799, entitled "an act for the augmentation of the navy," (United States Statutes at Large, vol. 1, page 623,) authorized "the President to place on the naval establishment" revenue cutters, &c., "*and thereupon the officers and crews of such vessels may be allowed, at the discretion of the President of the United States, the pay, subsistence, advantages, and compensations, proportionably to the rates of such vessels, and shall be governed by the rules and discipline which are, or which shall be, established for the navy of the United States.*"

The act of April 18, 1814, entitled "an act granting pensions to the officers and seamen serving on board the revenue cutters," in certain cases, (United States Statutes at Large, vol. 3, page 127,) provides for placing the "officers and seamen of the cutter service, wounded or disabled while co-operating with the navy, upon the navy pension list, on an equal footing with the officers and men of the navy in like cases."

Upon inquiry at the Navy Department as to its practice in such cases, the Secretary, in his letter of July 17, 1854, says:

"The Fourth Auditor informs me that he has not been able to discover any case except one, and he believes there is no other, in which an officer of the revenue service has been allowed naval pay while co-operating with the navy. The single case to which he alludes is that of Captain Ezekiel Jones, formerly of the revenue service, who received the difference between the pay and rations of a commander of a revenue cutter and those of a lieutenant commanding in the navy, under a special act passed for his relief on the 3d March, 1839."

The case of Ezekiel Jones, to which the secretary alludes, differs in no respect from that of other officers of his corps serving with the navy at and since the date of his service; and upon the presentation of it to Congress, the following special report was made and a bill passed for relief.

HOUSE OF REPRESENTATIVES, *January 27, 1838.*

MR. INGHAM, from the Committee on Naval Affairs, made the following report:

The Committee on Naval Affairs, to which was referred the petition of Ezekiel Jones, respectfully report:

The petitioner states that, in obedience to orders from the President of the United States, as contained in letters from the Secretaries of the Treasury and the Navy, of the 6th and 9th of January, 1836, he being then in command of the revenue cutter "Washington," sailed for Tampa bay, and served in conjunction with the navy of the United States until the 9th of July, 1836, when he was relieved and ordered on the Portland station; that as he was, during this period, acting with the naval force of the United States, and was in fact a part of it, and subject to all the increased expense of an officer of the navy in like command; and, having faithfully discharged all his duties, he believes himself honestly entitled to the pay of an officer of like rank in the navy, and he therefore prays that the same may be allowed him.

The facts are fully proved, as appears by the accompanying documents marked A, B, C, D, and E.

By the 12th section of the act of the 1st July, 1797, the President is authorized to increase the strength of the revenue cutters, and to cause them to be employed in defending the sea coast, &c.; and by the act of 25th February, 1799, entitled "An act for the augmentation of the navy," the President was authorized to place on the naval establishment and employ accordingly any of the revenue cutters which had been increased in force under, and in virtue of, the above mentioned act, and to allow the officers and crews of such vessels, at his discretion, the pay, subsistence, and advantages, proportionably to the rates of such vessels.

By the 98th section of the act of the 2d of March, 1799, it is provided that the revenue cutters shall, whenever the President shall so direct, co-operate with the navy, during which time they shall be under the direction of the Secretary of the Navy, and the expenses thereof shall be defrayed by the Navy Department.

The act of the 25th February, 1799, above referred to, seems to proceed on the ground of making compensation, in some measure, according to the character or grade of the services rendered, and it is difficult to see why it ought not to be so.

The amount of salary varies with the rank or grade of those who may be entitled to it, not because they are of different grades, but because the services to be performed are of a different character. A post captain is entitled to receive four thousand dollars per annum; not

because he is post captain, but because of the nature of the duties and the high responsibilities which are imposed upon him by law, as such, and which he is bound to perform. The service is that to which the compensation has reference, and not the rank of the officer by which it is rendered. This view of the subject is fully sustained by the spirit of the act of 3d March, 1835, to regulate the pay of the navy, in which it is declared that "officers temporarily performing the duties belonging to those of a higher grade, shall receive the compensation allowed to such higher grade while actually so employed."

