M.R.O. 1—39,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 126 Press ~~Mis.~~

211-212 Dated 23-1- ~~19~~ 1865

H/S

Not to be folded or roughly handled

CNB

Proceedings of the Madras Government, Judicial Department,
23rd January 1865.

No. 211. Read the following Proceedings of Government in the Military Department, dated 10th January 1865, No. 94.

Considering the claim of Serjeant Foley, Warder of the new prison at Ooty, to Military pay for 9 months as not valid. (Vide Proceedings, Military Department, dated 10th Jany. 1865, Nos. 162—164.)

No. 212. ORDER THEREON, 23rd January 1865, No. 126.

Communicated to the Inspector General of Jails, and to the Sessions Judge of Chingleput.

(Signed) **A. J. ARBUTHNOT,**
Chief Secretary.

To the **Inspector General of Jails.**
„ **Sessions Judge of Chingleput.**

Exd. J. Tulloch.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

From the Adjutant General, Head Quarters, Ootacamund, 5th November 1864, No. 959; to the Secretary to Government, Mily. Dept., Fort Saint George.

I have the honor, by order of the Commander-in-Chief, to request you will be good enough to solicit the orders of Government on the following case, connected with Pensioned Serjeant Michael Foley; correspondence herewith forwarded as per margin.

Pro. of Govt. in the Judicial Dept., dated 8th June 1863, *No.* 886.
Do. do. do. 27th November ,, ,, 1838.
Serjeant Foley's letter, dated 11th March 1864.
Letter dated 21st May 1864, *No.* 662, *from Officer Commanding Royal Artillery Centre Division, and one enclosure.*
Letter dated 21st October 1864, *No.* 1255, *from Officer Commanding Royal Artillery, Centre Division.*
Letter dated 10th August 1864, *No.* 575, *from Controller of Military Accounts.*
Letter dated 3rd September 1864, *No.* 694, *from Controller of Military Accounts.*

2. In G. O. C. C. of the 24th December 1861, Serjeant Foley, then of the Royal Artillery, was permitted to take Civil employment, on probation, as Warder of the new Prison at Ootacamund, but before that date, he appears to have been granted a Pass, and he entered upon the duties of his appointment from the 1st November 1861.

3. In December 1862, Serjeant Foley re-joined the Royal Artillery at the Mount, and having applied to be transferred to the Pension Establishment, was permitted by his Commanding Officer to reside at Chingleput until such time as his name would appear in Orders as pensioned.

4. In G. O. G., dated 26th May 1863, he was transferred to the Non-Effective Establishment on the superior Pension authorized to Serjeants, but in a letter addressed to this Department, dated 11th March 1864, the Serjeant stated that nine months' Pension was then due to him, owing, it seems, to the non-adjustment of his Military Pay and allowances, due after he resigned his Civil employment.

5. The Proceedings of Government in the Judicial Department, dated 8th June and 27th November 1863, numbered respectively 886 and 1838, apparently contain all the correspondence which took place between those dates regarding the Pay and allowances due to Serjeant Foley.

6. The last quoted Order states that Foley's claim to Military Pay ceased after the 1st November 1862, his year of probation in Civil employ having expired on 31st October 1862.

7. Agreeing with the opinion of the Controller of Military Accounts as contained in the concluding portion of paragraph 3 of his letter, dated 10th August 1864, No. 575, that the act of Serjeant Foley's re-joining the Artillery cancelled his first engagement in the Civil Department, and renewed his claim to Military Pay, it appears to His Excellency that no objection, under Regulations, should have been taken to disbursing to the Serjeant his Military Pay as an Effective Soldier at any Station at which he might choose to reside after he applied for his Pension, or to continuing such Pay to him until he was finally struck off the strength of Her Majesty's Army as an Out-Pensioner of Chelsea Hospital.

8. With reference to the date from which the Controller considers that Serjeant Foley's removal to the Pension Establishment should have effect, Sir Hope Grant is of opinion* that Serjeant Foley had (according to the Regulations under which he volunteered his services from Her Majesty's Local to Her Majesty's British Army) an equal claim with every other British Soldier to his Effective Pay up to the date on which the decision of the Chelsea Commissioners was made known in this country, and consequently, that G. O. G., dated 3rd June 1864, (and not G. O. G., dated 26th May 1863,) fixes the date on which Serjeant Foley should commence to draw his Pension Pay.

* *Vide G. O. G., No.* 334 *of* 1861, *page* 553, *and Extract from Secretary of State's Despatch, dated India Office, London, 24th February* 1864, *No.* 19, *recorded in Proceedings of Government, dated 29th April* 1864, *No.* 1439.

9. Serjeant Foley's last Pay Certificate, together with the other documents attached thereto, are forwarded.

10. Serjeant Foley's Family Pay should apparently cease from the 26th May 1863.

From the Acting Controller of Military Accounts, Fort Saint George, 14th December 1864, A; to the Secretary to Government, Military Department, Fort Saint George.

