

MADRAS RECORD OFFICE.

Government of Madras.

Provincial DEPARTMENT.

G.O. No. 334	<u>Press</u> <u>Mis</u>
Dated 1-3-1968	

Not to be folded or roughly handled

12/13

No. 18. Read the following letter from M. CROSS, Esq., Judge of the Court of Small Causes, Negapatam, to the Chief Secretary to Government, Fort Saint George ; dated Negapatam, 16th August 1866.

In September last year the Government did me the favor to transmit to the Secretary of State for India a Memorial, praying that I might be allowed the option of taking leave under the old Uncovenanted Service Rules, my application being based on the ground that I had entered the service under those rules, and that they were more favorable to me in the matter of allowances during the second and third years of absence.

2. That Memorial was forwarded by me as a Law Officer, the expressed opinion of the Supreme and Madras Governments supporting my position as such.

3. The Secretary of State's reply to my Memorial was not only unfavorable, but most unexpectedly gave expression to the opinion that Judges of Small Cause Courts were not entitled to the advantages conceded to "Law Officers" and "Native Judges" under the old rules.

4. Regarded then as a Law Officer, I did not deem it necessary to dwell, in that Memorial, on the serious hardship which would attend a denial of my prayer, and the Secretary of State could not, therefore, foresee how seriously his decision affected me ; for, if debarred by that decision from the advantages to which Law Officers are entitled under the old rules and conceded to my predecessors, Messrs. Rose and Fullerton, *as such*, that decision imposes on me the further hardship of forcing me to take leave under rules which not only exact from me an extended service of upwards of eight years, for the same pension of £500 as the old rules confer on me, but which pension the Superannuation Rules would interpose to prevent my qualifying for.

5. Thus circumstanced by the very unexpected ruling of the Secretary of State on my last Memorial, His Lordship in Council will, I trust, see that I have no alternative than again to lay my case before the Secretary of State, which I beg permission to do in the enclosed Memorial, forwarded in triplicate, and in soliciting its transmission, I do most respectfully and, at the same time, most earnestly entreat that His Lordship will be pleased to support my prayer.

To

THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA,

&c., &c., &c.

The humble Memorial of MAURICE CROSS, Esq.,
Judge of the Court of Small Causes, Negapatam.

HUMBLY SHEWETH,

That your Memorialist entered the Judicial Branch of the Uncovenanted Service in 1858, being then 34 years of age, and having been 14 years in the country.

2. That your Memorialist entered the service as a Law Officer, under certain rules for service and pension.

3. That those rules would permit your Memorialist a retiring allowance on his present salary of £500 per annum after 15 years' service, during which the following periods of leave might be availed of :—

Three years' sick leave.

Six months' special leave at intervals of six years.

of which

Two years' sick leave and the special leave counted for pension.

4. That the rules applicable to the General Uncovenanted Service were similar, but extended the service to 20 years.

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1st March 1867.*

5. That in 1863 (five years after your Memorialist entered the service) new rules of leave and pension were promulgated, the former being declared applicable to all Uncovenanted Officers receiving salaries of not less than Rupees 100 a month, those rules requiring the following periods of service, granting the following pensions, and permitting the leave as allowed under the old rules, but with this difference, that such leave is not permitted to count as service, that is to say,

Fifteen years, *plus* sick and special leave, pension £300 per annum, or
Twenty-five years, *plus* sick and special leave, pension £500 per annum.

6. That your Memorialist would here beg to place in juxta-position, for your Lordship's clearer comprehension, your Memorialist's position under the old and new rules.

Old Rules.		New Rules.	
Law Officer.	General Service.	New Rules.	
Service required..... Years. 15 Less Sick Leave..... 2 Special do., twice, 6 months each. 1 ----- 3 Actual service, 12 for a pension of £500 per annum.	Service required..... Years. 20 Less Sick Leave..... 2 Special do., thrice, 6 months each. 1½ ----- 3½ Actual service, 16½ for a pension of £500 per annum.	Service required, 15 years, <i>plus</i> any leave that may be availed of, for a pension of £500 per annum, or 25 years, <i>plus</i> any leave that may be availed of, for a pension of £500 per annum.	

7. That your Memorialist has not had any leave under either the old or new rules.

8. That in 1865, your Memorialist as a Law Officer petitioned the Secretary of State for India to be permitted the option of taking leave under the old rules, they being more favorable to your Memorialist in the matter of allowances during the second and third years of absence.

