M.R.O. 1—77,005—8-8-37.

(1) Number of pages 88

(2) Date of repair 4-11-37

(3) Initials of the Reference

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 573 Press / Mis.

17-18

Dated 12-12- 18 65.

17-18 9/9

Not to be folded or roughly handled

No. 17. Read the following letter from J. D. SIM, Esq., Secretary to Government, Revenue Department, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 12th December 1865.

I have the honor to request that you will bring to the notice of His Excellency the Governor in Council the refusal of the Examiner of Claims to pass my pay abstract for the period by which I overstayed my recent leave of six months on urgent private affairs.

2. I left Madras on the 14th May last, by the Mail Steamer *Bengal*, which was detained at Galle, for five days, waiting for the Australian Mails. The first Mail Steamer of October, by which I should have returned, in order to arrive within my leave, was due at Madras about the 8th November. Thus, by the detention of the *Bengal*, and the early arrival of the October Steamer, I should have lost, by circumstances beyond my control, 10 or 12 days out of my brief period of leave, my only leave to England since 1848.

3. I explained these circumstances to the Right Honorable the Secretary of State for India, who was pleased to permit me to return to my duty by the second Steamer of October, as a special case, and by that Steamer I duly returned.

4. The Pay Department argues that this special permission is operative to the extent of saving me from loss of my appointment, but not to the extent of saving me from entire loss of absentee allowance, during the period in excess of my original leave.

5. This decision, as the enclosed letter from the Examiner of Claims admits, is not founded on any order, ruling, or precedent, under the present leave rules. A case, viz., that of Mr. Breeks, is mentioned as having occurred under the old rules, but Mr. Breeks had not the permission of the Secretary of State to overstay his leave, as I had. The case is therefore of no avail as a precedent against me.

6. The rule is not one whit more stringent as to pay than as to duration. Six months is the maximum period allowed, and half salary monthly the maximum pay allowed. *Unauthorized* absence beyond that period entails loss of appointment and loss of salary; the two naturally go together.

7. In his Despatch, dated 23rd September 1864, No. 73, the Secretary of State expressly desires it to be understood that when an officer is permitted to return, as I was, by a particular Steamer, "*any extension of leave*, thereby rendered necessary, has been granted without prejudice to the appointment of the absentee." Now my leave was for six months on half pay; extension of this privilege, I submit, naturally means continuance of pay, as well as retention of office. The argument that the Secretary of State can relax the rule so far as relates to retention of office (a boon which the Governor in Council can grant by simple re-appointment), but not so far as relates to pay, is, I submit, untenable; the authority that made the rules, and can at any time alter or annul them, can surely relax their severity in any special case. I may observe, also, that the rule itself provides for the issue of pay for periods beyond six months, in cases where the officer obtaining the leave is at an inland station. In such cases, half pay is granted for the period occupied in proceeding to the port of embarkation and returning therefrom, so that six months' half pay is not, in all cases, the maximum allowable.

8. My argument, in short, is that the Right Honorable the Secretary of State has the power of extending this special leave with its necessary accompaniments, retention of office and half pay, and that in my case, he was pleased to exercise this power, for special reasons of unusual occurrence.

9. Under these circumstances, I have the honor to request that His Excellency the Governor in Council will be pleased to sanction the issue of pay to me according to the enclosed abstract (subject, of course, to refund, if ordered by the Right Honorable the Secretary of State), or to refer the case for the decision of the Home Government.

No. 128.

OFFICIAL MEMORANDUM.

When returning Mr. Sim's bill for absentee allowance from the 14th to 28th November 1865, the undersigned has the honor to state that, under the rules, absentee allowance can be passed only for the period of six months, when leave has been taken under Section 9.

2. The permission of the Secretary of State to return by any vessel simply secures an absentee his appointment, should he exceed the term of his leave; it does not carry with it absentee allowance when the rules do not sanction the same.

OFFICE OF EXAMINER OF CLAIMS,
FORT SAINT GEORGE,
4th December 1865.

(Signed) W. DONALD,
Examiner of Claims.

To J. D. Sim, Esq., Secretary to Government, R. D.

From the Examiner of Claims, Fort Saint George, to J. D. SIM, Esq., C. S., Secretary to the Government of Fort Saint George, Revenue Department; dated Fort Saint George, 11th December 1865, No. 251.

