

19 15.9.25 ✓
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3.4.37 ✓
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Educational (1899) Department

ORDINARY MS.

G.O., No. 606

Dated 12-9-99 ✓

INDEXED.



13-14

[Despatch Abstract.]

Stating that Govt. considers that rules
to the Public Service notification
should remain as at present.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Educational (1899) Department.

CURRENT No. 1134



resp

465-30-595

From

The Hon'ble Mr. D. Duncan M.A.
D.Sc. LL.D.
Commissioner for Government
Examinations, Madras.

Order *his* 606 dated 12/9/99.
Recorded.

No. 104
10.

2. The Govt. considers that note 111 to the
Public service notification ^{should} remain
as at present.

/ From orders/

M
12/9/99

also
12/9/99.

Pa
12/9/99

to
C.G.E. - 940 D. 14/9

Dated 25 July 1899.

Received 26 JUL 1899

Registered *Do*

Enclosures *one.*

Spare copies *nil*

SUBJECT.

Stating with remarks, that
his interpretation of Note 1
to Article 1 of the Public Service
Notification differs from those
placed upon it by Governments,
and submitting a draft
notification cancelling the
Note.

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G.O.	No.	Department.	Date.

It is hereby notified that note 1 to Article 1
of the Public Service Notification is
cancelled.

No. 104
1D

OFFICE OF THE COMMISSIONER
FOR GOVERNMENT EXAMINATIONS,
Madras, 25th July 1899.

From

THE HON'BLE MR. D. DUNCAN, M.A., D.Sc., LL.D.,

COMMISSIONER FOR GOVERNMENT EXAMINATIONS,

Madras,

To

THE SECRETARY TO GOVERNMENT,

LOCAL AND MUNICIPAL DEPARTMENT,

Fort St. George.

SIR,

With reference to G.O., No 298, Educational, dated 11th May 1898, I have the honour to state that my interpretation of Note 1 to Article 1 of the Public Service Notification differs from that placed upon it by the Government in the several orders to which I am referred. As I had something to do with the shaping of the Public Service Notification — and the important words: — "provided that their promotion was not already barred by any rules previously in force" — in Note 1 to Article 1 of the notification, were inserted at my suggestion, (vide my letter No 2922 dated 10th October 1895), I may be allowed to explain my meaning.

2. When the new Public Service Rules came into operation, there were two classes of Public Servants in Superior Service, but drawing less than Rs 15 per mensem who

189 <u>9</u>	Dept.
Encls. No. <u>1</u>	
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O. No. <u>1134</u>	

who were affected by the note as it originally stood, those who, having passed the General Test or the middle school examination in the first class, were until then eligible for promotion to higher appointments, and (2) those who, not having passed these or any higher examinations, were not eligible for appointments carrying salaries of Rs 15 and upwards. In proposing the insertion of the words quoted, my object was to shut out the latter class, and to allow to the former the same prospects with which they had entered the service of Government. These men had taken service under Government on the strength of the rules that were then in force and in the belief that promotion was open to them, and it would be hard, I thought, to deprive them suddenly of the prospects which had been held out to them by Government, when, perhaps, it was too late for them to think of passing higher examinations. Government was pleased to approve of my suggestion, and the words in question were inserted, but it may be that in doing so, the Government misunderstood my intention.

What I intended was that persons in Superior Service drawing less than Rs 15 per mensem should not be prejudiced by the new rules, but should continue to have the same prospects as before, provided their promotion was not debarred by any rules previously in force, - in other words, if they had passed the General Test

or the Middle School examination in the first class, and I certainly believed that such was the intention of Government at the time.

3. But it is unnecessary, perhaps, at this time to discuss what the proper interpretation of the Note is. Five years have passed since the new rules came into force, and it seems to me there must be very few General Test and first class Middle School men in Superior Service now drawing less than Rs 15 per mensem, and if during these years, these few have not been able to attain to anything higher, it may be taken that they are undeserving of advancement. No useful purpose is served by the retention of the Note, and if it is desired now to make the rule absolute that none but matriculates and upper secondary passed candidates should be appointed or promoted to situations carrying salaries of Rs 15 and upwards, I would recommend the entire abrogation of the Note. No further revision appears to be necessary.