It appears that the petitioner, while serving in conjunction with the naval force, in the manner stated, rendered essential service to the country, and performed all the duties assigned him with great fidelity and ability, for which he deserved and received the highest commendations of his superiors in command.

The committee are, therefore, of opinion that the petitioner is justly entitled to the same pay to which an officer of like grade in the navy would be entitled for like services, and therefore report a bill:

Be it enacted, &c., That the proper accounting officers of the treasury be, and they are hereby, authorized to allow to Ezekiel Jones, for his services as commander of the revenue cutter Washington, while acting in conjunction with the navy of the United States, in 1836, the same amount of pay as a lieutenant in the navy would be entitled to receive for like services, deducting therefrom the sum which he has already received therefor.

Approved March 3, 1839.

Your committee is unable to account for the non-compliance of the proper accounting officers of the government with the provisions of the act of 25th February, 1799, above recited; but the Secretary of the Navy's letter shows that it has been inoperative. It is the every day practice of Congress to compensate the employees of the country for all services performed beyond those of their special office, by extra compensation; and, upon this point may be cited the extra pay to the exploring squadron; to Lieut. Maury of the observatory; to Lieut. Dahlgren of the ordnance; to Lieut. Herndon of the Amazon exploration; to the California squadron; to officers doing duty as pursers; to navy agents acting also as pension agents, &c.

These frequent acts of relief are placed upon the ground that all salaries, pay, and emoluments, are based upon official duties and responsibilities.

The pay of a revenue captain is twelve hundred dollars per annum, (and the pay of the lieutenants is graduated by his) was doubtless determined by the consideration that his duties, circumscribed by a collection district, and performed under the immediate orders of the collector of the customs, could rarely incur responsibility, and that they belonged to the civil, and not the military, department of the government, and the pay of a naval lieutenant—which grade, in several respects, is more analogous to that of the revenue captain's than any other of the navy—was probably fixed at \$1,500 per annum in view of the wider sphere and more responsible character of his duties.

When the officers of the revenue marine are called upon to co-operate with the navy, therefore, it seems but reasonable that, with their increased duties and responsibilities, they should receive the increased pay.

Your committee has deemed it proper to report a general bill, whose provisions are designed to embrace not only the case of the memorialists, but the officers of their branch of the public service generally; and, therefore, adopts the bill brought forward in the Senate by Mr. Woodbury in 1841, and subsequently by Mr. Bayard in 1844.

A BILL

Increasing the pay of certain officers of revenue cutters while serving in the navy of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall deem it for the public interest that any portion of the officers and seamen belonging to the revenue cutter service shall be attached to or co-operate with the naval service of the United States, and shall order them to so act and co-operate with said naval service, said revenue cutter officers, while performing such duty, shall receive, in lieu of the pay and emoluments now provided by law, the pay hereinafter provided, viz: All such revenue cutter officers of the rank of captain, in said service, shall receive *at the rate of* fifteen hundred dollars per year; all such officers of the rank of first lieutenants, *at the rate of* twelve hundred dollars per year; all such officers of the rank of second lieutenants, *at the rate of* eleven hundred dollars per year; and all such officers of the rank of third lieutenants, *at the rate of* ten hundred dollars per year; which said sums shall be all the pay, emolument, or allowance, made to such officers while so employed, except one ration each per day.

SEC. 2. *And be it further enacted,* That all officers of said revenue cutter service, who may have been, since the thirty-first day of December, one thousand eight hundred and thirty-five, ordered to co-operate with the naval service of the United States, and have actually so co-operated, and the heirs and legal representatives of such deceased officers as may have so co-operated with the naval service since the said last-mentioned period, shall be entitled to receive the additional pay provided in the first section of this act, during the time said officers were so employed: *Provided, however,* That such officers as have heretofore received any additional pay or emolument, on account of such service, shall not be entitled to the retrospective benefit of this act, unless the amount of such additional pay or emolument was less than that allowed by this act.