That the Secretary of State's reply to your Memorialist's petition was unfavorable, the Secretary of State further remarking in paragraphs 3 and 4 as follows:—

"It appears from the papers which accompany your letter, that Mr. Cross is regarded by you as one of the Law Officers to whom the old rules were applicable, and that opinion received some confirmation from the letter from the Secretary to the Government of India, dated the 29th June last, No. 1034."

"I must, however, observe that neither Magistrates of Police nor Judges of Small Cause Courts were entitled to the advantages conceded to "Law Officers" and "Native Judges" under the old rules."

9. That your Memorialist was quite unprepared for such an expression of opinion from the Secretary of State respecting your Memorialist's position as "Law Officer," considering that your Memorialist was not only regarded by the Madras and Supreme Governments as such, but that your Memorialist's immediate predecessor in the Madras Court of Small Causes, Mr. Rose, and likewise Mr. Fullerton, another Judge of the same Court, were pensioned by the Madras Government as "Law Officers," said pensions being finally sanctioned by the Home Government.

10. That the Secretary of State's ruling upon your Memorialist's petition, inconsistent as your Memorialist most humbly and respectfully submits it is with the cases of Messrs. Rose and Fullerton, tells with grievous hardship against your Memorialist, as if not permitted the advantages conceded to your Memorialist's predecessors, the Secretary of State's denial of your Memorialist's prayer to be permitted the option of taking leave under the rules existing when your Memorialist entered the service, must either necessarily bar your Memorialist from taking leave during his whole period of service, so as to preserve your Memorialist's claim to pension under the old rules intact, or compel your Memorialist, if necessity arises, to take leave under the new rules, thus depriving your Memorialist of the evident greater advantages accruing to him, circumstanced,

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1st March 1867.*

as your Memorialist is, under the old rules, for as ruled by the Secretary of State in Mr. Ferrand's case, no Officer will be allowed to take his pension under the old rules, if he has, at any time, availed himself of the benefits conferred by the new leave regulations.

11. That your Memorialist, if forced to take leave under the new rules, and if spared even to serve the 25 years required by those rules, would not be permitted to render that service to Government so as to entitle your Memorialist to the pension of £500 per annum; for the Superannuation Rules require retirement at 55 years of age, your Memorialist being 59 before he could complete such service, even *without any leave*.

12. That your Memorialist feels assured when the Secretary of State replied to your Memorialist's petition, the Secretary of State never could have foreseen with what grievous hardship his decision on that petition would press on an Officer situated as your Memorialist is, and while your Memorialist would respectfully urge the hardship of the retrospective application of new rules to old Officers, in cases where they affect such Officers injuriously, as in your Memorialist's case, your Memorialist feels that the peculiar hardship of his present position only requires to be represented to your Lordship to ensure a modification of the decision which presses so hardly on your Memorialist; and your Memorialist would most respectfully request, that, in taking leave, he may be permitted the option of the rules in force when he entered the service, and that he may be declared entitled to the advantages hitherto regarded by the Madras and Supreme Governments as applicable to Officers in your Memorialist's position, and conceded to his predecessors as "Law Officers" of Her Majesty in India.

And your Memorialist, as in duty bound, will ever pray, &c., &c.

(Signed) M. CROSS.

No. 19. ORDER THEREON, 1st March 1867, No. 334.

Referring to the bearing of the old and new Rules in their application to Mr. Cross, the Governor in Council is of opinion that the case comes fully within the scope of Sir Charles Wood's Despatch of the 18th January 1865, No. 1, and is also analogous to that of Mr. Cower, Judge of the Madras Court of Small Causes, which has formed the subject of the recent correspondence with the Right Honorable the Secretary of State noted in the margin.

The Government resolve, therefore, to inform Mr. Cross that on occasion arising

they will be prepared to grant him leave under the old Rules, subject to the confirmation of the Home Government.

2. His request to be allowed to be admitted to the advantages conceded to Law Officers is inadmissible. The Right Honorable the Secretary of State has already finally decided the point.

(True Extract).

Chief Secretary.

To Maurice Cross, Esq.

Exd. J. Tulloch.

Mexapataw 27th August 1866

From

Mr. Croft Esquire

Judge of the Court of Small Causes

Mexapataw

To

The Honorable A. J. Ashurst Esquire

Chief Secretary to Government.

