

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	594	Press ~~Mis.~~
Dated	17-6	1918

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
17th April 1867.

Read the following papers :—

No. 94. From the Examiner of Claims, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 19th February 1867, No. 141.

I have the honor, by direction of the Accountant General, to submit, for the information of the Right Honorable the Governor in Council, the correspondence, as per margin, that has passed

Memorandum to Mr. B. Brooks, dated 2nd February 1867.
Letter from do. (in original, with bill, to be returned.)

between me and Mr. B. Brooks, regarding his personal allowance of Rupees 200 a month.

2. I have not the Despatch of this Government to the Secretary of State, alluded to by Mr. Brooks in the 2nd paragraph of his letter, to refer to, and am, therefore, unable to offer any opinion as to the correctness or incorrectness of Mr. Brooks' interpretation of the same; but I submit, that so long as Mr. Brooks' full time is devoted to the service of Government, and no longer, can the Audit Office admit his claim to the personal allowance under the Government Order, dated 18th November 1864, No. 1653, Judicial Department. At the time that allowance was granted Mr. Brooks, it is to be observed, was debarred from private practice, and was dependent, therefore, on the salary and emoluments which he received from Government. It was but reasonable, therefore, that, having been deprived of a portion of former emoluments, he should, so long as he was so debarred, receive some compensation from Government for their loss. Now, however, Mr. Brooks' status is entirely different, and, having placed himself in the position of a private practitioner, on whom has been conferred by Government the post of Deputy Clerk of the Crown, he has no longer any claim to the personal allowance for which he contends, as his whole income, except as far as the salary of the post named is concerned, depends entirely upon the goodwill of the public at large, and his income may or may not exceed the limit of Rupees 870 a month; but of this Government neither can nor ought to have any cognizance.

No. 92.

OFFICIAL MEMORANDUM.

Bill for the personal allowance of Mr. B. Brooks for January 1867 is returned for correction. The grant of this allowance was made by the Secretary of State to Mr. Brooks when Assistant Registrar and Deputy Clerk of the Crown, these appointments compelling Mr. Brooks to devote his whole time to the service of Government, and it was to be continued so long as Mr. Brooks' allowances as such did not exceed in all Rupees 870 per mensem. Mr. Brooks having, however, resigned the first named post, and occupying in consequence a different position as regards Government, it is considered that the personal allowance is not claimable from the date on which Mr. Brooks ceased to fill both of these appointments.

ACCOUNTANT GENERAL'S OFFICE,

FORT SAINT GEORGE,

2nd February 1867.

To B. Brooks, Esq.

(Signed) W. DONALD,
Examiner of Claims.

From B. BROOKS, Esq., to W. DONALD, Esq., Examiner of Claims, Fort Saint George.

I have the honor to acknowledge receipt of your Memorandum, No. 92, (returning my bill for personal allowance for January last,) and to express my surprise at the construction you have placed on the terms on which that personal allowance was recommended by the Madras Government and granted to me by the Right Honorable the Secretary of State.

*Proceedings of the Madras Government, Judicial Department,
17th April 1867.*

2. If you will only be good enough to refer to paragraph 2 of the Despatch of the Madras Government to the Right Honorable the Secretary of State, dated 25th July, No. 13 of 1864, Judicial Department, I think you will agree with me that the personal allowance of 200 Rupees per mensem (recommended in paragraph 4) was suggested, not for loss of emoluments connected with the appointments of Assistant Registrar and Deputy Clerk of the Crown, not for increased duties attached to those appointments, but as compensation for emoluments enjoyed by me for other substantive offices which were absolutely abolished by the revision of the High Court. I refer to my offices of Clerk to the Puisne Justice and Registrar to the Admiralty Court. By the absolute sweeping away of those offices, and a slight modification in the emoluments of the Deputy Clerkship of the Crown, which I still continue to hold, I lost 381 Rupees a month, in compensation for which the personal allowance of 200 Rupees per mensem was ordered to me.

