

Financial (1897) Department.

ORDINARY MS.

G.O., No. 2014202

DATED 9.2.99

INDEXED.

18/18

[Despatch Abstract.]

*With remarks, copy of
the Govt of India.*
Forwarding a letter from the Hon'ble Mr. Justice
Benson L.C.S. on the subject of the
furlough that will be admissible
to him in April next.

PRINTED IN G.O., dated

Final!
8 April 1899. No. 491

*T
9/2/99*

BACK PAPERS.

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

FURTHER PAPERS.

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

J.
82
1,000-20-4-98.

Financial Judicial (1899) Department.

CURRENT No. ²⁴³
~~125~~

From

The Honble Mr Justice
R. S. Benson Esq.
Judge, High Court
of Judicature,
Madras

No.

Dated 6.1.99

Received 7.1.99

Registered 00

Enclosures 2

Spare copies.

SUBJECT.

Addressing on the subject
of the furlough that will
be admissible to him in
April next.

Encl. - N. 169. of 18-1-99

Referred to the Accountant

General for remarks this is requested to forward a copy of his letter
to 4815 of 28th Nov. 98.

Chief Secretary
18-1-99



years of

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Do. Mr. Honble Mr. J. J. Stokes Esq.
 243 Chief Secy. & Secy. to Govt.
 CURRENT NO. 125

From.

Mr. Honble

Mr. Justice R. S. Benson
 Judge, High Ct. of
 Judicature, Madras.

Madras

6 "Jan" 1898.

For
 Chms 16/1
 Jul 1891

Sir,

I have the honour to
 address you on the subject
 of the furlough that will be
 admissible to me in April
 next.

2. I was appointed a Judge
 of the High Court on the 4th
 March 1896. As a District
 Judge & a member of the
 Indian Civil Service, I had
 one year & three months
 furlough without medical
 certificate "due" to me
 under art 339. C.S.R. I
 had returned from furlough
 on the 17th Nov. 1895, so that
 had I not been appointed
 to the High Court, furlough
 might have been granted
 to me under art. 340 at
 any time after three years
"Continuous Service" from
 the date of that return,
 i.e., at any time after the 17th
 of Nov. 1898. In April next
 I would have been eligible
 for the grant of about two
 years of f.

3. I now turn to my
title to furlough as a
High Court Judge. Under
art. 600(5) one years
furlough will be placed
to my "Credit" after four
years "actual service" as
a Judge i.e., after the 1st
March 1900. Under art.
600(6) no furlough (save
on medical certificate
or urgent private affairs)
can be granted to a Judge
until furlough is "at credit"
under art. 600(5). But an
exception is made in
favour of persons who,
like myself, were already
in ^{the} service of Govt., in
these terms: — "But any
Judge already in the service
of Govt. at the time of
being appointed to the
High Court, who when so
appointed was entitled
under the rules applicable
to the branch of the service
to which he belonged, to
furlough without medical
certificate

be granted
furlough

article 600, rule 6

furlough for a term not
exceeding that to which
he was so entitled. Provided
that such furlough shall
not be taken until the
completion of two years
actual service in the High
Court & shall not exceed
one year." The words
"entitled to furlough" in
this rule are not defined
in the Regulations. They
might, I think, be reasonably
construed as equivalent
to "had furlough at his
credit." If that construction
is placed on the words
I shall become entitled
to one year furlough
next April. I am, however,
informed by the Comptroller
of the Acct. General, whom
I have consulted, that the
words have (on a reference
by Mr. Justice Barry of the
Bombay High Court) been
construed by the Govt. of India
to mean (Copy enclosed)
"entitled to actually take
furlough" when I was
appointed.