Sir,

Since I did myself the honor to wait on you with my Memorial, I have discovered that a misprint has been made therein the year 1848 being printed for 1858 which latter was the year I entered the Service.

2.

Situated as I am away from the Printing Office, I am unable to rectify the mistake as I could wish, and I would, therefore, solicit the favor, if my request be not irregular, of your allowing it to be corrected in your Office.

3.

If, however, it is required that the Memorial should be reprinted I shall of course be happy to comply with

with such order.

Shall the honor to be,

Sir,

Your most obedient servant

Wm. A. B. B.

Judge.

To Secy State #13 of 1865.
 Jan. 5th Feb 1865 Oct 19-20.
 " 9th Sept 1865 Oct 101 to 105
 Feb- 17th May " Oct 62-43.
 " 22nd July " Oct 32-33.
 " 2nd March " Oct 3-4.
 " 1st Feb " Oct 1-2.
 " 23rd Dec " Oct 620.

Int. letter to Eng of 29 Feb
 #3 of 1865.

N 31. def. 18.
 R 27 Nov
 C 27 Feb/67
 R 28 " 1.

1865

of March 1865. At 19th
 Jan. 1865. In reality
 The Secy of the Com of
 Louis Casse
 N 1
 Supplication

of
 The High Secretary
 to Government

Dated 27 August
 Received 5 Dec 1865.

1865

Prop to Comd & imp
 in his Memorial of the
 year 1848 to 1858 the
 latter being the year
 in which he entered
 the service.

2321
 R 28 "

Memorandum.

On the 13th of March 1865.

The Old Rules sanction
3 years sick leave,
2 counting as service
6 months special
leave counting
as service

The New Rules sanction
5 years sick leave not
counting as service
6 months special leave not
counting as service
2 years furlough leave
counting as service

Mr Maurice Cross, Judge of the Court of Small Causes at Nagasatam, referring to the bearing of the old and new Unconquanted Service. Absent Rules, asked to be allowed the option of taking leave when the occasion should arise, under the Old Rules which were in force up to 1863. He pointed out that if forced by ill health to take sick or special leave, such leave would not, under the New Rules, count as service qualifying for Pension and that the period of service entitling him to pension would be correspondingly prolonged. This application was submitted for the orders of the Govt of India, who stated in reply that the deduction of

G.O. 17 May 1865. N^o

of periods of leave from service
qualifying for Pension, complain-
ed of by Mr. Croft. formed
a part of the New Pension
Rules, and not of the
New Leave Rules, to which
latter only, Law and
Educational Officers were
subject, while, as regards
pension, the old Rules
still applied. This being
communicated to Mr. Croft,
he submitted a Memorial
to the Right Hon'ble the
Secretary of State pointing
out the operation of the
New Leave Rules in his
case, and praying to be
allowed the option of
taking leave under the
old Rules which were
in force when he entered
the service. He showed
that if compelled to obtain
3 years sick leave under
the present Rules, he
would be a loser in absolute
allowance by £450. The
Memorial

G.O. 22^d July/65 N^o 343

G.O. 9th Sept/65 N^o 1280.

G.O. 5th Feb/66 N^o 151

Memorial being forwarded to
the Home Govt, the Secretary
of State declined to accede
to Mr. Croft's request. He took
occasion, at the same time
to observe that neither Magis-
trates of Police, nor Judges
of Small Cause Courts were
entitled to the advantages
conceded to "Law Officers"
and "Native Judges" under
the old Rules.

It is against this order
of the Home Government that
Mr. Croft appeals in his present
Memorial. He states that
he entered the Unconquered
Service in 1858 and that
he has not yet had any
leave under the Old or
New Rules, that by the
former, he would be re-
garded as a Law Officer,
be entitled, on his present
salary (£1400) to a
retiring Pension of £500
per annum after 15 years
service, during which the
following

Mr. Croft writes here
that he is entitled
to more than 1000
p. 104 Chap IV

following periods of leave might be awarded:-

3 years sick leave &
6 months special leave, &
which 2 years sick leave and
the special leave would
count for Pension.

That, regarded only as
any other Member of the
Uncovenanted Service, Mr.
Crop would be entitled
to leave on the same condi-
tions as above and to the
same amount of Pension viz
£500 at the end of 20 years

That on the other
hand, under the new Rules
framed in 1863 or 5 years
after the Memorialist
entered the service, neither
the sick leave for 3 years
nor the special leave at
intervals of 6 years count
as service for Pension, and
that 15 years of actual
service is required to entitle
a party to a Pension not
exceeding £300, whilst 25 years
actual

See Mr. Crop

actual service are required for
a Pension not exceeding £500
per annum.