I have the honor, with reference to your letter, dated the 6th instant, to state that I declined to pass to you any allowances for the period you overstayed your six months' special leave, upon the ground that the Civil Service Rules allow leave of that description for six months only in the course of an officer's service, and that it is no where stated that that leave can be extended. In fact the rule states that "after an absency of six months, any office held by the absentee will become vacant."

2. There is no "order, ruling, or precedent" under the new Civil Service Rules to which I can refer you as guiding me in my decision against your claim, as you are the first Civil Servant who has taken special leave under the revised rules; but, under the old rules, Mr. Breeks, who took leave under Section XIV and overstayed his time, forfeited all pay for the excess period.

3. I am further of opinion that the Secretary of State's Despatch, dated 15th September 1864, No. 219, does not authorize this Department to admit an Officer's claim to pay for excess period when the rules do not admit of this; it merely guarantees the Officer against forfeiture of his appointment, the words being "whenever your Government may be advised that a Covenanted or Uncovenanted Civil Servant has been permitted to return to duty by a particular "Steamer, it is to be understood that any extension of leave thereby rendered necessary has "been granted without prejudice to the appointment of the absentee."

No. 18. ORDER THEREON, 12th December 1865, No. 573.

The Governor in Council directs that the half salary claimed by Mr. Sim be paid to him, subject to such orders as may be passed in the matter by the Secretary of State, to whom it will be reported.

(True Extract).

Chief Secretary.

To J. D. Sim, Esq.
To the Accountant General.
„ Examiner of Claims, with bill.

Exd. J. H. Burns.

No. 128

Office of Examiner of Claims,
FORT SAINT GEORGE,
4th December 186[illegible].

OFFICIAL MEMO.

Please rebate Mr. Sim's bill for absentee allowance from the 14th to 28th Sept/65 the undersigned has the honor to state that under the Rules absentee allowance can be passed only for the period of six months & Mr. Sim's leave has been taken under Section 3. The permission of the Secy of State to return by any Vessel simply secures an absentee his appointment should he exceed the term of his leave it does not carry with it absentee allowance when the Rules do not sanction the same.—

W. Donald
Examiner of Claims.

To
The J. D. Sim Esq
Secy to Govt
Rev Dept.

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No. 257.

DEPARMENT.

Office of Examiner of Claims.

FORT SAINT GEORGE,

11th December 1866.

FROM

THE EXAMINER OF CLAIMS,

Fort Saint George.

TO J. D. Sim Esqre C.S.

~~THE~~ SECRETARY TO GOVERNMENT. of Fort Saint George

Revenue DEPARTMENT.

SIR,

I have the honor with reference to ~~Government Order~~ Your letter No. _____ dated the 6th instant ~~186~~, to state that I declined to pass to you any allowances for the period you overstayed your 6 months' special leave upon the ground that the Civil Service Rules allow Leave of that description for 6 months only, in the course of an Officer's service, and that it is no where stated that that Leave can be extended, in fact the rule states that "after an absence of six months any office held by the Absentee will become vacant."

2. There is no "order ruling or precedent" under the new Civil Service Rules to which I can refer you as guiding me in my decision against your claim, as you are the first Civil Servant who has taken Special Leave under the revised Rules, but under the old Rules Mr Brooks, who took leave under Section XIV and overstayed his time, forfeited all Pay for the excess period.

3. I am further of opinion that the Secretary of States' Despatch dated 15th September 1864, No 219 does not authorize this Department to admit an Officer's claim to Pay for excess period when the rules do not admit of this, it merely guarantees the Officer against forfeiture of his Appointment, the words being "whenever your Government may be advised that a Commander or Uncommanded Civil Servant has been permitted to return "to duly by a particular Steamer, it is to be understood that any extension of leave thereby rendered necessary, has been "granted without to the disappointment of the Absentee."

I have the honor to be,

Sir,

Your most obedient Servant,

J. Donald

Examiner of Claims.

