M.R.O. 1—89,000—16-10-19.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1158 Press ~~Mis.~~

1142

Dated 29—8—1859.

Not to be folded or roughly handled

1145

Proceedings of the Madras Government, Judicial Department, from 27th August to 2nd September 1859.

No. 11. Read the following Extract from the Proceedings of the Government of India, in the Financial Department, dated 29th July, 1859, No. 6642.

Read the following:—

From J. L. LUSHINGTON, Esq., Civil Auditor, Madras; to C. H. LUSHINGTON, Esq., Financial Secretary to the Government of India,—(No. 420, dated 23rd June, 1859.)

General Department. I have the honor to forward a printed copy of the Proceedings of the Madras Government, in the Judicial Department, dated 17th Instant, No. 839, on a reference made by this office, together with the whole of the correspondence connected therewith. As the case is without precedent, I beg that you will obtain the orders of the Supreme Government on the subject for my future guidance.

2. The case is as follows:—Colonel Colbeck, Senior Magistrate of Police, Madras, obtained a month's privilege leave under Section VII of the Uncovenanted Service Rules and proceeded to Bangalore on the 19th April last; this leave, therefore, it will be seen, expired on the 18th of the following month. In consequence of Mrs. Colbeck's illness, he applied to and obtained from Government, without the concurrence of this office, a month's extension under Section VIII, or special leave. Col. Colbeck, however, only availed himself of 2 days of this extension, and these days the local Government directed to "be treated as special leave on half salary," and the remainder to be cancelled on Col. Colbeck's rejoining office.

3. The late Hon'ble Court of Directors in the 1st paragraph of their Despatch, dated 7th April, 1857, No. 28, republished in the *Calcutta Gazette*, dated 27th June 1857, No. 25, Financial Departement, ruled, that leave on private affairs under Section VIII, or special leave, may not be taken in connection with or in continuation of privilege leave under Section VII, and further, that an Officer not returning to duty after the expiration of his privilege leave, forfeits all pay and allowances for the time he remains in excess thereof, and should he continue so absent for more than a month, his office becomes vacant.

4. The question therefore, is, has the Madras Government authority to grant "as a special case" leave under Section VIII, in continuation of Section VII, in opposition to the orders just recited.

FINANCIAL DEPARTMENT, RESOLUTION.

The Governor General in Council observes, that the ruling of the Home authorities, as contained in their Despatch, No. 28 of 1857, is clear and distinct, and that, under that ruling, the order of the Madras Government, in regard to Colonel Colbeck's leave, should be reversed. His Excellency in Council directs either that half salary only be allowed for the full period of leave taken by Colonel Colbeck, or if he prefers it, that the leave granted to him under Section VIII of the Uncovenanted Leave Rules be cancelled, and that his full salary be forfeited for the days that he overstayed his privilege leave.

Copy forwarded to the Civil Auditor, Madras, in reply to his above letter, and a copy also sent to the Government of Fort Saint George.

(True Extract.)

(Signed) C. HUGH LUSHINGTON,
Secretary to the Government of India.

No. 12. ORDER THEREON, 29th August 1859, No. 1158.

Ordered that Colonel Colbeck be informed that the Supreme Government have ruled that the leave of absence granted to him under date 17th May last, cannot be given under Section VIII of the Uncovenanted Service Rules, *i. e.*, as special leave on half salary, in continuation of the privilege leave previously granted him, and have directed either that half salary only be allowed for the full period of leave taken by him, or, if he prefers it, that the leave granted to him under Section VIII of the Uncovenanted Leave Rules be cancelled, and that his full salary be forfeited for the days that he over-stayed his privilege leave.

2. Colonel Colbeck will report which alternative he would prefer.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

No. 6642

EXTRACT from the Proceedings of the Government of India, in the Financial Department, d. 29th July, 1859.

READ the following:—

From J. L. LUSHINGTON, Esq., Civil Auditor, Madras, to C. H. LUSHINGTON, Esq., Financial Secretary to the Government of India,—(No. 420, d. 23rd June, 1859.)

SIR,

General Department, I HAVE the honor to forward a printed copy of the proceedings of the Madras Government, in the Judicial Department, dated 17th instant, No. 839, on a reference made by this Office, together with the whole of the correspondence connected therewith. As the case is without precedent, I beg that you will obtain the orders of the Supreme Government on the subject for my future guidance.

