

Financial (1899) Department.

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[Despatch Abstract.]

Furlough to a judge of the High Court

Recording telegram from the
Sg D stating that the words "entitled
to furlough" in rule 6 art 600 of the Civil
Service Regulations should be construed
as equivalent to "had furlough to his
credit", & that the Hon'ble Mr. Justice
Blason may be granted furlough
accordingly.

5/14/99

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Government {1899} of Madras. FINANCIAL.

Recd.

Enclosures

Regd.

1899

Spare copies

G.O., No. 491, 8th April 1899.

APRIL.

Furlough to a Judge of the High Court.

Recording telegram from the Government of India stating that the words "entitled to furlough" in rule 6, article 600, of the Civil Service Regulations, should be construed as equivalent to "had furlough to his credit," and that the Hon'ble Mr. Justice Benson may be granted furlough accordingly.

GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

Read—again the following paper:—

G.O., Nos. 201, 202, Financial, dated 9th February 1899.

Read—the following papers:—

From the Hon'ble Mr. Justice R. S. BENSON, I.C.S., Judge, High Court of Judicature, Madras, to the Chief Secretary to Government, dated 6th January 1899.

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 and a member of the Indian Civil Service, I then had one year and three months' furlough without medical certificate "due" to me under article 339, Civil Service Regulations. I had returned from furlough on the 17th November 1895, so that, had I not been appointed to the High Court, furlough might have been granted to me under article 340 at any time after three years' "continuous service" from the date of that return, i.e., at any time after the 17th of November 1898. In April next I would have been eligible for the grant of about two years' furlough.

3. I now turn to my title to furlough as a High Court Judge. Under article 600 (5) one year's furlough will be placed to my "credit" after four years' "actual service" as a Judge, i.e., after the 4th March 1900. Under article 600 (6) no furlough (save on medical certificate or urgent private affairs) can be granted to a judge until furlough is "at credit" under article 600 (5). But an exception is made in these terms:—"But any judge already in the service of Government 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, may be granted furlough for a term not exceeding that to completion of two years' actual service in the High Court and 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's furlough next April. I am, however, informed by the courtesy of the Accountant-General, whom I have consulted, that the words have (on a reference by Mr. Justice Candy of the Bombay High Court) been construed by the Government of India (copy enclosed) to mean "entitled to actually take furlough."

* Government of India No. 3096 P., dated 21st June 1894, Financial.

When I was 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 article 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 Government 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 should be ordinary furlough.

4. It is, perhaps, not possible to say that the construction placed by the Government 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, and probably does not give full effect to the intentions of its framers. The effect of the rule so construed in my own case is not only to cancel the furlough of a year and a quarter earned and at my credit when appointed a Judge, but to require me to remain on continuous active service for more than the three years which would 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 that a Civilian Judge having taken furlough, after, perhaps, twenty-five or thirty years' service in India would 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 and heat of many years' service in India presumably has a claim to furlough sooner than a new comer: at least there seems to be no reason why he should in some cases be obliged to give *nearly twice* as long continuous service before being eligible. Yet that is the effect of the rule as construed by the Government 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 should be recast so as to obviate the hardship to which I have referred. The interests of Government would, I submit, be sufficiently safe-guarded 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 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.

5. What I would respectfully request is that the Government of India should be asked to construe the words "entitled to furlough" in article 600 (6) as equivalent to "had furlough to his credit," or else that the Secretary of State for India in Council should be moved to recast the rule so as to meet such cases as I have referred to.

I would suggest that rule 6 should 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 Government 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: 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 Government, since his last return from furlough or from extraordinary leave, and shall not exceed one year."

6. Such an alteration would not increase the total amount of furlough which a judge 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 inconvenience or expense to Government, while it would be an undoubted advantage to a judge situated as I am and 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 Government and of the Government of India.

ENCLOSURES.

From R. A. GAMBLE, Esq., Officiating Under Secretary to the Government of India, Finance and Commerce Department (Leave and Leave Allowances, &c.), to the Accountant-General, Bombay, dated Simla, 21st June 1894, No. 3096 P.

I am directed to acknowledge the receipt of your letter, No. 32504—G.A., dated 15th March 1894, enquiring whether furlough under article 600, rule 6, of the Civil Service Regulations, is admissible to the Hon'ble Mr. Justice Candy, Judge of the Bombay High Court, before the expiry of four years from his appointment as judge.

2. Mr. Candy joined his appointment in the Bombay High Court on return from furlough, and accordingly though furlough may then have been at his credit, under the rules applicable to the branch of the service to which he previously belonged, he was not at that time entitled under those rules to furlough without medical certificate, as he had just returned from leave. Mr. Justice Candy cannot, therefore, under rule 6 of article 600 of the Civil Service Regulations, be granted furlough after the completion of two years' actual service in the High Court.