4. A draft notification is submitted for publication in the gazette, if it is approved by Government.

5. I have, in conclusion, to express my regret that I should have kept Government waiting so long for a reply. Owing to the pressure of examination work, the papers relating to the subject were laid aside to be taken up when they could receive fuller consideration, but having been put away at the time, they were completely forgotten.

forgotten till your reminder was received.
I hope Government will be pleased to ^{overlook} ~~excuse~~
the delay.

I have the honour to be,

Sir,

your most obedient servant

D Durian

Commissioner

Mh.

Educational Department.

Flag A.

Again G. O. No: 298 Edl., dated 11th May 1898.

Cur: No: 1134 of 1899, dated 25th July 1899, from the Commissioner for Govt. Examinations.

Subject.

~~quarantine~~ The revision of note (1) to the Public Service Notification.

Hm

For Orders.

Flag D.

In its order No. 482 Educational dated 28th July 1886, Government declared that after 1st July 1887 no person would be appointed to any post carrying a salary of Rs 15 a month or upwards unless he had passed the Middle School examination in the first class or the Matriculation examination with the hand-writing test and stated that unpassed officers then in service would not be affected by this order so far as the appointments they were then holding were concerned but that they would be ineligible for promotion to posts carrying a salary of Rs 15 per mensem until they had qualified by the tests.

Flag L.

2. In G. O. No: 17 Educational, d/

15th

15th January 1889, the institution of the

Primary examination was approved and in

para 15 of the notification introducing

it, Government ordered that after 1st April

(unless provided by art. 17 of the notification)

1891 no person would be deemed qualified for

an appointment in superior service on less

than Rs 15 or for an inferior non-menial

appointment unless he had passed ~~that~~ exami-

nation or some equivalent or higher exami-

nation. Nothing was said about unpassed

men already in service - either superior

or inferior- drawing less than Rs 15.

3. In July 1889 the Upper Secondary

examination was instituted and in notifi-

cation No. 48 published on page 435 Part I.

of the Fort St. George Gazette dated 2nd

July 1889 - the first Public service noti-

fication - it was laid down that -

(1) On and after 1st April 1891, in order

to be admitted to an appointment classed as superior

superior of the value of Rs 15 and upwards,

the candidate must have passed the Upper

Secondary examination or certain specified

higher examinations and

(2) On and after the said date in

order

order to be admitted to an appointment

classed as superior but of less than Rs

15 in value or to an appointment which

although classed as inferior is not menial

in character, the candidate must have passed

the Primary examination or certain speci-

fied other examinations.

Nothing was said in this notification

also about unpassed men or men qualified

under the rules of 1886, already in service.

4. In G. O. No. 483 Educational,

dated 25th June 1891, the Primary examina-

tion notification was revised and the fol-

lowing para was added for the first time

about persons in inferior service to whom

that examination was applicable:-

" 16. Persons entering the inferior

service of Government prior to ^{the} 1st January

1894 will not be affected by these rules,

but after that date they will be ineligible

for promotion to appointments to which

these rules have been declared applicable

and of which the emoluments are higher than

those attached to the posts in which they

may

Flag M.

may then be substantive or acting unless they pass the examination prescribed by this notification."

5. In G. O. No. 903 Educational dated 4th December 1891 the above rule was substituted by the following:-

"16. Unpassed persons holding substantive or acting appointments to which these rules are declared applicable upon the date on which they come into force will not be affected thereby so far as the appointments in question are concerned, but such persons cannot be appointed to other offices carrying higher salaries to which these rules apply and cannot be confirmed in the appointments in which they are acting after the date when these rules come into force unless they duly qualify".