G. G. J. No. 3096 P. dt. 21 June 1894
Linn.

for favor of return after
perusal

appointed to the High Court
I was not entitled to
actually take the furlough
at my credit as I had
not then had three
years continuous service
since my return from
furlough (as required by
art. 340.) the result of
so construing the rule is
that I shall be unable
to take any ordinary
furlough in April next
although, had I remained
in the service of Govt.
as a District Judge I would
have then been able to
take as much as two years
ordinary furlough. I am
no doubt entitled to
extraordinary furlough
on urgent affairs, but as this
leave can be taken only
once in my whole service
I am anxious to keep it
in hand as long as possible
to meet the unforeseen
necessities of the future.
I therefore, desire, if it be
possible, that the furlough

I propose to apply for
in April next sh^d. be order
furlough.
4. It is, perhaps, not
possible to say that the
construction placed by the
Govt. of India on the
words "entitled to furlough"
is not literally correct
but I venture to think
that the rule, ^{so} construed,
operates hardly in cases
like mine, & probably does
not give full effect to the
intentions of its framers.
The effect of the rule so con-
strued in my own case
is not only to cancel
the furlough of a year
& a quarter earned and
at my credit when app^{nt}.
a Judge, but to require me
to remain on continuous
active service for more
than ^{the} three years wh. w^d.
have sufficed to qualify
me for the grant of furlough
had I continued as a
District Judge. Under the
rule so construed, it might
happen

happen that a Civilian
Judge having taken furlough
after perhaps, twentyfive
or thirty years service
in India w^d. have to
give almost seven
years of Continuous Service
in India after return
from furlough before he
could again obtain
furlough. Whereas a
Judge newly appointed
from home could always
obtain furlough after
four years service in India.
The framers of the rule
could hardly have intended
it to operate in this way.
The man who has already
borne the burden & heat
of many years service in
India presumably has a
claim to furlough sooner
than a new com^r. at
least there seems to be
no reason why he sh^d.
in some cases be obliged
to give nearly twice as
long Continuous Service
before being eligible. Yet
that

that is the effect of the
rule as construed by the
Govt. of India. As already
stated I think the words
might reasonably be
construed in a more
liberal sense, so as to
give a man the benefit
of at least some part
of the furlough to his
credit when appointed
a Judge, but if the rule
will not admit of such
construction I would
respectfully urge that
the rule sh^d. be re-cast
so as to obviate the
hardship to wh^{ch} I have
referred. The interests of
Govt. would, I submit,
be sufficiently safeguarded
if the grant of furlough
to a Judge who had
furlough to his credit
when appointed a Judge
were made subject to
three conditions viz:-
(1) That the Judge sh^d. have
served for two years
as a Judge of the High Court

(2) that he sh^d have had three years Continuous service after his last return from furlough or extraordinary leave and (3) that the furlough sh^d not exceed one year.

5. What I would respectfully request is that the Govt of India sh^d be asked to construe the words "entitled to furlough" in art 600 (b) as equivalent to "had furlough to his credit," or else that the Secretary of State for India in Council sh^d be moved to recast the rule so as to meet such cases as I have referred to.

I would suggest that the Rule b sh^d be recast as follows:—

"Except under Rules 8 and 9 no furlough shall be granted until at credit under Rule 5—

But any Judge already in the service of Govt. kept the time of being appointed

[] Proposed to be substituted for the words "was entitled to furlough without medical certificate" in the present rule

[] for the words "that to which he was so entitled" in the present rule

[] new

appointed to the High Court, who, when so appointed, [had furlough without medical certificate at credit] under the rules applicable to the branch of the service to which he belonged, may be granted furlough for a term not exceeding the furlough so at credit. Provided that such furlough shall not be taken until the completion of two years actual service in the High Court, [nor until the completion of three years continuous service whether in the High Court or otherwise under Govt., since his last return from furlough or from extraordinary leave] and shall not exceed one year.

b. Such an alteration would not increase the total amount of furlough which a Judge could

could take. It would
only slightly alter the
time when he could
first take it. I do not
think that the alteration
could cause any incon-
venience or expense
to Govt, while it would
be an undoubted
advantage to a judge
situated as I am &
would be in harmony
with the rules applicable
to me before I became
a judge of the High Court.
I trust, therefore, that my
request may receive the
support of your Govt
and of the Govt of India.