Copy with copy of the letter to which it is a reply, and enclosure, forwarded to the Home Department and to the Accountants-General, Madras, Bengal, North-Western Provinces and Oudh and the Punjab for information.

(By order.)

(Signed) R. A. GAMBLE,
Offg. Under Secy. to the Govt. of India.

From A. F. COX, Esq., Accountant-General, Bombay, to the Secretary to the Government of India, Finance and Commerce Department, dated 15th March 1894, No. 32504—G.A.

I have the honour to submit for instructions a copy of a letter from Mr. Justice Candy of the High Court, enquiring whether furlough under article 600, rule 6, of the Civil Service Regulations, will be admissible to him before the expiry of four years from his appointment to be judge.

2. The rule in question permits a judge already in the service of Government at the time of his appointment to the High Court to take furlough after he has served as judge for two years if he was entitled to it at the time of his appointment. Furlough was due to the Hon'ble Mr. Candy when he was appointed, but was not admissible as he had just returned from furlough. I do not, therefore, think that he can be said to have entered the High Court entitled to furlough, but as there is room for doubt and as he wishes the point to be decided by the Government of India, to request that I may be favoured with instructions.

From the Hon'ble Mr. Justice CANDY, Judge of Her Majesty's High Court of Judicature, Bombay, to the Accountant-General, Bombay, dated 13th March 1894.

I have the honour to enquire whether furlough will be admissible to me under rule 6, article 600, Civil Service Regulations, before the completion of four years' actual service as substantive Judge of the High Court.

2. I officiated as Judge of the Bombay High Court from 4th January 1889 to 1st January 1890, and from 13th May 1890 to 25th April 1891. I then took leave. While in England on leave in March 1892, I received intimation from the Secretary of State that I was to be appointed a Judge of the Bombay High Court, and I was directed to join by the close of the May vacation. I did so on 13th June 1892. At that date I

was, by the ordinary rules of the service, entitled to apply for an extension of my furlough without medical certificate which I was enjoying when appointed permanently to the High Court. But being directed to take my seat in the High Court, I returned to India, as shown above, on the 13th June 1892, and on that date I had nearly two years' furlough "due" to me under article 339 of the Civil Service Regulations.

3. At present I am anxious to take furlough in the summer or autumn of 1895. I shall then have completed five years' "actual service" as a Judge of the High Court (by the definitions under article 600 "judge" includes an "acting judge" and "actual service" includes time spent by a judge on duty as judge) and under rule 5 of article 600, one year's furlough would be placed to my credit. Under the ordinary rules of my service two years' furlough would be admissible to me any day after 13th June 1895 (article 340). I submit that it cannot have been contemplated that in such a case as mine described above, I should not be entitled to even one years' furlough, say, from September 1895.

From T. HESKETH BIGGS, Esq., Accountant-General, to the Hon'ble Mr. Justice R. S. BENSON, Judge, High Court of Judicature, Madras, dated 17th November 1898, No. 5036.

With reference to your letter, dated the 13th of November 1898, I have the honour to state that the Government of India in their letter, No. 3096 P., Financial, dated 21st June 1894 (copy enclosed), have ruled that furlough cannot be granted to a Judge of the High Court before the expiry of four years from his appointment as judge. You were not entitled to furlough without medical certificate at the time of your appointment as judge, as you had not then rendered three years' continuous service since your last return from furlough. I regret therefore that you will not be entitled to furlough until 4th March 1900 when you will have completed four years' service as a judge. You can, however, take six months' furlough as stated in my No. 4815, dated 28th ultimo, in which case, however, you will have to complete three years' actual service after your return under article 600 (7), before you can avail yourself of the remaining six months.

Endorsement.

Transferred to the Financial Department.

17th January 1899.

(Signed) A. R. KNAPP,
Ag. Under Secretary.

Endt. No. 169.

Referred to the Accountant-General for early remarks. He is requested to forward a copy of his letter, No. 4815 of 28th October 1898.

18th January 1899.

(Signed) G. STOKES,
Chief Secretary.

From T. HESKETH BIGGS, Esq., Accountant-General, to the Chief Secretary to Government, dated Fort St. George, 25th January 1899, No. 288.

With reference to endorsement of Government, No. 169, dated the 18th of January 1899, referring for my remarks letter from the Hon'ble Mr. Justice R. S. Benson, dated 6th 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.

ENCLOSURE.

From T. HESKETH BIGGS, Esq., Accountant-General, to the Hon'ble Mr. Justice R. S. BENSON, Judge, High Court of Judicature, Madras, dated Fort St. George, 28th October 1898, No. 4815.