In other words, Mr. Crop
shows, that under the old
Rules he would, as a Law
Officer, earn a Pension of
£500 at the end of
15 years, irrespective of 2 years
sick leave and 6 months
special leave which he
would be at liberty to
take without affecting the
Pension; or, if regarded only
as belonging to the general
service, he would be entitled
to the same Pension after
20 years service, enjoying
the same advantages as
to sick and special leave
during that term of service.
— Whereas, under the New
Rules, 15 years service without
any leave that would
count towards Pension, would
give him a retiring allow-
ance of £300, and 25 years
plus

plus any period he might
be compelled to pass on
sick or special leave would
be required before he
could entitle himself to a
Pension of £500 and this
term of service Mr Croft
adds he could never hope
to complete, as he would
be 59 years of age at the
end of 25 years service
supposing he is not com-
pelled to take any leave
in the meantime and
the Rules require retire-
ment from the service
at 55 years of age. Practically
therefore, Mr Croft, if thrown
on the new Rules, could
complete but 15 years (and
that without any leave
that would reckon as
service for Pension) and
earn a retiring Pension of
but £300 per annum.

With reference to the
decision

decision of the Right Honorable
the Secretary of State that
Small Cause Court Judges
are not entitled to the
advantages conceded to
"Law Officers" and "Statute
Judges" under the old
Rules, Mr Croft points out
that not only was he re-
garded as such by the
local and Supreme Govts,
but that his predecessors
in Office in the Madras
Court of Small Causes viz
Messrs Rose and Fullerton
were pensioned by the
Madras Govt as Law
Officers and that their
Pensions were sanctioned
by the Home Govt.

Under these cir-
cumstances, Mr Croft prays
that, in taking leave, he
may be permitted the
option of the Old Rules
i.e. those which were in
force

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Judge of the Court of Small Causes, Negapatam.

Read letter to H. E. J. High 106

Order thereon 1st March 1857 N^o 334.

Referring to the bearing of the old and new Rules in their application to Mr. Prop, the Governor in Council is of opinion that the case comes fully within the scope of Sir Charles Wood's Despatch of the 18th January 1854 and is also analogous to that of Mr. Lower, Judge of the Madras Court of Small Causes, which has formed the subject of the recent correspondence with the Right

Wm

force when he entered the service and that he may be declared entitled to the advantages he thereto regarded by the Madras and Supreme Governments as belonging to Officers in his position and actually conceded to his Predecessors as "Law Officers" -

The same as he below were in the on his terms before I saw the proposed rule order. I have seen your through all the papers and think that in promising Mr. Lower for his combination of Rs 500. I found the other leave in his time by saving his claim to pension - a little more as a law officer - in the old Pension in his, he got as for Mr. Lower the attorney that they can do. I have put in - put in the draft of the W. P. C.

I think that all present rules as to relating to leave of absence and pension should be prospective in their operation and should not affect persons who entered the service prior to their promulgation and other conditions. Such persons should be allowed to hold on to the old rules if not, as has been allowed to high court officers, to choose between the old rules & the new.

Unhappily this principle, however equitable in itself has not I believe been generally admitted.

In trusting Mr. Croft's Memorial Committee might support its prayer on both points but I fear that it will not be of much use.

There is in this case this special incident that from the advanced period of life at which he entered the Judicial Service he cannot qualify for the larger pension under the new rules. His

Right Honble the Secretary
of State notes in the margin
the Government resolve
therefore to inform Mr
Crosby that on occasion
arising they will be
prepared to grant him
leave under the old Rules
subject to the confirmation
of the Home Government.

2. His request to be
allowed to be admitted
to the advantages conceded
to Law Officers is in-
admissible. The Right
Honble the Secretary of State
has already finally decided
the point.

To Secy of State. 12th Sept 1886 No 13
From — do — 15 Dec 1886 101

M

Maurice Crosby Esq

1864. Department.

No. 122/68.

PROCEEDINGS OF GOVERNMENT.

Feb. 122/68.

Dated 1st March 1864.

1864. Department.
No. 122/68.
Feb. 122/68.
Dated 1st March 1864.