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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. <u>23</u>	Press Mis.
<u>26-27</u>	
Dated <u>15-1-</u>	<u>1861</u> .

B/mo 26-27 *5/6*

Not to be folded or roughly handled

*Proceedings of the Madras Government, Financial Department,
15th January 1861.*

No. 26. Read the following Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Honorable the Governor in Council, Fort St. George, dated London, 24th November 1860, No. 76.

I have to acknowledge the receipt of your Financial letter, dated the 10th August 1860, No. 20, relative to the claim of Mr. Goldingham, and other Members of the Madras Civil Service, to a refund of subscriptions in excess of the half value of the Annuities which have been granted them from the Madras Civil Service Annuity Fund.

2. My Financial Despatch, dated the 31st August last, No. 64, forwarded an explanation which had been obtained from Counsel, on the points referred to in your Financial letter, dated the 8th June 1860, No. 12, and I now transmit for your guidance a further opinion in regard to the additional questions raised in your letter of the 10th August.

3. With reference to your request that the conclusion arrived at might be communicated to Mr. Goldingham in England, I consider it desirable that as the precise amount to which he is entitled must be paid and can only be determined at your Presidency, the necessary communication should be made to him through the Managers of the Fund.

CASE

For the Secretary of State for India in Council.

Counsel are requested to peruse the accompanying copy of a letter and its enclosures from the Madras Government of 10th August 1860, and to refer to the accompanying Collection of Documents. It will be remembered that the opinion of Counsel was taken upon the claims of Messrs. Goldingham and Underwood amongst others in January last, when the Government were advised (in the case of Sir V. Stonhouse) that as at the time of the passing of the new Rules he had actually paid in excess of the half value of the annuity according to his then age, although he might not in law be entitled—the distinction between his case and that of Mr. Robertson's decided by the Privy Council was too fine to admit of a practical difference being recognized. It therefore becomes important to see whether the cases of Messrs. Goldingham and Underwood can after the explanation given in the letters of Mr. Hudleston and Mr. Goldingham be considered as falling under the same category in this respect as that of Sir V. Stonhouse.

With a view to obtaining this result it is suggested by the Managers of the Fund that a different method of calculating the value of the annuities of Messrs. Goldingham and Underwood should be adopted from that by which the value was ascertained in the cases of Sir V. Stonhouse, Mr. Hooper and Mr. Hudleston by excluding the value of quarterly payments, and payments to date of decease which were not included in the first values of annuities under the old Rules of 1825, but were obtainable by subscribers on an additional but optional payment. The question therefore for consideration so far as regards this part of the case appears to be simply whether as is suggested by the Managers the exclusion of the enhanced value of the annuity consequent on the foregoing advantages is justified on the ground that the payment securing them was optional.

Upon reference to the old Rules of 1825, it will be found that the following Rule bears upon this question, viz:—

16. "Any subscriber who may accept the tender of an annuity of pounds sterling one thousand shall be required, to entitle him to such annuity to pay to the institution, previous to the date at which the annuity is to commence, the difference between one half of the actual value of the annuity on his life and the accumulated value of his previous contributions, in case the latter quantity shall be less than the former, but should the contributions be in excess, such excess shall be refunded. These values shall be determined as below provided. Such annuity, if required, may be made payable either to the date of decease only or quarterly, and to the date of decease, the first benefit may be secured previous to the date at which the annuity is to commence by payment as fine of the value of half a year's annuity of Company's Rupees five thousand, as computed in the subjoined table; the latter by paying in addition to that fine the value of an addition of Company's Rupees two hundred and twenty-five, as computed in the same table. Subscribers retiring on annuity cannot be allowed to

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15th January 1861.*

"purchase only the benefit of a quarterly payment, but there will be no objection to
"the other benefit being taken singly."

The other point raised in the letter of 10th August appears to be dealt with in the opinion
of Counsel of 1st August 1860, a copy of which will be found in the accompanying Collection.

Your opinion is requested

1st. Whether under the circumstances explained in the letters from Mr.
Hudleston of 14th July 1860, and Mr. Goldingham of 3rd May 1860,
the claim of Messrs. Goldingham, and Underwood, to refund of the surplus
amount of their subscriptions be admissible.

2nd. Whether in the event of the former question being answered affirmatively
the surplus is to be calculated up to the 17th June 1853, or to the date
of their retirement from the service.

We have carefully considered this case with reference to the claims submitted to the con-
sideration of Government by Mr. Goldingham, and Mr. Underwood. The question as to the
admissibility of those claims is not free from difficulty. In the opinion which we wrote in
January last, we advised that the claims should be admitted of those who at the time of the
passing of the new Rules had paid in excess of the half value of their Annuities according to
their then respective ages; and under the circumstances explained in the documents on the 17th
June 1853 paid in excess of the amount which was fixed as the half value of the Annuity by the
Rules of 1825 (as published in 1838) and which was the whole sum which they were required
to pay under such Rules in order to entitle them to the Annuity.