I have the honor to be
Sir

your most obedient servant

R. L. Benson

Judge, High Ct.

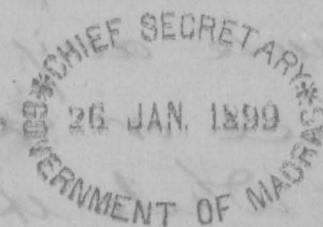
of Judicature. Madras.

Financial

Judicial (189

) Department.

CURRENT No. 365



From

The Accountant General

Order

No. 288

Dated 25th January 1899

Received } 26. 1. 99

Registered

Enclosures are 243 vst.

Spare copies

SUBJECT.

Stating that the facts stated in Mr.
Justice R. L. Benson's letter are
correct.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Gazette audit

DEPARTMENT.

FORT ST. GEORGE,

Accountant-General's Office,

28 October 1898.

No. 1815

128

From

The

ACCOUNTANT-GENERAL TO THE

GOVERNMENT OF MADRAS,

To

THE Honourable Mr. Justice R. S. Benson,
Judge High Court of Judicature,
Madras.

SIR,

With reference to your letter dated the 25 October 1898, I have the honour to state that under article 600 rule 5 Civil Service Regulations, you will not be eligible for any furlough except on Medical Certificate before you complete 4 years actual service as a Judge ^{not before} 1st March 1900 when you will be entitled to furlough for 1 year. You may however be granted at present furlough on urgent private affairs for a period not exceeding 6 months under Article 600. rule. 9.

I have to

(Sigs) H. G. Jenkins

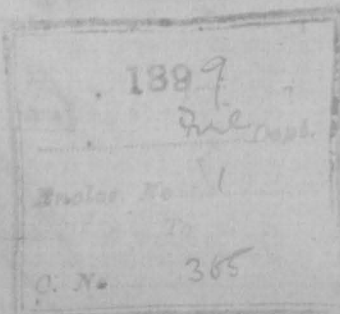
Asst. Accountant Genl

(True copy)

J. S. Jones

Chief Superintendent.

W.D.



Resident General

UNDER SECRETARY
27 JAN 9

CHIEF SECRETARY
7 JAN 1899
GOVERNMENT OF MADRAS

Sanctioned

CURRENT No. 30

DEPARTMENT.

FORT ST. GEORGE,

Accountant-General's Office,

25 January 1899.

No. 288

From

T. Heston Biggs Esq.

ACCOUNTANT-GENERAL TO THE

GOVERNMENT OF MADRAS,

To

THE *Chief Secretary to Government,*

Financial Department.

SIR,

With reference to Endorsement of Government
No. 169. dated the 18 of January 1899 referring for my
remarks letter from the Honorable Mr. Justices.
Benson dated 6 January 1899, I have the
honour to state that the facts as stated in
his letter are correct.

A copy of this office letter No. 4815 dated 28th
October 1898 is herewith sent as requested.

I have the honour to be,
Sir,
Your most obedt servant.

W. H. Biggs

Accountant General

C 3. 2. 99
R 4. 2. 99

C 4. 2. 99.
R 6. 2. 99

[G.]
[25 A]
500-8-12-97.

Financial DEPARTMENT.

C. No 3. 243 and 365.

Am and circ

SUBJECT.

The Honble Mr. Justice Benson's
claim to furlough

FOR ORDERS.

C No 243 A

A letter from the Honble
Mr. Justice Benson regarding
his claim to furlough in
April next is submitted for orders.

2 The facts of the case are
clearly set out in the Honble
Mr Justice Benson's letter and the
request preferred by him is that
the Govt of India be moved
with a view to recast Rule 6,
article 600 of the C. S. R. ^{or} ~~xxxx~~
to ^{place} admit ^{more} of a liberal con-
struction being ~~placed~~ on the
words "entitled to furlough"
in that rule.

