M.R.O. 1—77,008—8-6-37.

(1) Number of pages 8

(2) Date of repair 1-6-8

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Financial **DEPARTMENT.**

G.O. No. 574 Press Mis.

19-20

Dated 13-12- 1865.

19-20 4/5

Not to be folded or roughly handled

No. 19. Read the following letter from the Accountant General, Madras, to the Chief Secretary to Government, Fort Saint George ; dated 6th December 1865, No. 191.

Post Audit Department.

I have the honor to submit certain remarks on the Proceedings of this Government, 373, dated 5th August last, which have hitherto been delayed for want of an opportunity of discussion, which has only lately been found.

2. Lieutenant Colonel O'Connell, appointed Assistant Quarter Master General at Kamptee, was ordered to proceed to Calcutta, before he joined his appointment there, to give evidence before the High Court in a case, the particulars of which are unknown. Had it been a criminal case, the Commissioner of Police, Calcutta, would have paid him Rupees 5 per diem, deputation allowance, and necessary conveyance allowance ; had it been a Civil case, he would have received all allowances from the party summoning him ; but he was directed to attend by a Military order, and his passage to Calcutta was paid by Government. Evidently, Government was in some way concerned.

3. The proceedings above quoted granted to him (1) compensation for loss of allowances, (2) mileage allowance for the remainder of his journey, and directed that these should all be charged against the Civil Department. For justification of each grant, different authorities are quoted.

4. The grant of compensation rests on a ruling (Government of India, Financial Department, 1782, dated 29th April 1863) not at all in point. That ruling granted to an Officer compensation for allowances he had already been receiving, and the order I transcribe in the margin distinctly allows the claim in such cases, so that the only point under reference must have been the Department to which they should be charged. But the same order as distinctly refuses compensation to any officer for any allowance of which he shall not already have been in receipt, and the exceeding care with which the order is drafted is deserving of attention ; the contingencies which may have detained an officer seem exhausted with elaborate forethought, and in all it is ruled that compensation can only be given for allowances which he may already have been actually drawing. It appears then that, without special orders of the Supreme Government, this compensation cannot be granted. I need not, of course, point out that the Commander-in-Chief's argument of the *justice* of Lieutenant Colonel O'Connell's claim is quite beside the point, so far as the Audit Department is concerned. The question which we have to consider is whether a rule admits of an allowance, not whether a rule distinctly refusing one is, or is not, just.

Pay and Audit Regulations of 1861, Section IX, 44.
The claimant, at the time of withdrawal from his corps or station, for the special duty occasioning the alleged loss, must have been in actual receipt of the allowance for which he seeks compensation ; the circumstance that, had he not been withdrawn, he would have enjoyed it, or that his detention on special duty, or his being placed on Court Martial, or any other duty, during leave, and even perchance while he was in progress to join, or his being wounded in action, prevented or delayed his coming into receipt of the allowance, gives no claim to indemnification.

5. For the travelling allowance, Lieutenant Colonel O'Connell rests his claim on a letter (628, dated 13th February 1865) from the Deputy Secretary, Government of India, Military Department, which grants a free pass for the Railway journey, and directs the submission of the "claim for travelling expenses for the remainder of the journey in the usual manner." I might urge that this does not show that the claim for travelling allowance for the remainder of the journey is to be tried by any but the usual rules, which would infallibly reject it; but had the case not come under the orders of the local Government, I should not have considered myself justified in passing the claim on an order of the Military Department which had not been backed by the Financial Department, and in referring to the latter for an endorsed copy of the former's order, I should have pointed out that Lieutenant Colonel O'Connell had already made some profit out of his journey to Calcutta, in having got a free passage so far, while on his way to join a new and better paid post.

6. Perhaps there would have been no need of objection had Lieutenant Colonel O'Connell demanded from the Civil Department only the hotel and carriage allowances he could have claimed in Calcutta in a criminal case, and in addition thereto the difference between the cost of joining at Kamptee by the cheapest route, and the cost actually incurred ; but any thing in excess of this, it appears to me, should certainly be granted by the Government of India.

Proceedings of the Madras Government, Financial Department,
13th December 1865.