2. The case is as follows:— Colonel Colbeck, Senior Magistrate of Police, Madras, obtained a month's privilege leave under Section VII of the Uncovenanted Service Rules and proceeded to Bangalore on the 19th April last; this leave, therefore, it will be seen, expired on the 18th of the following month. In consequence of Mrs. Colbeck's illness, he applied to and obtained from Government, without the concurrence of this Office, a month's extension under Section VIII, or special leave. Col. Colbeck, however, only availed himself of 2 days of this extension, and these days the local Government directed to "be treated as special leave on half salary," and the remainder to be cancelled on Col. Colbeck's rejoining office.

3. The late Hon'ble Court of Directors, in the 1st paragraph of their despatch, dated 7th April, 1857, No. 23, republished in the *Calcutta Gazette*, dated 27th June, 1857, No. 25, Financial Department, ruled, that leave on private affairs under Section VIII, or special leave, may not be taken in connection with or in continuation of privilege leave under Section VII, and, further, that an officer not returning to duty after the expiration of his privilege leave, forfeits all pay and allowances for the time he remains in excess thereof, and should he continue so absent for more than a month, his office becomes vacant.

Gazette 28 July 1857 Page 161.

4. The question, therefore, is, has the Madras Government authority to grant "as a special case" leave under Section VIII, in continuation of Section VII, in opposition to the orders just recited.

JUDICIAL DEPARTMENT.

Proceedings of the Madras Government.

READ the following letter from J. L. LUSHINGTON, Esq., Civil Auditor, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George,—(dated 31st May, 1859, No. 362.)

IN 2nd paragraph of the Proceedings of Government, No. 744, dated 28th instant, in the Judicial Department, the excess of leave taken by Colonel Colbeck, is allowed him as a special case with forfeiture of half salary, or, in other words, under Section VIII.

2. This special concession, I would respectfully observe, is directly opposed to and strictly prohibited by the orders of Hon'ble Court, in paragraph 1 of their despatch, No. 28 of 1857, published at page 161 of the Official Gazette, dated 28th July, 1857. Under these circumstances,

and under orders of the Hon'ble Court, conveyed to me in Extract Minutes Consultation, No. 16, dated 11th January, 1856, Financial Department, I feel bound to point out this departure from the Rule, in order that the above order may be reconsidered.

ORDER THEREON, 17TH JUNE, 1859, No. 839.

THE Government do not consider the grant to Colonel Colbeck of leave on private affairs and on forfeiture of half salary, in extension of the privilege leave previously granted him, to be, as supposed by the Civil Auditor, "directly opposed to and strictly prohibited by the orders of the late Hon'ble Court of Directors."

Despatch 28 of 1857, p. 1.

2. The Court no doubt express their concurrence with the Government of India, that leave on private affairs is not to be taken by Uncovenanted Servants in continuation of privilege leave, and such indulgence certainly ought not to be conceded unless under very peculiar circumstances. But extreme instances may arise, and the case of Colonel Colbeck is one, which may warrant a relaxation of the rule, and this Government are persuaded that it was not the intention of the Hon'ble Court that the local Government should be precluded from exercising a discretion on such occasions. The orders of the Court in Extract Minutes of Consultation 11th January, 1856, refer only to new or increased allowances in augmentation of salary, and do not apply to the present question.

3. The Government therefore do not see reason to alter their orders of the 28th ultimo.

JUDICIAL DEPARTMENT.

Proceedings of the Madras Government.

READ the following letters from Lieutenant-Colonel COLBECK, Senior Magistrate, to T. PYCROFT, Esq., Chief Secretary to Government,—(d., Bangalore, 12th May, 1859.)

IN consequence of the very precarious state in which Mrs. Colbeck is at present, I am exceedingly unwilling to leave her. I have the honor therefore to request you will favor me by submitting to the Hon'ble the Governor in Council, my request to be permitted to remain here upon another month's privilege leave.

2. I have during the last ten years (even including my present leave) been allowed only one month and ten days' privilege leave. I imagine, therefore, the present indulgence will not be denied under the peculiar circumstances in which I am placed.

FORT ST. GEORGE, JUDICIAL DEPARTMENT, THE 13TH MAY, 1859.

Referred for the early report of the Civil Auditor.

No. 318, REPORT OF THE CIVIL AUDITOR, DATED 14TH MAY, 1859.

General Department. THE Civil Auditor has the honor to report that Colonel H. Colbeck, Senior Magistrate, Madras Police, attached to Royapetta, is not eligible to another month's leave under Section VII of the Uncovenanted Leave Rules, in continuation of that granted in orders of the 15th April last, as he has been in uninterrupted employment only since the 3rd December, 1857, on which date he returned from the 10 days' leave granted him on the 17th November, 1857.

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From Lieutenant Colonel H. COLBECK, Senior Magistrate, to T. PYCROFT, Esq., Chief Secretary to Government,—(d., Bangalore, 14th May, 1859.)

