

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1235

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Dated

25-7-48

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 29th September 1857.

No. 36. Read the following letter from J. ROHDE, Esq., Inspector of Prisons; to E. MALTBY, Esq., Acting Chief Secretary to the Government of Fort Saint George, dated Ootacamund, 5th September 1857, No. 383.

SIR,

I have the honor to state, that I have some doubts as to the application to Military Convicts in the Zillah Jails of the Rules laid down for other prisoners, and that it seems desirable that some definition of the Rules may be laid down in respect to such persons. The Government will probably think it necessary that the questions should be referred to the Military Department.

1st. Under Clause 5, Section VIII, Regulation XV of 1803, Act VIII of 1836, and the order of Government 13th May 1836, Convicts under sentence of imprisonment may be transferred, under the authority vested by the order of Government referred to, in the Inspector of Prisons. But Act VIII of 1844 provides for the transfer of Military Officers, Soldiers or followers who may be imprisoned in any prison or other place by order issued by the Governor in Council.

Question.—Does the authority vested in the Inspector of Prisons, to transfer Convicts, extend to persons of this class, or to any persons sentenced by Court Martial, and is there any distinction between Military Convicts confined previous to discharge and such Convicts who on being sentenced cease to belong to the Army? The Rule however interpreted will refer also to the case of prisoners in a bad state of health, who ordinarily would be transferred without reference to a Medical Certificate.

2nd. Soldiers of the Native Army, delivered over to the Civil power, under sentence of imprisonment and hard labor, are accompanied by a warrant of commitment requiring that the sentence be carried out for——reckoned from the day on which such sentence was passed. I observe on looking over the general Regulations of the Bengal Army that the day of sentence and of release are both included, that is, that a sentence of a month's imprisonment passed on the 1st February, would terminate on the 28th February, and not on the 1st of March; Colonel Chalon informs me that the same rule prevails in the Madras Army.

Question.—Is this rule applicable, both in the cases of Military persons continuing such, and in that of others sentenced by Courts Martial?

3rd. In cases of sentence by Courts Martial, "Calendar months" not being specified in the Warrant, are Officers in charge of Jails to understand by "months" Lunar or Calendar months. If Lunar months, are these to be calculated at 28 days or as in the Telougo Almanac months as defined by the moon.

4th. Are the provisions of Clause 2, Section V, Regulation II of 1822, (prescribing the penalties for prisoners escaping) applicable to Military prisoners?

5th. Are the provisions of Section V, Regulation X of 1832, prescribing penalties for breaches of discipline, &c., applicable to such prisoners?

2. I would further beg that in case of sentences by Military Courts, separate Warrants may be issued in the case of each prisoner, and that the date of release may be distinctly stated on each Warrant. I have some months since urged the adoption of this course as well as the use of printed forms of Warrants on the Court of Foujdaree Udalt, and have further requested that a form of endorsement may be printed on a quarter fold of the back for convenience of reference.

3. In answering my questions the case of Convicts continuing on the strength of the Army and of Convicts struck off on conviction should be distinctly alluded to.

4. The Government will observe that the application of Clause 2, Section V, Regulation VI of 1836, would effect Convicts escaping on their way to Jail while in charge of their guards.

(Signed) J. ROHDE,
Inspector of Prisons.

*The Inspector of Prisons has no control
over such prisoners in such respect.*

Fort St. George, Judicial Consultation, 29th September 1857.

No. 37. ORDER THEREON, No. 1235; dated 25th September 1857.

The Inspector has some doubts on his mind, relative to the application of certain Regulations regarding prisoners, to Military Convicts.

2. He observes first, that, under the authority assigned to them by Act No. VIII of 1856, the Government vested in his office certain powers, which were heretofore vested in the *Foujdaree* *Udalut* and Sessions Judges. Among these is the authority to transfer Convicts from one prison to another. Does this authority, he asks, extend to "Native Officers, Soldiers and followers imprisoned under sentence of a Court Martial?"

Answer.—Certainly not. Inasmuch as power to remove persons of such classes never belonged to the *Foujdaree* Court or Sessions Judges, but is limited by Act No. VIII of 1844, to the Governor in Council alone, the Inspector of Prisons has no control over such prisoners in such respect.