6. In its order No. 224 Educational, dated 5th April 1893 Government considered that this rule went too far and modified it ~~as follows:-~~ *as follows:-*

"16. Unpassed persons who on the date on which these rules come into force are acting in appointments to which these rules are

Flag N

Flag E.

are applicable and who have no permanent lien upon other appointments to which these rules are applicable will be ineligible for confirmation in the appointments in which they are acting unless they qualify according to these rules."

Government also resolved to amend the Public service notification so as to render it clear that the rules therein contained had no retrospective effect and called upon the Commissioner for Government Examinations to insert the necessary provision in the draft of the notification he was then preparing.

Two points have to be noted here.

First the rule quoted above applied only to the confirmation of unpassed men with no permanent appointments acting in appointments to which the primary examination rules were applicable. As regards men permanently employed the orders were that their promotion should not be regulated by rules which were not applicable at the time they entered service. Vide para 1. of the order.

The second point is ^{that} the Public service notification which the Government resolved to amend applied to superior and inferior servants—drawing Rs 15 and above as well as less than Rs 15. When therefore it was resolved that this notification should not have retrospective effect it could have only meant that the new rules should not affect men already in service permanently—whether superior or inferior—whether drawing Rs 15 and above or less than Rs 15. A note was accordingly added at the foot of the original G. O. that "It is proposed to ^{Flag E.} incorporate with the Public service notification the decision arrived at in G. O. ^{EM} dated 26th January 1893 No. 50 ^{as} regards posts carrying Rs 15 and over and the decision now arrived at in respect of posts carrying less than Rs 15."

7. Till this time all appointments—those on Rs 15 and above as well as those below Rs 15—were dealt with in the Public service notification, while the latter appointments on less than Rs 15 were also dealt

with

with in the Primary examination notification. In submitting the revised drafts of these notifications, the Commissioner for Government Examinations incorporated in the draft of the Public service notification all matters relating to qualification for admission to the Public service and omitted them from the draft of the Primary Examination Notification. The orders that the rules in the Public service notification should not have retrospective effect were embodied in the form of a note at the beginning of the notification. This note was subsequently modified by Gos: No. 67 Educational dated 2nd February 1894 and No. 781 Educational dated 24th September 1895. It now stands as thus modified.

8. It will thus be seen that up to the date of Gos: No. 50 dated 26th January 1893 and No. 224 Edl. dated 5th April 1893 ^{apparently} Government intended that persons in service permanently but not qualified under the new rules whether superior or inferior were not eligible for promotion, but ~~in~~ in these Gos: the question was reconsidered

Para 3 of the D.P.'s letter
in page 1 of 8. No 18 Edl
dt 17th Jan^y 1894
Flag D.

G.O. No 818 Edl dt 8th Nov^r
1893. Flag H.

Flag I.

Flag B.

Flag C.

Flag P.

Flag L.

and the intention changed. It was accordingly resolved then that the new rules should not have retrospective effect—that is to say—a person entertained under the rules of July 1886 should be allowed promotion to the extent permissible under those rules, ^{and} his promotion should not be regulated by rules which were not applicable at the time of his entertainment. This decision was made clearer by the proviso inserted at the Director's suggestion by G. O. No. 781 Edl. dated 24th Septemeber 1895.

9. The above gives a history of note (1) to the Public Service Notification. The question of revising this note arose out of the case of a lock superintendent named P. Kamiah who had passed the Middle school examination in the first class and was on 1st July 1894, the date given in ~~the~~ note (1), holding a permanent appointment on Rs 12 in superior service. This man held that according to the note in question he was qualified to be promoted to a post on Rs 15, but Government in G. O. No. 298 dated 11th May 1898 refused to admit his claim or to

relax

Flag B.