3. You will further observe, by referring to the correspondence noted in the margin, that on the Civil Paymaster raising the question that I was not entitled to this personal allowance during the time that I was absent from my duties from 15th May 1863 to 25th April 1864, on the ground that the full salary of the offices of Assistant Registrar and Deputy Clerk of the Crown were drawn by the gentlemen who conducted the duties, the Government directed the personal allowance to be passed to me even although I was not at my post.

4. Further, when you consider the words in which the Madras Government conveyed their recommendation for the grant of personal allowance of 200 Rupees to me, viz., "that he should be granted a personal allowance of 200 Rupees per mensem for so long as his official emoluments including such personal allowance shall not exceed Rupees 870," I think you will agree with me that the personal allowance was made irrespectively of the actual appointments I might be holding in the service, and was, by no means, contingent, *expressly or impliedly*, on my holding the two offices of Assistant Registrar and Deputy Clerk of the Crown conjointly, or separately, or on the condition of my holding any particular office in the service.

5. Furthermore, my resignation of the office of Assistant Registrar was brought about in consequence of an alteration in the duties of that office. The only *contingency* which can deprive me of my personal allowance, or any part of it, is whenever my emolument may reach or exceed 870 Rupees a month.

6. If you still differ from me and retain your opinion that the personal allowance was made to me on the condition that I should hold both the abovementioned offices conjointly, and not in compensation for loss of emoluments enjoyed in substantive appointments swept away by the revision of the High Court, I beg you will do me the favor of submitting the question to Government, together with a copy of this letter; and if you will be good enough to favor me with a copy of your own letter to Government, I shall feel further obliged, as I shall thus have the opportunity of meeting any objection you may therein raise to my claim.

7. I return my bill for personal allowance unaltered as, until the orders of Government are obtained, I maintain that the bill is not susceptible of any change.

No. 95. From the Examiner of Claims, Fort Saint George, to the Chief Secretary to Government, Fort Saint George; dated 26th February 1867, No. 157.

I have the honor, in continuation of my letter, No. 141, dated the 19th instant, to forward, by direction of the Accountant General, for the information of Government, true copy of my letter to Mr. Brooks, No. 147, dated the 21st instant.

*Proceedings of the Madras Government, Judicial Department,
17th April 1867.*

From the Examiner of Claims, Fort Saint George, to B. BROOKS, Esq.; dated Fort Saint George, 21st February 1867, No. 147.

I have the honor, with reference to your letter without date, to state that, as requested in paragraph 6 thereof, I have forwarded the correspondence to Government for their orders, but regret that I cannot comply with your request for a copy of my letter to Government, as it is contrary to all precedents to furnish the party interested, in a case like the present, with a copy of a letter addressed to Government. It rests with Government, should they consider it necessary, to allow you an opportunity to reply to my statements.

2. Your bill which accompanied the letter under reply, has been forwarded to Government with my letter.

No. 96. From B. BROOKS, Esq., to the Chief Secretary to Government, Fort Saint George; dated Madras, 10th April 1867.

If in bringing to your notice, and for consideration, the undermentioned circumstances, I should not be strictly regular, I trust I may be excused.

2. In February last, I sent in to the Examiner of Claims, as usual, a Receipt for the month of January, for the "personal allowance granted to me by the Secretary of State for India, as per his Despatch, dated India House, London, 17th October 1864, No. 26, and the Proceedings of the Madras Government, Judicial Department, and the order thereon, dated 18th November 1864, No. 1653."

3. The Examiner of Claims doubted my claim to continue to receive this "personal allowance," owing to my resignation of the appointment of Assistant Registrar in the High Court, which is one of the several appointments I held in that Court.

4. I pointed out to the Examiner of Claims that the Despatch of the Secretary of State for India, and the Orders of the Madras Government, were clear and explicit on the subject, and that he had no authority to question them. At the time of his objection, I believe he had overlooked the previous Orders of Government. I also added an explanation to the effect, that my resignation was necessitated by changes which the Acting Chief Justice of the High Court had ordered in regard to the duties to be performed by me as Assistant Registrar, whereby the entire duties of the Registrar devolved upon me in addition to my own, and also that, being still in the service of Government, it was clear from the Despatch, and the Orders of Government on the subject, that my right to this personal allowance (which was awarded in the nature of compensation for losses by the abolition of a substantive appointment previously enjoyed by me) was not contingent on my continuing to hold the office of *Assistant Registrar*.