3 The following is a sum-
mary of Honble Mr Benson's
statement of the case and
of the arguments advanced by

him for effecting a change in the existing rule.

4. At the time of his appointment as a Judge of the High Court the Hon^{ble} Mr. Benson had, as a District Judge and as a Member of the Indian Civil Service, one year and three months' furlough without medical certificate due to him under article 339 of the C. S. R. As he had returned from furlough on the 17th November 1895. he might, had he not been appointed to the High Court, have been granted furlough under article 340 at any time after the 17th November 1898. Thus in April next he would have been eligible for furlough for about two years.

5. In consequence of ^{his} appointment as a Judge of the High Court the Hon^{ble} Mr. Benson is, under rules 5 and 6 of article 600 of the C. S. R., ~~is~~ entitled to take furlough for one year, only after the 1st March 1900 when he will

* 4th March 1896

have completed four years' service in the High Court. This is so because Mr Justice Benson ~~had not~~ had, at the time of his appointment to the High Court, ^{had not} three years continuous service after ^{his return} ~~he had returned~~ from furlough on the 17th November 1895. If, however, he had been appointed a Judge of the High Court, only after he had put in three years' ^{continuous} ~~actual~~ service ^{counting from} ~~after~~ his return ~~from~~ from furlough, he would have been entitled to the one year's furlough after the completion of two years' (instead of four years) actual service in the High Court, in accordance with rule 6 of the article above quoted, as at present understood.

6. Mr Justice Benson points out that the words "entitled to furlough" in the above rule ~~have~~ are not defined in the Regulations and that they might reasonably

be construed to mean "had
furlough at his credit", in
which case he will become
entitled to take one year's
ordinary
furlough in April next,
instead of in March 1900.

From the Govt of India,
Finance and Commerce Dept
letter N^o 3096 P, dated the
21st June 1894, which forms
an enclosure to the Honble
Mr Benson's letter, it will
be seen that the Govt of
India has, in the case
of Mr Justice Gandy of
the Bombay High Court,
construed the words "entitled
to furlough" to mean "en-
titled to actually take fur-
lough."

5 7. Mr. Justice Benson,
n while admitting that ~~the~~ the
b construction placed by the
i Govt of India on the words
a "entitled to furlough" in the
e rule in question is perhaps
f literally correct, observes that
4 the rule so constructed ^{is} ~~is~~ ~~with~~

"furlough, whereas a Judge"
"newly appointed from home"
"could always obtain furlough"
"after four years service in"
"India. The framers of the"
"rule could hardly have in-"
"tended it to operate in this way."

8. The Honble Mr Benson
considers that the interests
of Govt would be sufficiently
safeguarded if the grant
of furlough to a High Court
Judge, who had furlough
to his credit when appointed
such a Judge, were made
subject to three conditions, viz:-

(1) That the Judge should
have served for two years
as a Judge of the High Court;
(2) That he should have had
three years continuous service
after his last return from
furlough or extraordinary
leave and

(3) That the furlough
should not exceed one year.

9. In the ^{foregoing} cir-
cumstances Mr Justice Benson

requests that the Govt of India
be asked to construe the words
"entitled to furlough" ^{rule 6 of} in article
606 ~~as~~ as equivalent to "had
furlough to his credit" or else
that the Secy of State for India
be moved to recast the rules thus:-

"Except under Rules 8 and
"9, no furlough shall be"
"granted until at credit"
"under Rule 5. But any Judge"
"already in the service of"
"Govt at the time of being"
"appointed to the High Court,"
"who, when so appointed,"
"had furlough without"
"medical certificate at credit"
"under the rules applicable"
"to the branch of the service"
"to which he belonged, may"
"be granted furlough for"
"a term not exceeding the"
"furlough so at credit: Pro-"
"vided that such furlough"
"shall not be taken until"
"the completion of two years"
"actual service in the High"
"Court, nor until the"
completion

"completion of three years"
 "continuous service whether"
 "in the High Court or"
 "otherwise under Govt, since"
 "his last return from fur-"
 "lough or from extraordinary"
 "leave, and shall not"
 "exceed one year."

