M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1347	Press ~~Mis.~~
114-115	
Dated 17-10	~~19~~ 1887

415

Not to be folded or roughly handled

NRP

Proceedings of the Madras Government, Judicial Department,
17th October 1860.

No. 114. Read the following Proceedings of Government, in the Financial Department, dated 8th October 1860, No. 507.

Communicating the Resolution of the Government of India, relative to the acting allowances of an Officer officiating for one holding a staff or other detached appointment absent from his duties on sick certificate.

(Vide Proceedings, Financial Department, dated 8th October 1860, Nos. 17 and 18.)

No. 115. ORDER THEREON, 17th October 1860, No. 1,347.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. S. T. Augustine.

FINANCIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Extract from the Proceedings of the Government of India, in the Financial Department, dated 9th August 1860, No. 7,747.

Read an Endorsement from the Foreign Department, No. 2,383, dated 2nd ultimo, forwarding for consideration and orders papers relative to the acting allowances of Captain E. Thompson, Officiating Deputy Commissioner of Seetapoor.

RESOLUTION.—Section 13 of the New Military Furlough Rules, dated 17th November 1854, provides that "an Officer holding a Staff or other detached appointment will be allowed to be absent on sick certificate in England or elsewhere beyond sea for a period of 15 months, without losing his appointment; and that during the first six months only of such absence he will be entitled to draw half the Staff salary of his appointment, the Officer officiating for him drawing the remaining half salary during the first six months, and *the whole salary during the remainder of the time.*"

2. A question having subsequently arisen relative to the title of Acting Officers in the *Department of Public Works* to full Staff pay after having acted for six months *vice* a permanent incumbent on sick furlough, it was decided by this Government that the first Acting Officer became entitled to full Staff pay at the expiration of six months from the date of the permanent incumbent's quitting his office; but that, in the event of the first Acting Officer's proceeding on sick leave, he forfeited all claim to any portion of the Staff salary, and the next Acting Officer was entitled to the full salary.

3. With reference to this decision, the late Court of Directors, in paragraph 11 of their Financial Despatch No. 78, dated 4th November 1857, wrote—"We cannot approve your decision in this case, as no Officer appointed to act for another is entitled to full Staff pay, *until he shall have been performing those duties for more than six months.*"

4. Under this interpretation, an Acting Officer has been held as not entitled to the full salary of the place in which he officiates, until he "himself has acted for six months, without reference to the period that may have elapsed from the date of the permanent incumbent's proceeding to England on sick furlough," or to the fact of his predecessor having been restricted to half Staff salary during "the first six months of his officiating incumbency."

5. Two years after the date of the above orders of the Honorable Court, the Military Auditor General enquired, on the 23rd November 1859, whether those orders were to be confined to the Department of Public Works, a case in which Department elicited the orders, or whether they were to apply to all Staff appointments and salaries in the Army, which were ordinarily divisible between an absentee and his *locum tenens, i. e.*, the half or full salary forfeited by the former was made over to the latter, although on date of such lapse of the full salary to the *locum tenens* he may not have officiated for six months.

6. The question having been referred Home, the Secretary of State wrote, on the 8th February last, that the rule of the 4th November 1857, (quoted above) may be applied to all cases of Military Officers in Civil employ, as recommended by this Government.

7. Thus stands the rule. The case now submitted for consideration is as follows:—

8. Captain E. Thompson, who officiated as Deputy Commissioner, Seetapoor, from 6th December 1858 to 17th March 1859, during the absence on sick leave to Europe of Major Evans, the permanent incumbent, sent a bill to the Civil Auditor for the full salary of the appointment, from the date he commenced to officiate, on the ground that the full salary was available in consequence of Major Evans having been absent over six months.

9. The Auditor, however, refused to admit the claim, on the strength of the Honorable Court's orders of 4th November 1857.

10. Against this decision Captain Thompson urges that that rule did not originally extend to Military Officers in Civil employ; that the extension was subsequently made under orders from the Secretary of State, dated 8th February 1860; that Section 13 of the new Military Furlough Rules admits of his drawing the full allowances forfeited by the Officer for whom he acted; that this Section remained in force until it was modified by the Home Government; that it had not been modified in any way affecting Military Officers in Civil employ, at the time he officiated

as Deputy Commissioner; that the subsequent interpretation of Section 13, as ordered by the Secretary of State, had no retrospective effect; and that he is, therefore, qualified to draw the full allowances claimed.

11. The Governor General in Council is, however, of opinion that the Auditor is right. It is true that Section 13 remains in force; but it has been explained by the Home Government that the six months mentioned in that Section were intended to mean the "first six months" of the Acting Officer's incumbency, not of the absence of the absentee, as before understood; and it seems clear that the mere fact of the meaning of the Section not having, in the first instance, been rightly understood, can give no ground of claim. Every case now to be decided must be decided in conformity to the proper bearing of the rule.

No. 4,648.

Copy forwarded, for information and guidance, to the Government of Fort Saint George.

(Signed) C. H. DICKENS, Captain,
Offg. Secy. to the Government of India.

PUBLIC WORKS DEPARTMENT,
FORT WILLIAM,
7th September 1860.

ORDER THEREON, 8th October 1860, No. 507.

Ordered to be communicated to the Departments and Officers noted below, and to be published in the Fort Saint George Gazette.

(True Extract.)

Signed H. Wyndham.
Chief Secretary.

To the Public Works Department.
„ Military „
„ Public „
„ Judicial „
„ Military Auditor General.
„ Civil Auditor.

Exd. F. Cartledge.

Ind. 1860 Dept.
Pro: of Oct.
Pro: Govt. in the
Fin. Dept. No. 507.

Desp. to
Ref. 16 to 3 Oct. 1860.

Ref. 2052.

No. 1712.

Copy the Resolution
of the Govt. of India relative
to the acting allowances
of an Officer officiating
for one holding a staff
or other detached appoint-
ment absent from his
duties on sick Certificate.

No. 1347 - 17 Oct. 60.

To be recorded. JP

114 & 115.