Flag A

relax the rules in his favour. The Commissioner was ^{at the same time} asked to revise the note so as to make it clear that the holding of a permanent appointment before the 1st July 1894 did not necessarily carry with it the right to promotion to posts having a pay of Rs 15 and upwards and classed as "superior" in the Civil Service Regulations. It was also pointed out to him that the entry of a specific date i.e. 1st July 1894, in the note gave rise to confusion as all the rules in the notification did not come into force simultaneously.

10. In the current ^{the} Commissioner replies that his interpretation of the note in question differs from that placed upon it by Government and suggests for the reasons given in para 3 of his letter that the note may now be altogether omitted. His view is that, ^{as the note now stands,} persons, who, having passed the General Test or the Middle school examination in the first class on the 30th June 1894 held superior appointments carrying less than

Rs

Rs 15 and were eligible under the rules then in force for promotion to the higher posts, are from and after 1st July 1894 entitled to the same prospects as before. He says also that this was his intention in framing the alteration approved in G. O. No. 781 Edl. dated 24th September 1895, viz. the insertion of the words "provided that their promotion was not already barred by any rules previously in force" after the words "1st July 1894". The Government on the other hand hitherto understood the note to mean that General test and first class Middle school men holding superior appointments and drawing less than Rs 15 on the 30th June 1894 are not eligible for promotion to Rs 15 and upwards from and after 1st July 1894.

With regard to the 11. ~~the~~ interpretation ~~of~~ put on the note by the Commissioner, ~~it may be noted that~~ the words "provided that their promotion was not already barred by any rules previously in force", inserted in the note by G. O. No. 781 Edl. dated 24th September 1895 (Flag B), reaffirmed the ~~restriction~~ ~~resolution~~

Flag B.

{ Note for orders under cover of
G.O. No. 61. Ed. 23-1-95. Flag R.
G.O. No. 782 Ed. d. 24-9-95. Flag S.
G.O. No. 56. Ed. d. 29-1-96. Flag P.
G.O. No. 17. Ed. d. 13-1-97. Flag W.
G.O. No. 96. Ed. d. 16-2-97. Flag Z.

This was obviously an incorrect interpretation of the rule

JMS
5-11-97

Flag D.

11. ~~restriction~~ ~~resolution~~ regarding the promotion of ~~unpassed~~ men imposed by G. O. No. 482 Edl. dated 28th July 1886, but under ^{the} ~~that~~ order a passed man (i.e. a man who had passed the Middle school examination in the first class) was eligible to be appointed to a post on Rs 15, and as Government declared that the rules in ^{the} ~~the~~ Public service notification should not have retrospective effect it would seem to follow that a first class Middle school man holding a superior appointment on less than Rs 15 before the 1st July 1894 ^{is} ~~will be~~ eligible for promotion to a post on Rs 15. It does not seem to be probable that Government intended to bar the promotion of such a man simply because he happened to hold a superior post on less than Rs 15. If he had been holding a superior post on Rs 15 on July 1st, 1894, there would have been no question about his eligibility for promotion. As ^{been} ~~been~~ however, Government has hitherto ~~been~~ acting on the interpretation noted in para 10 of this note, it does not seem advisable to accept the Commissioner's interpretation.

On

The Government never intended any such bar - the rules have been misinterpreted by the office & the late Mr. Grose followed the office ruling in consequence - at least so it seems to me.

JMS
5-11-97

On the other hand ~~the note applies to inferior servants as well as superior, a fact which the Commissioner appears to have overlooked, his suggestion to omit it altogether cannot, it is submitted, be accepted. If it is omitted there will be no guide to their promotion.~~

PH 2/9/99
12. Orders are requested whether the Commissioner should be asked to redraft the note so as to bring out clearly the following points:-

(1) that a general test or first class Middle school man holding a superior appointment on less pay than Rs 15 or an inferior appointment before the rules in the notification came into force is not eligible for promotion to a superior appointment on Rs 15, and

(2) that persons holding appointments excluded from the scope of the Primary examination, such as Masalchis &c. are not eligible for appointments included in its scope such as peons, attenders, &c. by the mere fact of their holding permanent posts before the rules come into force.