The alteration suggested above would not, Mr Justice Benson states, increase the total amount of furlough which a Judge could take but would only slightly alter the time when he could first take it.

The Accountant General, to whom the Hon Mr Benson's letter was referred for remarks, merely observes that the facts as stated in the letter are correct.

Orders are solicited as to whether the Govt of India may be addressed on the lines suggested by Mr. Justice Benson

cc. Wm
29.1.99

CMS
2.2.99

Hardly so because he can get furlough on medical certificate (rule 8 p. 154 C.S.R.)

KL

I wd send on the corresp. to India with the remark that the present interpretation of the rules involves the drawback pointed out in para 4 of Mr Justice Benson's letter.

KL 3.2.99.

I think we might use the word 'hardship' - or 'is open to the objection' WJS

7 Apr. 2.99.

4.2.99

3-2-99

Mr. Benson's letter puts the matter as clearly & well as it can well be put. It seems to me that the construction which India puts on the rule ^{may} act most prejudicially on the interest of the public service by compelling a Civilian Judge to hang on in his place when he is unfit for his work and must rest and change. Mr. Benson points out the effect of the interpretation may be to keep a Civilian Judge in the country and at work continuously for 7 years while the rule admits that a man fresh out from home should be allowed furlough of not 4 years. I submit that this is a strong representation that he sent to India on the need for a change in the rule.

WJS

WJS

WJS

Financial DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

- (1) Current No. 243 of 1899, dated 6th Jan'y, from the Hon Mr Justice R S Benson
(2) " " 365^{385/22} of 1899, " 25 Jan'y, " the Accountant Genl
" " 385/197 of 1899, " " " "

ORDER.

ORDER. No. 201 79-2-22.
Hris

The Govt of India
will be addressed.

The Hon Mr Justice
R. S. Benson (Q of 1
and P of 2) with G.L.
Accountant Genl (P of 1
and Q of 2)

John 7-2-99

Letter No 202 of 9. 2-98

70

The Secretary to the
Govt of India,
Finance & Commerce Dept

Sir,

I am directed to forward, for the orders of the Govt of India, copy of a letter from the Hon'ble

S / Re-type the four
personals. 9.2.99

Mr Justice R. S. Benson ICS,
Judge of the High Court
of Judicature, Madras,
on the subject of the
furlough that will be
admissible to him in April
next under rule 6 of article
600 of the Civil Service
Regulations, as construed
by the Govt of India in
its letter to the Accountant
General of Bombay No.
3096 P., dated the 21st June
1894.

2. The request of the
Hon Mr Justice Benson,
^{letter sets out}
whose ~~has~~ clearly stated
^{clear}
this case, is that the words
"entitled to furlough" in
the rule above referred to
may be construed to mean
as equivalent to "had
furlough to his credit",
or else that the ^{rule} ~~Secretary~~
of the Govt of India may be
~~by means of~~ recast the
rule in such a ^{manner} ~~way~~ as to
remove the hardship com-
plained of.

140
3. The Governor in
Council considers that
the present interpretation
of the rule in question is
open to the objections
pointed out in para 4
of Mr Justice Benson's
letter and I am therefore
to urge upon the Govt
of India the necessity
for placing a ^{more liberal} construction
upon the rule ~~not favorable~~
to officers ~~transferred~~
~~from one station to another~~

(From order)

Wm
7-228 Cmt.
8/1/94

1894

When given for copying
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 a examined 1897
 a signed

AGAIN G.O., No. 189 DATED

RENT No.

ENCLOSURES TO C. No.

GOVERNMENT

LITTLE OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.—
 A = Copy in full.
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 P = Copy abstract only.
 Q = Copy heading only

A A A A A A A

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[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]