

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1045	Press
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Dated	4 - 7	19 1866

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,

4th July 1866.

Read the following papers:—

No. 35. From G. E. COWER, Esq., Judge of the Madras Court of Small Causes, to the Acting Chief Secretary to Government, Fort Saint George; dated Madras, 13th June 1866, No. 29.

I shall feel much obliged if you will bring the following facts to the notice of His Excellency the Governor in Council.

2. I have been advised by my Medical Attendant that it is highly desirable I should have leave of absence for a time, and that a protracted stay in this country is likely to be attended with serious consequences to me.

3. Under a recent ruling of the Home Government, it has been held that it is not open to an Uncovenanted servant to take leave, except under the New Rules, and as the latter reduce my retiring allowance from £400 per annum to £200, after 20 years, which period of service I might hope to attain in about 15 months from this date, I am left in this difficulty, that I must either remain in Madras at the risk of my life, or forfeit one-half of that provision which I have fairly earned by the expenditure of my best years in this country, and which I was certainly led to believe would be mine, under the Rules in force at the time when I relinquished the prospects of a lucrative profession for the Public Service.

4. This decision presses upon me with such peculiar hard-ship, as to induce the supposition that such a case as I have the honor now to submit never could have been contemplated, and that if the matter is represented in the proper quarter, a modification of this ruling will follow, almost as a matter of course, in the case of a public servant of nineteen years standing. I would therefore most earnestly entreat that His Excellency in Council may be pleased to take such course as will secure to me what I would venture to hope may be considered no more than is justly due, namely the option of taking leave under the old Rules.

5. A reference to the Examiner of Claims will, I believe, show that I have not in the smallest degree over-stated the hardship of my case.

Referred to the Examiner of Claims, for his report.

13th June 1866.

(Signed) J. D. SIM,
Acting Chief Secretary.

No. 98.

No. 36.

ENDORSEMENT.

The undersigned has the honor to report that, under the Government of India's letter, dated 31st March 1855, No. 1839, to the Government of Bengal, Mr. Cower cannot be granted leave under the old

Uncovenanted Civil Service Rules; the leave must be given under the new. The undersigned would, at the same time, however, observe that it appears to him that Mr. Cower would not vitiate his claim to pension under the old Rules, if he takes only 12 months' sick leave, as, by doing

* The old Rules allowed an Officer to draw moiety of pay for one year, while absent on sick leave.

so, he will not reap any of the advantages* of the new leave Rules, and the

only bar to Government granting to an Uncovenanted Servant, situated as Mr.

*Proceedings of the Madras Government, Judicial Department,
4th July 1866.*

Cower is, should they consider him entitled to favorable consideration, pension under the old Rules, is that "he has at any time availed himself of the benefits conferred by the new leave Regulations."—*vide* Secretary of State's Despatch, dated 18th January 1865, No. 1, (Paragraph 3).

18th June 1866.

(Signed) W. DONALD,
Examiner of Claims.

No. 37. ORDER THEREON, 4th July 1866, No. 1045.

In the foregoing letter Mr. Cower, Judge of the Small Cause Court, Madras, states that he is obliged to leave India, on Sick Certificate, and complains of the hardship entailed on him by the new leave Rules.

2. Mr. Cower has been about 19 years in the service, and has had 1 year, 11 months and 23 days' sick leave which reckon for pension. By the old Rules which were in force up to 1863, he could now have *one year's* sick leave which would not reckon as service qualifying for pension, but he would become entitled, on serving another year, when his 20 years service would be completed, to a pension of one-third of his pay, or to £400 per annum.

3. By the new Rules, on the other hand, he can get two years leave, but *they do not count for pension*; consequently, he can only get for his present service, or if he returns and completes his 20 years service, then for that period, a pension of £200 per annum, and he must complete 25 years service before he can get £400 per annum.

4. Thus it will be seen that, under the new Rules, Mr. Cower practically loses six years' service.

5. In his Despatch of the 18th January 1865, No. 1, the Secretary of State expressed himself in the following terms on a Memorial from Mr. Ferrand, First Uncovenanted Assistant in the Government Office, Military Department.

"Mr. Ferrand points out that the application of the new Rules might render it necessary for him, in order to obtain a pension, to serve for a longer period than was required by the old rules. In the case of any Uncovenanted Servant so circumstanced, who was appointed prior to the promulgation of the new Rules, and whom you may consider entitled to favorable consideration, I shall not object to your granting a pension, after he has completed the period of service required by the old rules, in the event of his health rendering it necessary for him to retire from your Service," provided he has not, "at any time availed himself of the benefits conferred by the new Leave Regulations."

6. Mr. Cower has never taken, and does not now wish to take, advantage of the new Rules, and his case only differs from Mr. Ferrand in this respect, viz., that Mr. Ferrand would be deprived of five years service at the commencement of his service, while Mr. Cower's loss will be at the end of his service. This difference is clearly immaterial, the practical result being identical in both cases.

7. The literal wording of the Despatch might, at first sight, be held to imply that the concession was intended to be limited to cases where entire loss of pension would be entailed by applying the new Rules; but this obviously is not the case, for Mr. Ferrand, even under the new rules, was entitled to £200 per annum, and his complaint was not that he would or might lose a pension altogether, but that, for

*Proceedings of the Madras Government, Judicial Department,
4th July 1866.*

his half pay pension, he would have to serve 2 years 7 months longer under the new than under the old Rules.