5. I requested the Examiner of Claims, if after that explanation he still questioned the Despatch and the orders of the Madras Government, to be good enough to submit his objections to Government together with my letter of explanation above referred to.

6. Since then, I have twice addressed the Examiner of Claims, but he has not favored me with any explanation. The Receipt remains unpassed, and, as far as I am aware, his act in withholding my personal allowance is not authorized by Government, and is putting me to very great inconvenience.

Proceedings of the Madras Government, Judicial Department,
17th April 1867.

No. 97. ORDER THEREON, 17th April 1867, No. 594.

The Governor in Council directs that the Examiner of Claims will continue to pass to Mr. Brooks the personal allowance of Rupees 200 per mensem, sanctioned in the Despatch from the Secretary of State, under date the 17th October 1864, pending a reference which will be made on the subject to the Home Government.
(True Extract).

Chief Secretary.

To B. Brooks, Esq.
To the Examiner of Claims.

Ed. T. Cartledge.

Judicial Department

Memorandum for Order.

Letter from the Examiner of Claims Dated 19 + 26 Feb 1867 No 141 + 157.

Mr. B Brooks previous to the revision of the establishment of the High Court in 1863 held the undermentioned offices.

Assistant Registrar
paid by the Registrar. Rs 300 per mensem
Deputy Clerk of the Crown.
average emoluments — 189 —
Clerk to the Suiene Justice — 350 —
Registrar to the Admiralty Court — 31 —
Total 870 —

After the revision, his offices and emoluments were as follows: —

Assistant Registrar Rs
paid by Government. 300 per mensem
Deputy Clerk of the Crown. 175 —
Total 475.

In

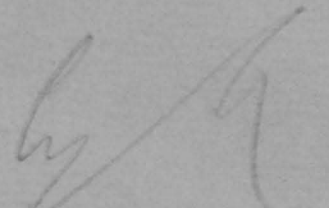
In consideration of the
loss which Mr Brooks
had sustained by the
revision of the Establish-
ment the Secretary of State
adopting one of two al-
ternative recommendations
made by this Government
granted Mr Brooks a
personal allowance of
Rs 200 per mensem "so long
as his office emoluments
including such personal
allowance shall not
exceed Rs 870, the average
amount of his official
income previous to the
revision of the High Court
Establishment"

Mr Brooks has
lately resigned the ap-
pointment of Assistant
Registrar and has gone
into private practice ap-
parently as an attorney
and the Examiners of Claims
considers

considers that under
these circumstances he
is no longer entitled to the
personal allowance
sanctioned by the Secretary
of State. Mr Brooks
on the other hand argues
that the personal al-
lowance having been
granted to him as com-
pensation for the loss of
certain offices its con-
tinuance is in no way
dependent upon his
retaining the offices which
he happened to hold
when the allowance
was granted. He implies
in fact that if he were
to retire from the public
service altogether he
would still be en-
titled to retain his
personal allowance.

M.

Mr. Brooks position
as a private practitioner
holding the Government
office of Deputy Clerk
of the Crown which can
be held in conjunction
with private practice
is certainly very different
from his position when
the allowance was
granted and when his
appointment as Deputy
Registrar debarred him
from private practice.
and Mr. Donald's con-
struction would seem
to be in accordance with
the spirit of the Secretary
of State's Despatch and
of the letter from this Govt
on which it was based.
Orders are requested.

by 
It can hardly be admitted that as contended
by Mr. Brooks his personal allowance of

5
£200 per year was from that time a compensation
-tion for offices which had been abolished
on the establishment of the High Court. On
the contrary in the Despatch 25 July 62, it
was expressly stated that the Chief Office which
Mr. B. had lost - that of Clerk to the Puisne
Judge - was one the abolition of which
could not be considered to give him a
claim to compensation which is usually
recognized in the case of the abolition of an
existing public office.

It was in fact a sort of compensation
allowance given in consideration of the fact
by Govt to which Mr. B. official receipts had
been rendered - or by nearly one half - on the
annual payment of £200 per year to the County -

When it was so ordered Mr. B. held
the office public - that of Assistant-Registrar -
in which he was debarred from private prac-
-tice - His resigning this office, and going
into business on his own account was
not contemplated.