To The Chief Secretary
to Government
Fort St. George

Sir,

I have the honor to request that you will bring to the notice of His Excellency the Governor in Council the refusal of the Examiner of Claims to pass my pay abstract for the period by which I overstayed my recent leave of six months on Urgent Private affairs.—

I left Madras on the 14th May last by the mail steamer "Bengal" which was detained at Galle for five days waiting for the Australian Mails. The first mail steamer of October by which I should have returned, in order to arrive within my leave, was due at Madras about the 8th November. Thus by the detention of the Bengal and the early arrival of the October Steamer I should have lost by circumstances beyond my control, 10 or 12 days out of my brief period of leave - my only leave to England since 1848.—

I

1865 Oct 5
From
The Examiner of Claims
Fort St. George
To
Lt. Col. Sim Supt. Gen.
Govt. Civil
Res. Posts

Sir,

I have the honor to forward herewith the Abstract of Pay and Allowances of Lieut. Col. Sim for the period specified in the margin, which has been returned for the reason stated in the accompanying letter from the Chief Secretary to Government.

I am Sir
Your Obt. Servt.
[illegible]

I explained these circumstances to the Right Honble the Secretary of State for India, who was pleased to permit me to return to my duty by the second steamer of October - as a special case - and by that steamer I duly returned. -

The Pay Department argues that this special permission is operative to the extent of saving me from loss of my appointment but not to the extent of saving me from entire loss of absentee allowance, during the period in excess of my original leave. -

This decision, as the enclosed letter from the Examiner of Claims admits, is not founded on any order, ruling or precedent, under the present leave rules. A case - viz that of Mr. Brooks is mentioned as having occurred under the old rules, but Mr. Brooks had not the permission of the Secretary of State to overstay his leave, as I had - the case is therefore of no avail as a precedent against me. -

The rule is not one which more stringent as to pay than as to duration - Six months is the maximum

maximum period allowed - and half salary monthly the maximum pay allowed. Unauthorised absence beyond that period entails loss of appointment and loss of salary: the two naturally go together. -

In his Despatch dated 23rd September 1864, No. 43, the Secretary of State expressly desires it to be understood, that when an officer is permitted to return as I was - by a particular steamer, any extension of leave thereby rendered necessary, has been granted, without prejudice to the appointment of the absentee". Now my leave was for six months on half pay - extension of this privilege, I submit, naturally means continuance of pay as well retention of office. The argument that the Secretary of State can relax the rule so far as relates to retention of office - (a boon which the Governor in Council can grant by simple re-appointment) but not so far as relates to pay - is, I submit, untenable - the authority that made the rules and can at any time, alter or annul

annual term, can surely relax their severity in any special case - I may observe also that the rule itself provides for the issue of pay for periods beyond six months in cases where the officer obtaining the leave is at an inland station - In such cases, half pay is granted for the period occupied in proceeding to the port of embarkation and returning therefrom - so that six months' half-pay is not, in all cases, the maximum allowable. —

My argument, in short, is that the Right Honorable the Secretary of State has the power of extending this special leave with its necessary accompaniments - retention of office and half pay - and that in my case, he was pleased to exercise this power, for special reasons of unusual occurrence. —

Under these circumstances, I have the honor to request that His Excellency the Governor in Council will be pleased to sanction the issue of pay & allowances according

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according to the enclosed abstract (subject of course to refund, if ordered by the Right Honorable the Secretary of State) or to refer the case for the decision of the Home Government &c. —

I have the honor to be
Sir
Your most obed.t Servt.

Fort St. George
12th December
1865.

I D Lum
Secretary to Govt.

Financial

Proceedings of the Madras Government

Read letter from W. J. D'Sim - 3 12 Dec 1865 -
Secy to Govt - Rev Dept -

Order thereon 12th December 1865 No 5703

The Governor in Council directs that the sum claimed by the petitioner Simon D'Silva be paid to him subject to such orders as may be passed in the matter by the Secretary of State & shown in the Statement.

W.R.

J. D. Sim Esqr 13/12/65 by R
Accountant General 15/12
Examined & Cleared 13/12/65
with Bill

Fin. Dept Letter Issued 11th January 1866.
Counter. No. 2. Pro No.
Applied to - 31st March 1866
27

From Lt. Col. W. Morrison
Secy to Govt. Rev Dept

No 5703

Dated 12 Dec. 1865

Rec'd 15 Dec 1865

Fin. 634

No 606.

Requests that the circumstances stated may be adopted as the claim to obtain for the Servant the mentioned in case.

Rec'd 15 Dec 1865 Accepted

13 Dec 1865

Financial 1865 Departt.

No 573

Proceedings of Govt.

Dated 12 December 1865.

Finl. Ltr. to Engr. 11th Jany. No. 2 of 1866.

17-18.