

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1508	Press
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Dated	25. 9.	191866

271-272

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
25th September 1866.*

No. 271. Read the following letter from the Examiner of Claims, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 13th September 1866, No. 338.

When forwarding the accompanying appeal to Government by Mr. J. Maskell, in the matter of his deputation allowance, as Acting Small Cause Court Judge, I have the honor, by direction of the Accountant General, to offer the following remarks.

2. I did not admit the deputation allowance claimed by Mr. Maskell, because I considered that Government granted Mr. Cower leave to Europe on Medical Certificate upon one-third salary, solely for his own benefit, and did not intend that the acting incumbents should, as regards pay, be treated otherwise than if Mr. Cower had obtained leave under the present Rules, which, but for the special reasons stated in Proceedings of Government, Judicial Department, 4th and 13th July 1866, Nos. 1045 and 1102 respectively, would have been the case. I may add that, till the Secretary of State's decision is communicated, it is not certain that the two-thirds salary will be available.

3. With reference to paragraph 7 of Mr. Maskell's letter, neither the Covenanted nor Uncovenanted Civil Service Revised Rules contain any clause regarding deputation allowance. Mr. Maskell has, however, overlooked paragraph 9 of the Secretary of State's Despatch, forwarding the New Covenanted Service Rules, which says—"It must be understood that the new rules do not repeal those hitherto in force for regulating deputation allowance." Although there is no such proviso in the Despatch forwarding the Revised Uncovenanted Civil Service Rules, the Audit Department still acts upon the old Rule quoted by Mr. Maskell, in cases similar to the present, and I cannot imagine that the Secretary of State intended that any other course than this should be taken. Accordingly, had I not held the views expressed in paragraph 2 above, Mr. Maskell would have been allowed the amount of salary forfeited by Mr. Cower, in terms of old Section XIV.

From J. MASKELL, Esq., Acting Judge of the Madras Court of Small Causes, to the Secretary to Government, Fort Saint George (through the Examiner of Claims); dated Madras, 6th September 1866, No. 62.

I have the honor to request you will submit, for the consideration and orders of the Right Honorable the Governor in Council, the question as to the amount of deputation allowance I should receive, as Acting Judge of the Court of Small Causes.

2. Mr. Cower obtained leave of absence on Medical Certificate, under the old Rules of 22nd February 1856, forfeiting two-thirds of his salary. I naturally concluded I was entitled to the amount deducted from his pay, forfeiting, of course, a similar proportion of my own substantive salary, and prepared my abstract for last month accordingly. The Examiner of Claims has, however, retrenched the difference between two-thirds and one-half of my Small Cause Court allowance, and forwarded me an Official Memorandum, of which the following is a transcript:—

"When forwarding a cheque for Rupees 854-13-5, the undersigned has the honor to state that, without special sanction of Government, he cannot pass to Mr. Maskell the allowances he claims. A moiety of his own salary, and of that of Mr. Cower, is all that can be admitted without order."

3. From the personal inquiries I have made, I have gathered that the Examiner's Office has acted on this principle, viz., if Mr. Cower had obtained leave under the new rules, he would receive an absence allowance of one-half his salary, and the other moiety alone would be avail-

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able for his *locum tenens*; but Mr. Cower was allowed leave under the old Rules, under special circumstances, which do not in any way affect the acting incumbent, who should, therefore, not be permitted to benefit by Mr. Cower's voluntary sacrifices.

4. I submit that this is not a correct view of the question. The Government allot a certain sum monthly as the salary of a Junior Judge of the Small Cause Court. I perform the duties of the office, but cannot be allowed the full pay, as a portion is drawn by the permanent incumbent. The balance, therefore, is fairly, I think, due to me, a proportionate deduction being made from my own salary as a Magistrate of Police. It is surely not intended to make a profit to Government out of the transaction.

5. That this principle was fully recognized by the rules of 1856, is shown by the following extract, which is transcribed below for convenience of reference:—

"Section XIV. A person officiating temporarily in any situation will draw so much of the salary of such situation as may equal the sum deducted, on account of absence, from the real incumbent, and the substantive allowances of every Officer temporarily in a situation of superior emolument, will be subject to deduction at the same rate; but no additional expense is, on any account, to be incurred by the absence of any Officer on leave."

6. The new Absence Rules contain no provision whatever regarding deputation allowances, and I submit that, as the old rules have not been abrogated in this respect, the provision quoted above is still in full force.

7. I believe I am correct in stating that the new Covenanted Service Rules also contain no provision regarding deputation allowances, in consequence of which Covenanted Officers are still allowed the benefit of the old Rules as regards acting allowance. I solicit, therefore, that the same equitable principle may be regarded in dealing with my case.

8. If my request is complied with, I shall be entitled to the following allowances:—

	RS.	A.	P.
As Acting Judge of Small Cause Court, two-thirds of 1000 Rupees, or	666	10	8
As a Magistrate of Police, one-third of 800 Rupees, or.....	266	10	8
Total Rupees...	933	5	4

9. The salary which the Examiner of Claims has passed to me is a moiety of that of each office, or 900 Rupees, the difference per mensem being Rupees 33-5-4.

No. 272.

ORDER THEREON, 25th September 1866, No. 1508.

The Governor in Council concurs in the view taken by the Examiner of Claims.

(True Extract).

Secretary to Government.

To the Examiner of Claims.

„ Accountant General.

To Mr. J. Maskell, Acting Judge of the Madras Court of Small Causes.

Ed. J. H. Burns.

No. 1508. 25 Sept 1866.

The Governor in Council concurs in the view taken by the Examiner of Claims.

Wm

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*So Examiner of Claims
Acting Judge of the Madras Court of Small Causes
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