3. The foregoing question brings him to a second. "Is there any distinction between Military Convicts, confined previous to discharge, and such Convicts, who, on being sentenced cease to belong to the Army?"

Answer.—Obviously there is. The latter class differ in no respect from other Convicts. Act No. VIII of 1844 above quoted refers only to prisoners "belonging to the forces of the East India Company," not to any who have ceased to belong to them.

4. In reply to the third question, the Government consider it would not be lawful, except on extreme emergency, to remove any prisoner of the kind contemplated in the said Act, even on a Medical Certificate. There is nothing in the Act to authorize such exception of "Medical Certificate."

5. *Fourth Question.*—As the usage is, in Court Martial sentences, to include in the imprisonment adjudged, both the days of sentence and release, Officers in charge of Jails should be guided by this Rule in the case of all prisoners sentenced by Courts Martial.

6. *Fifth Question.*—Where it is not otherwise described in the sentence, "a month" must be held to have the meaning ordinarily assigned to that term; viz., a Calendar month.

7. *Sixth and seventh Questions.*—Military Convicts are certainly liable, like all others, to the penalties prescribed by the law for prisoners escaping, or infringing the Rules laid down for the better discipline of the Jail.

8. The question of requiring Courts Martial to issue separate Warrants of commitment for each prisoner will be considered in the Military Department.

9. In the last para. of his letter Mr. Rohde refers to Regulation VI of 1836, as providing for Convicts escaping on their way to Jail. The Government presume this is an error, for Regulation VI of 1822, the second clause of the fifth Section of which enacts Rules on that behalf.

(Signed) E. MALTBY,
Acting Chief Secretary.

Judicial Sept

No 1235

Encl. 5/25th September 1857

following taken } here entered No 983.
Inspector of Prisons } 5/5th Sept/57.

The Inspector has some doubts on his mind, relative to the application of certain Regulations regarding Prisoners, to Military Convicts.

2. He observes first, that, under the authority assigned to him by Act No. VIII of 1856, he has vested in his office certain powers, which were heretofore vested in the *Foujdaree* *Udalut* & Sessions Judges. Among these is the authority to transfer Convicts from one Prison to another. Does his authority, he asks, extend to "Native Officers, Soldiers and followers imprisoned under sentence of a Court Martial?"

Answer.—Certainly not. Inasmuch as power to remove persons of such classes never belonged to the *Foujdaree* *Udalut* & Sessions Judges, but is limited by Act No. VIII of 1844 to the Governor in Council alone, the Inspector of Prisons has no control over such prisoners in such respect.

3. The foregoing question brings him to a second. "Is there any distinction between Military convicts confined previous to discharge, and such convicts, who, on being sentenced, cease to belong to the Army?"

Answer. Obviously there is. The latter class differs in no respect from other convicts. Act No VIII of 1844 above quoted refers only to prisoners "belonging to the forces of the East India Company", not to any who have ceased to belong to them.

4. In reply to the kind question, the Govt consider it would not be lawful, except on extreme emergency, to remove any Prisoner of the kind contemplated in the said Act, even on a Medical Certificate. There is nothing in the Act to authorize such a exception of "Medical Certificate".

5. Fourth Question. As the usage is, in Court-martial sentences, to include in the imprisonment adjudged, both the days of sentence & release, officers in charge of jails

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th^t be guided by his rule in the case of all Prisoners sentenced by Courts Martial.

6. Fifth Question. Where it is not otherwise directed in the sentence, "a month" must be held to have the meaning ordinarily assigned to that term, viz; a calendar month.

7. Sixth and Seventh Questions.

Military convicts are certainly liable, like all others, to the penalties prescribed by the law for prisoners escaping, or inflicting the rules laid down for the better discipline of the Jail.

8. The question of requiring Courts Martial to issue separate warrants of commitment for each Prisoner will be considered in the Military Dept.

9. In the last Para of his letter Mr. Noble refers to Reg^t VI of 1836 as providing for convicts escaping on their way to Jail. The Govt presume this is an error for Reg^t VI of 1822, the second clause of the fifth section of which enacts rules on that subject.

To the Secy of Prison }
Military Dept }
Sept 1st Oct

17-9-57.

James Allen & Co.
24 Old Broad Street

June 29

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At the Court: 29th July 1856
Judicial Assizes

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At the Court: 29th July 1856

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