8. The Government are of opinion that Mr. Cower's case comes fully within the scope of the Despatch above quoted, and they resolve, therefore, to inform him that they are prepared to grant him one year's leave on sick Certificate, on one-third pay, which, however, cannot reckon for pension. On his completing his 20 years service (including therein the period of sick leave which he has already enjoyed) they will, if his health necessitates his retirement, be prepared to grant him a pension under the old Rules, subject to the orders of the Home Government, to whose notice his case will be brought as deserving of special consideration. The Government, of course, reserve to themselves the right, when the proper time arrives, to fix the amount of pension which will be awarded to Mr. Cower.

(True Extract.)

Acting Chief Secretary.

To G. E. Cower, Esq.
To the Examiner of Claims.

Ed. J. H. Burns.

No. 114

Office of Examiner of Claims,
FORT SAINT GEORGE,

26th June 1856

OFFICIAL MEMO.

The undersigned has the honor to state for
the information of the Acting Chief Secretary to
Government, that Mr. G. B. Coover, Judge of the Court
of Small Causes, Madras, was absent on sick leave
in 1853 for _____ years " 6 17
and in '60 and '61 for _____ " 1 5 5
and that with these exceptions he does not appear to
have had any other than privilege leave under the
old Rules.

H. Donald

Examiner of Claims.

To

The A^d Chief Secretary
to Government
Public Deptⁿ

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S. D. S. in
Asst. Chief Secretary

13th June 1866.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from Mr. C. E. Cover with the
Report of the Examiner of Claims

Here enter 13th June 1866

4th July 1866
Order 25th June 1866 H. 99.

1 In the foregoing letter
Mr. Cover, Judge of the Small Cause
Court, Madras, states that he is
obliged to leave India on Sick
Certificate and complains of the
hardship entailed on him by the
new leave Rules.

2 Mr. Cover has been about
19 years in the service and ^{by the} ~~has had 1 yr 11 months & 22 days sick leave~~
which reckon for Pension. By the old Rules which were in force
up to 1863 he could now have
one year's Sick Leave which would
not reckon as service qualifying for
pension, and thus he would
become entitled on ^{on the expiration} ~~the expiration~~
~~of his leave~~ when his 20 years service
would

would be completed to a pension of one third of his pay or to 400 £ per annum - and during his leave of two years he would receive 1000 as absentee allowance.

3 By the new Rules on the other hand he can get 2 years leave - but they do not count for pension - consequently he can only get for his present service, or if he returns and completes his 20 years service then for that period a pension of 200 £ per annum - and he must complete 25 years service before he can get 400 £ per annum. During his two years absence he would receive 975 £ as absentee allowance.

4 Thus it will be seen that under the new Rules Mr Cover loses 25 £ of absentee allowance and practically also loses six years service.

6 In his Despatch of the 18th January 1865, No. 1, the Secretary of State expressed himself

6 himself in the following terms in a Memorial from Mr. Ferrand, First Uncovenanted Assistant in the Government Office Military Department.

"Mr. Ferrand points out that the application of the new Rules might render it necessary for him, in order to obtain a pension, to serve for a longer period than was required by the old rules. In the case of any Uncovenanted Servant in circumstances, who was appointed prior to the promulgation of the new Rules and whom you may consider entitled to favorable consideration, I shall not object to your granting a pension after he has completed the period of service required by the old rules, in the event of his health rendering it necessary for him to retire from your service: - provided he has not, at any time - availed himself of the benefits conferred by the new Leave Regulations."

Mr.

6 Mr. Lower has never taken, and does not now wish to take, advantage of the new Rules and his case only differs from Mr. Ferrand in ~~these~~^{this} respects - viz that Mr. Ferrand ~~under the new Rules would have to serve over again a period of 2 years sick leave while Mr. Lower has not yet had any sick leave and that Mr. Ferrand would be deprived of 5 years service at the commencement of his service while Mr. Lower's loss will be at the end of his service. This difference is clearly minimal the practical result being identical in both cases.~~
7. The literal wording of the Despatch might at first sight be held to imply that the concession was intended to be limited to cases where entire loss of pension would be entailed by applying the new Rules, but ~~this~~

on one third pay which however cannot reckon for Pension. On his completing his 20 years service including therein the period of sick leave which he has already enjoyed if they will, if his health necessitates his retirement, he prepared to grant him a Pension under the old Rules.

this obviously is not the case for Mr. Ferrand - even under the new Rules was entitled to 200£ per annum and his complaint was not that he would, or might lose a pension altogether, but that, for his half pay Pension he would have to serve 2 yrs. 7 months longer under the new than under the old Rules.

8 The Government are of opinion that Mr. Lower's case comes fully within the scope of the Despatch above quoted and they resolve therefore to inform him that they are prepared to grant him one years leave on sick Certificate and to allow that period with any extension up to 2 years that may subsequently be granted (the first year on half and the second on one fourth pay) to reckon towards pension, subject to the orders of the Home Government to whose notice this case will be brought

brought as deserving of special
consideration. The Government
of course reserve to themselves
the right, when the proper
time arrives, to fix the amount
of pension which will be
awarded to Mr. Cover.

J. E. Cover

J. E. Cover, Reg. 3
Ex of Claims } despt 5/7

Recd of 10 July

Pub. Act 299
12th of Feb 1866
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Act of 1866
Feb 15 29/109

Judicial 1865 Department.

No. 994 1045

PROCEEDINGS OF GOVERNMENT.

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4th copy
Dated 25th June 1865.

Small detached
from West House

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