It might certainly be contended and very possibly with success, that inasmuch as the service
had, by passing the new Rules on 17th June 1853, agreed to alter and enhance the price at
which Annuities were thereafter to be taken, the only claim to a refund should be limited to what-
ever surplus might exist of subscriptions beyond the half value of an Annuity calculated at the
enhanced price which the subscribers were by the new Rules required to pay. We cannot
however say that this is free from doubt, and on the whole, we are of opinion that it would be
safer to admit the claims of Messrs. Goldingham and Underwood, to a refund of the surplus
standing to their credit on the 17th June 1853, over and above the amount which they would
have been respectively required to pay under the old Rules of 1825 in order to entitle them to
the Annuity.

In finally adjusting the amount of refund to the other three Gentlemen Sir V. Stonhouse,
Mr. Hooper, and Mr. J. A. Hudleston, the same principle should of course, be adopted, and the
half value of their respective Annuities on the 17th June 1853, should be calculated exclusively
of the value of the additional advantages of quarterly payments and payments to date of decease
for which an additional but optional payment would have been required.

2. For the reasons stated in our opinion of 1st August last, we think that the refund to
Sir V. Stonhouse, Mr. Hooper, Mr. Hudleston, Mr. Goldingham, and Mr. Underwood, should be
limited to the surplus which stood to their credit respectively on the 17th June 1853, over and
above the half value of their respective Annuities calculated as before mentioned.

A question is raised in Mr. Goldingham's letter as to the date on which the new Rules are
to be considered as having come into operation, and he insists that a later date than the 17th
June 1853, ought to be taken, viz., the date when the sanction of the Court of Directors was
given to the operation of the new Rules. The Rules of 1825 certainly provide that such new
Rules shall not take effect until sanctioned by the Court of Directors, but having regard to the
fact that the new Rules were proposed by the Court of Directors and passed without alteration
by the service on 17th June 1853, and came into immediate operation with the consent of the
service, we do not think that a later date than the 17th June 1853 should be fixed for the calcu-
lation of the surplus. If any of the claimants should be dissatisfied with this and think proper to
insist upon a later date being taken, we advise that his claim should be entirely resisted and that
he should be left to establish his right to any refund at all in a Court of Law.

Our view with respect to interest on the surplus is fully explained in our opinion of the 1st
August last, to which we beg to refer.

(Signed) WILLIAM FORSYTH.
(") W. HENRY MELVILL.
Temple, 31st October 1860.

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15th January 1861.*

No. 27.

ORDER THEREON, 15th January 1861, No. 23.

Resolved that a copy of the foregoing Despatch and of its enclosure be furnished to the
Managers of the Civil Service Annuity Fund for their information and guidance, and that they
be authorized to refund to Messrs. Goldingham and Underwood, the amounts to which they are
respectively entitled under the decision now communicated, and report to Government the exact
sums paid to them, for communication to the Offices of Account and Audit.

2. The Managers of the Fund will observe that in calculating the surplus subscriptions of
the gentlemen above named, beyond the half value of their respective annuities on the 17th
June 1853, the values of the latter are to be taken exclusive of the sums required to be paid
for ensuring the special advantages of quarterly payments and payments to date of decease; and
that in finally adjusting the amount of refund to the other Members of the Service, Sir V. Ston-
house, Mr. Hooper and Mr. J. A. Hudleston, the same principle should be adopted.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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Financial Department
Proceedings of the Madras Government.

Read the following Despatch
from the Rt. Honble the Secy.
of State for India -

(Dated 24th Novr. No. 76 of 1860)

Order thereon - 15th January 1861. No. 23.

Resolved that a copy of
the foregoing Despatch & of
its enclosure be furnished to
the Managers of the Civil
Service Annuity Fund for
their information & guidance,
& that they be authorised
to refund to Messrs. Holding-
ham & Underwood the amounts
to which they are respectively
entitled under the decision
now communicated, & report
to Govt. the exact sums paid to
them, for communication

to the Offices of Account
and Audit.

2 The Managers of the
Fund will observe that ^{in calculating} the
surplus subscriptions of the
Gentlemen above named,
beyond the half value of their
respective annuities on the 1st
June 1853, should be calculated
exclusive of the special ad-
vantages of quarterly payments
& payments to date of decease,
& that in finally adjusting
the amount of refund to the
other Members of the Service,
Sir V. Stourhouse, Mr. Hooper
& Mr. L. A. Huddleston, the same
principle should be adopted.

the value of the latter
are to be taken exclusive
of the sum required to be
paid for ensuring

Placed in para 3 of the
Order of 1852. The
last sentence of the
Order is "The Managers of the
Fund shall have power to
make such adjustments of the
amount of the annuity as may
be necessary for the purpose of
equalizing the value of the
annuity to the value of the
subscription at the date of the
death of the subscriber."

J.P.
W. Stourhouse

To the Managers of the
Civil Service Annuity Fund }
- Secy General } depth 15th
- Civil Auditor. }

1023.

Summer 1881. Defunct

8. Proceeding of Govt.

15th January - 1801.