7. I would take this opportunity of suggesting the introduction under this Government of the system of appeal adopted over the chief part of India. An appeal, or any application resembling an appeal, against a ruling of the Audit Department, is submitted through that office. Thus, before passing orders, Government has before it one paper stating the appellant's case *de novo*, and another showing the views and ground of action of the Audit Department. It is found by experience that Government gains largely, both in being saved some unnecessary references, and in seeing both sides of the question plainly and fully stated before giving any judgment.

No. 20. ORDER THEREON, 13th December 1865, No. 574.

The Governor in Council is not prepared to re-open the question referred to in the foregoing letter.

(True Extract).

Chief Secretary.

To the Accountant General.

Ed. J. H. Burns

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37

Fort Saint George,
Accountant General's Office,
6 December 1865. —

No. 191

From,

The Accountant General
to the Government of Madras. —

To,

The Chief Secretary
to the Government of Madras. —

Sir,

I have the honor to submit certain remarks on the proceedings of this Government 373 dated 5th August last, which have hitherto been delayed for want of an opportunity of discussion which has only lately been found. —

Lieutenant Colonel O'Connell, appointed Assistant Quarter Master General at Kamptee, was ordered to proceed to Calcutta before he joined his appointment there to give evidence before the High Court in a case the particulars of which are unknown. Had it been a Criminal case the Commissioner of Police Calcutta would have paid him Rs 5 per diem deputation allowance and necessary conveyance allowance; had it been a Civil case he would have received all allowances from the party summoning him; but he was directed to attend by a Military order and his passage to Calcutta was paid by Government. Evidently Government was in some way concerned. —

The proceedings above quoted granted to him (1) compensation for loss of allowances, (2) Mileage allowance for the remainder of his journey, and directed that these should all be charged against the Civil department. For justification of each grant different authorities are quoted. —

The

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For the travelling allowance Lieutenant Colonel O'Connell rests his claim on a letter (628 dated 13th February 1865) from the Deputy Secretary Government of India Military department which grants a free pass for the railway journey and directs the submission of the claim "for travelling expenses for the remainder of the journey

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"journey in the usual manner." I might urge that this does not show that the claim for travelling allowance for the remainder of the journey is to be tried by any but the usual rules which would infallibly reject it; but had the case not come under the orders of the local Government, I should not have considered myself justified in passing the claim on an order of the Military department which had not been backed by the Financial Department, and in referring to the latter for an endorsed Copy of the former's order I should have pointed out that Lieutenant Colonel O'Connell had already made some profit out of his journey to Calcutta in having got a free passage so far while on his way to join a new and better paid post. —

Perhaps there would have been no need of objection had Lieutenant Colonel O'Connell demanded from the Civil department only the hotel and carriage allowances he could have claimed in Calcutta in a criminal case, and in addition thereto the difference between the cost of joining at Kampti by the cheapest route, and the cost actually incurred; but any thing in excess of this it appears to me should certainly be granted by the Government of India. —

I would take this opportunity of suggesting the introduction under this Government of the system of appeal adopted over the Chief part of India: An appeal, or any application resembling an appeal, against a ruling of the audit department is submitted through that Office. Thus, before passing orders, Government has before it one paper stating the appellant's case de novo, and another showing the views and ground of action of the audit department — It is found by experience that Government gains largely, both in

in being saved some unnecessary references, and in seeing both sides of the question plainly and fully stated before giving any judgment.-

I have the honor to be,

Sir,

Your Most Obedient Servant:-

[redacted]

F. Lushington

Accountt General.-

[redacted]

Pro: 5th Augt 65- 12-13
Mis. 10th March 65- 41-42/19
Pro. 26th Apl 65 56-57

8.6

19-20.

Fin'l 1865 Department.

From, Pro: of Officer

The Accountt General
to the Govt of Madras.

To, The Chief Secretary
to the Govt of Madras -

Dated 6th
Rd 7 December 1865.

No. 191.

574

No. 599

Submitting for consider=
=tion remarks on the proceed=
=ings of Govt No. 373 dated
5th August last Sanctioning
Compensation &ca to Lieut
Coll O'Connell on proceeding
to Calcutta to give evidence
before the High Court there -

With an Order

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No 574 of 13th Dec 1865

The Governor in Council is not
prepared to re-open the question referred
to in the foregoing letter.

To the Acctt General