I HAVE the honor to request you will submit, for the consideration of the Hon'ble the Governor in Council, my appeal for an extension of leave without loss of allowances, to be granted as a peculiar indulgence ceded to the painful circumstances with which I am surrounded.

2. In the middle of last month, I obtained one month's privilege leave to accompany a sick wife to this station.

3. My leave expiring on Monday, I was preparing yesterday to proceed *en route* to Madras, but a serious relapse of Mrs. Colbeck's rendered me unwilling to leave my family at such a time and under such painful circumstances.

4. I forwarded a telegram to Madras asking an extension of leave, but received for answer that the Absentee Rules would admit only of emergent leave with consequent loss of allowances.

5. Leave of the above description my circumstances forbade, and I was to leave this day, but a telegram received last night conveyed the kind permission of the Governor to await the result of my present letter.

6. Under the painful circumstances of my case, I do with confidence hope some indulgence may be granted me.

7. I assumed my present appointment in the early part of the year 1850, and although each year entitled to a portion of privilege leave, I availed myself of none until November, 1857, when I was absent from Madras for nine days. This period and my present leave is all the relaxation I have had from the duties of an arduous and responsible office during so long a service.

8. Inclination would lead me to Madras, and whatever indulgence the Hon'ble the President in Council may possibly see fit to grant, my return will not be delayed an hour beyond the time I consider imperatively calling for my presence here.

ORDER THEREON, 17TH MAY, 1859; No. 685.

UNDER the very peculiar circumstances of the present case, the Hon'ble the Governor in Council resolves, as a special instance, to grant Colonel Colbeck, Magistrate of Police, one month's leave of absence in extension of that granted him under date the 15th ultimo. This second month will be under Section VIII of the Uncovenanted Absentee Rules, or on forfeiture of half salary, but it will not prejudice the month's privilege leave on full pay already enjoyed by Colonel Colbeck.

From J. L. LUSHINGTON, Esq., Civil Auditor, to the Chief Secretary to Government,—(No. 343, d., Fort Saint George, 21st May, 1859.)

SIR,

General Department. IN yesterday's Gazette I perceive that a month's leave has been granted to Colonel H. Colbeck, Senior Magistrate of Police, under Section VIII of the Uncovenanted Leave Rules, in continuation of that granted in orders of the 15th ultimo, *i. e.*, in continuation of privilege leave under Section VII.

2. Under a notification of the Government of India, republished in the Fort Saint George Gazette at page 161, dated 28th July, 1857, it is ruled that no leave on private affairs or under Section VIII can be taken in continuation of privilege leave, and in the latter part of the same notification it is ruled that, "Uncovenanted Officers not returning after the "expiration of their privilege leave forfeit all pay and allowances during the time of their "remaining so absent without leave, and if absent for more than one month beyond the term "granted, their office becomes vacant."

3. Colonel Colbeck's case does not come strictly under this ruling, as he will have been absent under sanction of Government, but the leave having been granted contrary to the rules, I request to be informed what allowances are to be passed to him.

4. If the Section under which the original leave was granted be commuted to Section VIII, Colonel Colbeck will be subjected to the loss of half salary for the two months, and will not be entitled to a similar indulgence for another six years.

From Lieutenant Colonel H. COLBECK, Senior Magistrate of Police, to T. PYCROFT, Esq., Chief Secretary to Government,—(No. 7, d. 21st May, 1859.)

SIR,

IN reference to Extract Minutes of Consultation, Judicial Department, 17th May, 1859, No. 685, I have the honor to state, for the information of the Hon'ble the Governor in Council, that circumstances will not admit of my availing myself of the consideration of Government, as exhibited in the extension of the leave granted to me under date the 15th ultimo, as the loss of half allowances would be to me of serious consequence.

2. Under these circumstances, within two hours of the receipt at Bangalore of the Extract Minutes of Consultation above alluded to, I was on my way to Madras and have this day arrived.

3. I have now only the honor to solicit that the few days I have exceeded my privilege leave (pending an answer to an application for an extension of such leave) may be granted to enable me to join; by which indulgence I shall escape the forfeiture of salary, and that my leave under date the 17th instant, may be cancelled in the Gazette.

NO. 347, REPORT OF THE CIVIL AUDITOR, FORT SAINT GEORGE, DATED THE 23RD MAY, 1859.

General Department. THE Civil Auditor understands from Colonel Colbeck's letter of the 21st instant to the address of the Chief Secretary to Government, that he has overstayed the month's privilege leave granted to him in the Gazette of the 15th ultimo. As Colonel Colbeck has not reported to this Office the date of availing himself of the leave, the Civil Auditor is unable to say how many days in excess have been taken by Colonel Colbeck; he will, however, forfeit all pay and allowances for the period in excess, no additional time being allowed for rejoining his appointment.