543 (6), 5th Apr. With reference to your letter, dated the 25th 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 four years' actual service as a judge, i.e., not before 4th March 1900, when you will be entitled to furlough for one year. You may, however, be granted at present furlough on urgent private affairs for a period not exceeding six months under article 600, rule 9.

Order—No. 201, Financial, dated 9th February 1899.

The Government of India will be addressed.

(True Extract.)

(Signed) G. STOKES,
Chief Secretary.

To the Hon'ble Mr. Justice R. S. Benson (with C. L.).
" Accountant-General.

Letter—No. 202, Financial, dated 9th February 1899, to the Secretary to the Government of India, Finance and Commerce Department.

543 (7), 5th Apr. I am directed to forward, for the orders of the Government of India, copy of a letter from the Hon'ble Mr. Justice R. S. Benson, I.C.S., 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 Government of India in its letter to the Accountant-General of Bombay, No. 3096 P., dated the 21st June 1894. (p. h. ante)

2. The request of the Hon'ble Mr. Justice Benson, whose letter sets out the case clearly, is that the words "entitled to furlough" in the rule above referred to may be construed as equivalent to "had furlough to his credit," or else that the rule may be recast in such a manner as to remove the hardship complained of.

3. The Governor in Council considers that the present interpretation of the rule in question is open to the objections pointed out in paragraph 4 of Mr. Justice Benson's letter and I am therefore to urge upon the Government of India the necessity for placing a more liberal construction upon the rule.

(Signed) G. STOKES,
Chief Secretary.

READ—also the following papers:—

Telegram to the Secretary to the Government of India, Finance and Commerce Department, dated 5th April 1899, No. 175.

Telegram from the Secretary to the Government of India, Finance and Commerce Department, to the Chief Secretary to the Government of Madras, dated Simla, 7th April 1899.

543 (1), 5th Apr. Your letter No. 202, dated ninth February, and subsequent telegram. Government of India agree that the words entitled to furlough in rule 6, article 600, Civil Service Regulations, should be construed as equivalent to had furlough to his credit. Justice Benson may be granted furlough accordingly.

ORDER—No. 491, Financial, dated 8th April 1899.

Recorded.

(True Extract.)

G. STOKES,
Chief Secretary.

To the Judicial Department.
" Hon'ble Mr. Justice R. S. Benson, I.C.S.
" Accountant-General.

(1899) Department.

D. O. No. 188

*Read also Refers
15 heading by E*

CS

*despd
referred
5/4/99.*
Telegram

D. O.

From The Honble Mr. Justice
Benson.

To Finance and Commerce
Simla.

No.

*17/5 + My letter 202 Fint
9 Feb'y. Please wire whether
Benson likely to get
ordinary furlough
with reference to his
representation*

Dated

Received

Registered

Enclosures -

Spare copies. -

SUBJECT.

Requesting to be informed
whether the ordinary furlough
applied for by him would
be granted.

*When
5-4-99*

*Cmb.
5/4/99*

H. J. A.

Fint Ref

*Papers Memo
When
5/4/99*

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

instead of the latter all
to be done

Requesting to be informed
whether the committee
appointed for the purpose
be done

J.O. N. 188.

Dobson House,
Bungumbakum.

CA/ 11/24/95 5/10/55

Dear Knapp,

Can you (by telegraph
or otherwise) kindly
find out whether the
G. I. is going to let
me have ordinary
parlour or not.

This almost two months
since the matter was
referred to them (G.O.
201 of 9th Feb 99) -
I am anxious to know
as soon as possible.
Yours
R. S. Benson

Financial (1899) Department.

CURRENT No. 1486.

CL 178

Read again G.O. 201-202. *Final* } A
89-2-99 (H)

Telegram to the Govt of India
No 175 dated 5-4-99 From The Govt. of
Finance & Commerce

Read also c no 1486 (A)

Order No 49108-4-18
PS. Recorded

No.

Copy

8/4/99

Dated 7. 4. 99

Received } 8. 4. 99

Registered }

Enclosures

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To the Judicial Dept
The Hon Mr Justice R.S. Benson
Secy General

Sum in final

Dec 21-4-99

10/4/99

SUBJECT.

Stating that the (Govt) agree
that the words "entitled to furlough"
in rule 6 art. 600, C.S.R., should
be constructed as equivalent
to "had furlough to his credit" &
that Mr Justice Benson may
be granted furlough accordingly.

Return the original
enclosures to C no 243
Final in G.O. 201-202 *Final*
9-2-99

with copy 980 491 *Final*
8-4-99

18 4 99

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READ AGAIN G.O. No.
189

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

PRESENT WITH DUTY.

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