

Marine (1898) Department.

G.O., No. 711 Marine

DATED 26 Aug. 1898.

Salary of an officer which is liable to attachment
On the decree of Civil Court

Pro: Inl Dept Commr.
indicating Circular from the Govt of India
Explaining what constitutes the —
Communicated to the Prt Post Office

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G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	450	Sec.	23-5-99				

GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

READ--the following papers:—

Circular from the Government of India, Public Works Department (General), dated Simla, 29th June 1898, No. 9, Public Works.

The following is forwarded to the Local Governments, Administrations and The Government of Madras, Public Works Department, General and Railway Branches. officers noted on the margin for information.

(By Order.)

(Signed) G. H. LEMAISTRE,
Offg. Under Secy. to the Govt. of India.

ENCLOSURES.

From Lieutenant-Colonel E. G. BARROW, Deputy Secretary to the Government of India, Military Department, to the Adjutant-General in India, dated Simla, the 11th June 1898, Judicial, No. 1035-C.

I am directed to acknowledge the receipt of your letter, No. 108-D., dated the 13th January 1898, enquiring what constitutes the "pay" or "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, i.e., whether the salary which is liable to attachment includes such items as horse allowance and tentage, which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

2. With reference thereto, I am to forward the enclosed copy of a letter, No. 493, dated 27th May 1898, from the Solicitor to the Government of India, submitting the opinion of the Hon'ble the Advocate-General of Bengal, and to say that, until the Courts rule otherwise, heads of departments may be guided by the opinion expressed by the Advocate-General.

From the Adjutant-General in India, No. 108, dated 13th January 1898.

To the Solicitor to the Government of India, No. 866-C., dated 16th May 1898.

From the Solicitor to the Government of India, No. 493, dated 27th May 1898, and enclosures.

Copy, with copy of the papers noted in the margin, forwarded to—

The Finance and Commerce Department, for information.

The Public Works Department, for information.

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From the Adjutant-General in India, to the Secretary to the Government of India, Military Department, dated Simla, 13th January 1898, No. 108-D., *Judicial*.

I have the honour, by direction of the Commander-in-Chief, to forward the marginally-noted correspondence having reference to the attachment of half the pay and allowances of Major W. G. Alban, 24th Bombay Infantry, in satisfaction of Civil Court decrees.

Endorsement from the Lieutenant-General Commanding the Forces, Bombay, No. 381—8515, dated 6th October 1897, and annexures.
Copy of Adjutant-General in India's letter, No. 107-D., dated 13th January 1898.

2. It will be seen from this department letter, No. 107-D., dated 13th January 1898 (copy attached), that the Lieutenant-General Commanding the Forces, Bombay, has been informed that, in respect of decrees obtained prior to 31st December 1895, on behalf of the total emoluments of Major Alban, has been rightly stopped, under the expression "one-half of such pay and public money" appearing in section 151 (3), Army Act, which still has force in respect of decrees obtained thereunder.

3. I am now to address you in view to your obtaining an authoritative ruling from the Government of India as to what constitutes "pay" for the purposes of section 136 of the Army Act in respect of decrees obtained against military officers subsequent to the repeal of section 151, and which are for execution under the Code of Civil Procedure.

4. It appears to the Commander-in-Chief that inasmuch as the effect of the repeal of section 151 of the Army Act has been to place the military officer in precisely the same position (in respect of attachment of his pay) as any other Government servant, his liability and the measure of protection extended to him should be the same. The analogy which naturally suggests itself is the case of the covenanted civilian in whose case it is believed (a) subscriptions to funds, (b) deduction for income-tax, and (c) local allowances are generally excluded from the aggregate salary with reference to the question of attachment. It seems only equitable that the same practice should prevail when the pay of a military officer is attached under the provisions of the Code of Civil Procedure. His Excellency is further of opinion that such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, should also be excluded from the computation.

From Lieutenant-Colonel E. G. BARROW, Deputy Secretary to the Government of India, Military Department, to the Solicitor to the Government of India, dated Simla, 16th May 1898, No. 866-C, *Judicial*.

I am directed to forward the correspondence, noted in the margin, regarding the attachment of an officer's salary under the decree of a Civil Court, and to request that the Government of India may be favoured with an expression of the opinion of the Hon'ble the Advocate-General on the question raised therein, as to what constitutes the "salary" of officers which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, i.e., whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

From the Adjutant-General in India, No. 108-D., dated 13th January 1898, and enclosures.
(Return requested.)

of the Hon'ble the Advocate-General on the question raised therein, as to what constitutes the "salary" of officers which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, i.e., whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

From W. K. EDDIS, Esq., Solicitor to the Government of India, to the Secretary to the Government of India, Military Department, dated Fort William, 27th May 1898, No. 493.

Referring to your No. 866-C, dated 16th instant, I have the honour to forward herewith copies of the case I submitted to the Hon'ble the Advocate-General and of his opinion thereon.

No. 646, FINANCIAL, 27TH JULY 1898.

I return all the papers which accompanied your letter under reference.

Case submitted to the Hon'ble the Advocate-General.

The Solicitor to the Government of India forwards herewith a letter from the Military Department, No. 866-C, dated 16th instant, with its enclosures, regarding the attachment of an officer's salary under the decree of a Civil Court, and requests that the Hon'ble the Advocate-General will favour the Government of India with an expression of his opinion on the question raised therein as to what constitutes the "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, *i.e.*, whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

Opinion of the Hon'ble the Advocate-General.

I am of opinion that the salary which is liable to attachment does not include such items as horse allowance and tentage which are allowances granted to an officer for specific purposes, nor such items as local allowances and house-rent.

I am also of opinion that subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

26th May 1898.

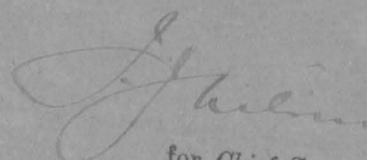
(Signed) G. C. PAUL,
Advocate-General.

Office-note from the Secretary to Government, Public Works Department, to the Chief Secretary to Government, dated Ootacamund, 23rd July 1898, No. 704-D.

ORDER—No. 646, Financial, dated 27th July 1898.

Communicated to the departments of the Secretariat and to all heads of departments under the Chief Secretary.

(True Extract.)


for Chief Secretary.

To the Departments of the Secretariat. (Mar)
„ all Heads of Departments under the Chief Secretary.