JUDICIAL DEPARTMENT.

Proceedings of the Madras Government.

READ the following letters:—

From the Civil Auditor... ... ... (Here enter 21st May, 1859, No 343.)

" Lieut. Col. H. Colbeck, Senior Magistrate of Police ... ... (Here enter 21st May, 1859, No. 7.)

Read also Report of the Civil Auditor on the latter.... (Here enter 23rd May, 1859, No. 347.)

ORDER THEREON, 28TH MAY, 1859, No. 744.

Para. 1. It is observed that after his letter of the 21st May, 1859, No. 343, was written, the Civil Auditor will have received the orders of Government, 17th instant, and will have been apprized of the terms on which additional leave has been granted to Colonel Colbeck.

2. Colonel Colbeck will be informed in reply to his letter of the 21st instant, that the privilege leave originally granted him cannot be extended and that the time taken by him in excess of it, must be treated as special leave on half salary; so much of the leave granted him under date the 17th instant as he has not availed himself of, will be cancelled by his rejoining his office.

3. Colonel Colbeck may, however, if he prefers, forfeit his full salary for the days that he has outstayed his privilege leave, in which case the leave granted him on the 17th instant, will be cancelled in full and his claim to special leave within the next six years will not be prejudiced.

From J. L. LUSHINGTON, Esq., Civil Auditor, to the Chief Secretary to Government,—(No. 362, d., Fort Saint George, 30th May, 1859.)

SIR,

General Department. IN the 2nd paragraph of the Proceedings of Government, No. 744, dated 28th instant, in the Judicial Department, the excess of leave taken by Colonel Colbeck is allowed him as a special case with forfeiture of half salary, or, in other words, under Section VIII.

2. This special concession, I would respectfully observe, is directly opposed to, and strictly prohibited by, the orders of the Hon'ble Court, in paragraph 1 of their despatch, No. 28 of 1857, published at page 161 of the Official Gazette, dated 28th July, 1857. Under these circumstances and under orders of the Hon'ble Court, conveyed to me in Extract Minutes of Consultation, No. 16, dated 11th January, 1856, Financial Department, I feel bound to point out this departure from the rules in view, that the above order may be re-considered.

FINANCIAL DEPARTMENT, RESOLUTION.

THE Governor General in Council observes, that the ruling of the Home authorities, as contained in their despatch, No. 28 of 1857, is clear and distinct, and, that, under that ruling, the order of the Madras Government, in regard to Colonel Colbeck's leave, should he reversed. His Excellency in Council directs

either that half salary only be allowed for the full period of leave taken by Colonel Colbeck, or, if he prefers it, that the leave granted to him under Section VIII of the Uncovenanted Leave Rules be cancelled, and that his full salary be forfeited for the days that he overstayed his privilege leave.

COPY forwarded to the Civil Auditor, Madras, in reply to his above letter, and a copy also sent to the Government of Fort Saint George.

(A true Extract)

Secretary to the Government of India.

[Exd. R. N Dhur.]

Order thereon-
The above resolution of the Govt. of India will be communicated to Col. Colbeck in reference to their Orders of the 28th May last. No. 744

Judicial Department.

Proceedings of the Madras Government.

Read the following Extract from the Proceedings of the Government of India, in the Financial Department.

(Here enter 29th July 1859, No. 1066.)

Order thereon, 29th August 1859, No. 1158.

Ordered that Colonel Colbeck be informed that the Supreme Government have ruled that the leave of absence granted to him under date 17th May last cannot be given under Section VIII of the Uncovenanted Service Rules - i.e. as special leave on half salary, in continuation of the Privilege leave previously granted to him, and have directed either that half salary only be allowed for the full

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full period of leave taken by ~~Colonel Colbeck~~ him, or, if he prefers it, that the leave granted to him under Section VIII of the Unconvenanted Leave Rules be cancelled; and that his full salary be forfeited for the days that he overstayed his privilege leave.—

2.— Colonel Colbeck will report which alternative he would prefer.

JPO

This shows the Madras Civil Auditor in a new light—as appointing the Surgeon and against orders passed by Headquarters &c—

But I conclude that he is Warden Unit so to doing by the Orders of the Govt of India 26 March 1878 No 1681 PD— which I have not with me—

To Lieutt Colonel H. Colbeck Supdt
~~To the Lunatic Asylum~~

H M Macneill

Pres of Govt 2 Sept
Judicial 1859 Depart.

No 1158.

Proceedings of Govt

D/ 29 August/59.

7. Pro 1441.