* The specific date being omitted.
i.e. para. 9 above.

It has been so ruled by the Board in its Proceedings recorded in G. O. No. 695 d/ November 8th December 1898, and the ruling has been accepted by H. M. (vide note for orders on Cur: No. 1050, dated 10th July last).

al
2/9/99

It is submitted that this best note to all the Notifications. It will only raise doubts in what has been done up to date.

Looking at the papers, it would seem that the note has not been interpreted in the manner intended by the Members of the Government who passed it. The Hon'ble Mr. Ganshin & Mr. Wrenlock. It was clearly intended that the P.S. Not' sh'ld have retrospective effect. What has happened owing to the misinterpretation of the orders that, while men qualified under the old rules holding appts on Rs 15 have been allowed to get promotion to posts carrying more than Rs 15, tho' not qualified under the P.S. Not', yet men holding superior appointments carrying under Rs 15 - tho' qualified under the old rules have been held debarred from promotion to Rs 15 -

There is no justification in the orders for the different treatment of these two classes of men.

The question is now what is to be done

It will not do to cancel the note 1. altogether - because that will place men, qualified under the old rules, who held post of Rs. 15 under a disability & give the P.S. Note a retrospective effect as regards them.

On the other hand it will look very queer to differentiate between two classes of persons & say the P.S. Note is to be retrospective as regards persons holding post carrying less than Rs. 15 but not so as regards persons holding post carrying Rs. 15.

It is better perhaps to leave things as they are & go on interpreting the rule as hitherto - tho' that interpretation has not been right.

As regards Musalehis and persons of that kind - it is hardly conceivable issuing a notification about them. When the No. of Rs. 1500 come in giving the number of such men who have been promoted exemption can be given in that case & a G.O. can be issued that in future such persons are not to be promoted as before unless they have the necessary examinations.

There

MA 5.11.97

How many men are there who have suffered by the misinterpretation of the rule. Can a list be made of them, and if the list is not very large will any ill-effects follow from putting back on the original intention?

MA 9.9.97.

MA with reference to the rule

MA

8.11.97.

v. the G.O.s quoted in para 10 of the original note.

Flag W.

Flag B.

NOTE FOR THE Secretary.

Please see St. M's remarks.

It is impossible for this office to say exactly how many men there are who have suffered by the misinterpretation of the rule. The office only knows of the cases in which persons have come up claiming to be declared eligible for promotion to posts of Rs. 15 & upwards, & in which Genl. held that they were ineligible but there may be & probably are many persons who have not thought it worth while to ask for promotion in view of the orders of Genl. In his letter read in G.O. No. 17 d.d. 13-1-97 the D. G. of Registration stated that there were 325 men in his dept. holding posts of Rs. 14, many of whom had passed the General Test or Middle School Exam^t in the first class & were eligible for promotion, & of these 31 were exempted in G.O. No. 619 d.d. 3-11-97 but only so far as to enable them to continue in the posts then held by them so that it is possible that all these 31 clerks have suffered by not being allowed to receive further promotion.

It is now over five years since the date given in the note (1) to the P.S. notice, & it is submitted that if a reversion to the original intention is now made, not only will Govt. have to declare that its former interpretation was wrong, but many complications with regard to promotion would ensue & probably much ill-feeling would be caused.

But if H. M. wishes Heads of Dep'ts can be called on to submit lists showing the number of persons who have suffered by the previous interpretation of the rules & the extent to which they have suffered, in the position they would have been in now if their promotion had not been barred by the interpretation given by Govt. to the rules -

2/9/99. Any declaration that Govt. intended altering its views hitherto taken on the matter would probably lead to a large number of petitions from persons asking to be put into the positions they would have held, had ^{not} been interpreted as originally intended.

2/9/99

The interpretation hitherto accepted by Govt. must be adhered to.

21.9.99.

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HEAD AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

.. .. A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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