I have the honor to forward a letter, from the Adjutant General, dated 5th November 1864, No. 959, with enclosures, on the subject of a claim to Effective Pay preferred on account of Pensioned Serjeant Michael Foley, late of the Royal Madras Artillery.

2. The Serjeant on the 24th December 1861, was permitted to take Civil employ as Warder of the Prison at Ootacamund, on probation.

G. O. C. C. 24th December 1861.

3. On the expiration of a year from that date (23rd December 1862,) his Military Pay was disallowed.

4. When this case was first referred to this Office, it was stated that the Serjeant had expressed his desire to relinquish his Civil appointment prior to the expiration of the probationary year, and assuming that to be the case, and that he *bonâ fide* relinquished the Civil employment and re-joined the Artillery with a view to obtain his Pension, it was considered that he had renewed his claim to Military pay.

5. It now, however, appears that the Serjeant was struck off the Establishment of the Jail at Ootacamund on the 13th October 1862, and appointed Jailor at Chingleput, and that the Serjeant, as far as the Inspector General of Jails knew, did not apply to quit the Civil Department.

Letter of Officer Commanding Royal Artillery, Centre Division, dated 21st October 1864, *No.* 1255.

6. It is also stated by the Officer Commanding Royal Artillery, Centre Division, that Serjeant Foley did not perform any duty at the Mount from date of his return in December 1862, he merely arrived, and was permitted to proceed to Chingleput, until his name would appear in the General Orders as pensioned.

Letter dated 21st May 1864, *No.* 662.

7. It would thus seem that Serjeant Foley never did quit the Civil Department, and never intended to quit it; but, that, having been appointed to Chingleput Jail, he reported himself at the Mount for the purpose of applying for Pension, and having applied, without the necessity of appearing before any Medical Committee, as he had completed twenty one years' service, he proceeded at once to his Civil appointment at Chingleput with permission, there to await the appearance of his name in General Orders as a Pensioner.

8. The grounds therefore, upon which he was considered to have renewed his claim to Military Pay do not exist. Although he went through a form of reporting himself at the Mount, and obtaining permission to await the decision of Government regarding his Pension at Chingleput, it is evident that he neither *bonâ fide* quitted the Civil Department, nor re-joined for Military duty.

9. No Effective Military Pay, therefore, is due to him after the 23rd December 1862, as he has continued in Civil employ.

10. In G. O. G., 26th May 1863, agreeably to paragraph 2 of the Order of Government, No. 982, 24th March 1863, the Serjeant was transferred to the Pension Establishment, in anticipation of the sanction of the Commissioners of Chelsea Hospital, when the rules subsequently issued in G. O. C. C. 30th May 1863, No. 32, were not in operation, and he is entitled to Pension from the 26th May 1863.

11. The Adjutant General, however, considers that his Pension should commence from the 3rd June 1864, the date upon which the decision of the Commissioners was notified, but with a claim to Effective Pay up to that date.

G. O. G. 3rd June 1864.

12. I do not however concur in that view of the Serjeant's claim, for the reasons above stated I do not consider him entitled to Effective Pay subsequent to the 23rd December 1862, and according to the rule then in force, his Pension should, I conceive, commence from the 26th May 1863, in accordance with the specific decision of Government on his case.

13. It will be observed that the Serjeant has actually drawn more Effective Pay than he was strictly entitled to, as it was not known that he had entered on his duties as Warder, on probation, on the 1st November 1861, instead of the 24th December, from which latter date the year of probation was reckoned in the Pay Department; but retrenchment now would be inexpedient.

ORDER, No. 94, 10th January 1865.

The Governor in Council observes that Serjeant Foley never having *bonâ fide* quitted the Civil Department, or returned to Military duty, his claim to Military Pay for the period in question, is inadmissible under the foregoing report from the Controller of Military Accounts, which will be communicated to the Commander-in-Chief. The over-payment referred to in paragraph 13 of the report, need not, however, be retrenched.

(True Extract.)

Secretary to Government.

To the Adjt. Genl., with 25 enclosures.
" Controller of Military Accounts.
" Examiner Pay Department.
" Judicial Dept., for information.

Exd. T. Stubbs.

Pro: 8th June 1863 ~~No 261–62~~
~~" 17th Nov^r " No 240 to 242~~

Dec^r 1863 — Acpt

Proceedings of Sorters
Daily Deputt
" 94

Lett of 31st Dec^r

Postd 10
Dec^r 15 } Cancd 65

No 126 — 23rd January 186
Communicated to the
Inspector Genl. of Jails
& to the Sessions Judge
of Chingleput.

No 72

Considering the Claim
of Sergt Foley — warder
of the Rev Remand
Wty — 5 Daily Cancy
" 9 months — at
Cent rate a —

2 212

With Order.

The Inspector Genl. of Jails.
" Sessions Judge of Chingleput } Order 23