It is evident too that by such a proceeding
Mr. B. has endeavored in fact to call the
condition on which his personal allow-
-ance was granted viz that he should hold
for his appointments the number of
which ^{exceeded} 870 - 200 = 670 per year - In his present
position what his income from public

private income &
whether upon or less
than R 870 per an-
num of course & know.

Mr Brooks' personal
allowance.

Then does the sum & the
for in the Exchequer's
objections -

(15)

But the matter is not
wholly free from doubt &
the stopping of the allowance
may bear hardly on the B
who but in probability would
not have resigned the post.
Resist a man might be
supposed that he would
have by him for private his
allowance or less R 300 + 200
= R 500 in all -

I should be disposed
to refer his case to the
of State & see how far
that he is permitted
to retain his allowance
JP

According to the
system observed in
the office of post in

England, where
compensation is

For Orders

When up with his place & still retained the allowance. The allowance is awarded
on compensation for the loss of that security which is paid for the income of the post. He
does not gain the security by going into private practice. He may make more but
there is a risk. I would advise a pay and the case come and recommend it to the
for the consideration of the Govt.

is always distributed on an ex-
tremely liberal scale, Mr Brooks
would be entitled to carry with him
the 200 R. monthly personal allowance,
whenever he might go, without reference
to any proposition he might follow, or
other post appointment he might receive.
But that rule has not hitherto been
followed in this country. We have
fixed compensation according to well
known rates & rules, and if a man subsequently
obtains fresh post employment, he is called
on to refund the compensation so
received - Mr Brooks retains one of
the two offices; he filled when he got
the 200 R. monthly allowance & has
now commenced practicing as an attorney.
This brings into use, knowledge which
he gained in part whilst serving under
the judges of the late Supreme Court.
and receiving pay from the State.
His case then, seems to be one
for which no great liberality is required,
and I do not consider it to call
for favorable consideration to the
extent of advising that he be left in
receipt of what he has hitherto
been drawing.
The wording of the Secy of States order
is however, such that the matter
remains to be dealt with at home &
in their deciding the subject for deli-
verance, I would suggest that under

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from
the Examiner of Claims.
(New enter 19th and 26th Feb by J. H. H. 1874)

From Mr B. Brooks — 10 April 1864 —

Sir: I have the honor to acknowledge the receipt of your letter of the 17th April 1864.

The Governor in Council directs that the Examiner of Claims will continue to pay to Mr. Brooks the personal allowance of Rs. 200 per mensem sanctioned in the Despatch from the Secretary of State under date the 17th October 1854, pending a reference which will be made on the subject to the Home Government.

J. H. H.
W. H. H.

To B. Brooks Esq.
The Examiner of Claims
} Despatch 20/4

The career of Mr Brooks when possible he should take only half of what was just a signed to him. He later remembered that Mr Brooks duties in the abolished office were such as any ordinary clerk might have discharged. That his life in that office was one of extreme ease without such or exposure of any kind. That he abandoned no prospect to enter on his duties and that he was in the early autumn of life, just from his appearance. Originally too he was the nominee of one of the Judges of the Court the Government itself having had no concern whatever in appointing him over the way of Bengal to eat of the good things of the Supreme Court Judges then far away, too-badly

The cost of the same — W. H. H.

I think that there was no limitation placed by gov. in the enjoyment by Mr Brooks of his personal allowance save one viz: that his official emoluments plus his allowance were not to exceed 870. Rs. If he had received official emoluments exceeding 670 Rs. his personal allowance would, I presume, have dropped. If I understood the question aright it was not said that the allowance was contingent on Mr Brooks receiving some official emoluments or on his not drawing any emoluments from this source. Under the order of gov. Mr Brooks might have

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Judicial 1864. Department.

No. 394

PROCEEDINGS OF GOVERNMENT.

Oct. 1758. 1900.

Dated 19 April 1864

Mr. Brook...
allowance
Judge...
April 22.6 of 1864.
Oct. 1758. 1900.

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