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(2) Date of report 17-10-38
(3) Initials of the Referencer CP

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	Page No.
Dated	16

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CP

*Proceedings of the Madras Government, Public Works Department,
for the month of January 1860.*

No. 180. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras ; to the Secretary to Government, dated 16th January 1860, No. 29.

I have the honor to acknowledge the Proceedings of Government noted in the margin.

2. Having obtained the papers relating to this matter, which were submitted to the Advocate General in November last, I again laid them with the proceedings above noted before him on his return to Madras for his further consideration, and I subsequently conferred with him thereon.

3. I now forward a copy of his opinion.

OPINION.

Mr. Drummond's covenant binds him, that after arriving and reporting himself he shall "accept an appointment by warrant, in such manner, &c. &c. after the manner of the appointment by warrant of the officers of the Indian Navy, and shall thereby become and be subject to all the rules and discipline of the said service as a warrant officer." The covenant was probably drawn up chiefly with reference to Bombay and it seems not altogether unlikely that as Madras has not much connection with the Indian Navy, there may be no such warrants here, and that therefore none such may have been tendered to Mr. Drummond for his "acceptance" and as it is only "thereby" that he would become subject to the rules of the Indian Naval Service, it seems important to ascertain in the first instance how the fact stands.

2. If no such warrant has been accepted by or tendered to him, he is not liable to the rules of the Indian Naval Service.

3. If he has accepted such a warrant, then he is subject to these rules so far as they apply. I have not these rules before me, and in what follows I go altogether upon the information given by the Commander-in-Chief of the Indian Navy.

4. I feel considerable doubts however whether the Commander-in-Chief can have meant literally, that "warrant officers are only amenable to the Naval Articles of War for the three offences noted in the margin, when such offences are actually committed on board a vessel of the Indian Navy." I cannot think for instance that he meant to convey that a warrant officer would not be liable to the Naval Articles of War for being *drunk on duty* on board a vessel of the Indian Navy. I should doubt also whether he meant that, in a case of warrant officers of the Indian Navy being employed on shore, suppose lately at Beyr or Dwarka with ship guns, like the Naval Brigades of the Shannon and Pearl at Lucknow and elsewhere, that they if then guilty of mutiny, desertion or disobedience of orders, would not be liable to be tried by the Naval Articles of War, because the offence was not *actually* committed on board a vessel of the Indian Navy. If this be so, it seems to me eminently deserving of consideration whether some alteration is not required.

5. I take it however as being now laid down that the rules of the Indian Navy, whatever they are, *do not apply* to an Engineer being a warrant officer who is guilty of any insubordination, drunkenness or other intemperance or misconduct (as specified in the covenant) *on shore*. This being so, I have no doubt that, under the covenant, Government may discharge him from their service for such misconduct *without a Court Martial*, and that by such misconduct and consequent dismissal, he forfeits one year's wages as liquidated damages, and that after six months Government may send him and his family home at his own expense unless he removes himself and such family as provided in the covenant.

6. As regards the question put by Government "whether there is any thing in the terms of the agreement to prevent the Government from subjecting a party to such a covenant to "stoppage of pay and other minor punishments without the sentence of a Court Martial," the

information

Proceedings of the Madras Government, Public Works Department,
for the month of January 1860.

question really is "whether there is anything in the agreement to empower the Government to
"do so," and I am clearly of opinion that there is not and without authority either express and
direct in the covenant itself, or indirectly by its subjecting the Engineer to the rules of some
department which contain a regulation to that effect, I am clear that Government cannot
legally do so.

7. The order of Government 24th December 1859 refers to paragraph 5 of my former
opinion but probably paragraphs 3 and 4 were the passages intended.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

Dated January 12th, 1860.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 181.

ORDER THEREON, 31st January 1860, No. 247.

Ordered to be communicated to the Chief Engineer together with the papers recorded in
Proceedings dated 2nd and 24th December 1859 Nos. 2815 and 2992, in reference to Colonel
Bell's letter of the 29th October last No. 6644.

(Signed) T. PYCROFT,
Chief Secretary.

Copy Opinion

Mr Drummond's Covenant binds him
that after arriving and reporting himself he
shall accept an appointment by Warrant in
"such manner or after the manner of the
"appointment by Warrant of the Officers of
"the Indian Navy and shall thereby become
and be subject to all the rules and discipline
of the said service as a Warrant Officer. The
Covenant was probably drawn up chiefly with
reference to Bombay and it seems not altogether
unlikely that as Madras has not much
connection with the Indian Navy, there may
be no such warrants here, and that therefore
none such may have been tendered to Mr
Drummond for his "acceptance" and it is
only "thereby" that he would become subject to
the rule of the Indian Naval Service, it seems
important to ascertain in the first instance
how the fact stands.

2. If no such warrant has been accepted
by or tendered to him, he is not liable to the
rules of the Indian Naval Service.

3. If he has accepted such a Warrant, then
he is subject to these Rules so far as they apply.
I have not these rules before me and
in what follows I go together upon the

information

information given by the Commander-in-Chief
of the Indian Navy.
4. I feel considerable doubts however whether
the Commander-in-Chief can have meant
literally that "Warrant Officers are only amenable
to the Naval Articles of War for the three offences
noted in the margin, when such offences are ^{Mutiny}
"actually committed on board a vessel of ^{Desertion and}
"the Indian Navy". I cannot think from ^{Disobedience of orders}
instances that he meant to convey that a warrant
officer would not be liable to the Naval Articles
of War for being drunk on duty on board a
vessel of the Indian Navy. I should doubt also
whether he meant that, in a case of warrant
officers of the Indian Navy being employed
on shore - suppose lately at Rangoon or Swatara
with ship guns like the Naval Brigades
of the Shannon and Pearl at Lucknow and
elsewhere that they if then guilty of mutiny
desertion or disobedience of orders would not
be liable to be tried by the Naval Articles
of War because the offence was not actually
committed on board a vessel of the Indian Navy.
If this be so, it seems to me eminently deserving
of consideration whether some alteration is
not required.

5. I take it however as being now laid down
that the Rules of the Indian Navy whatever
they are, do not apply to an Engineer being
a warrant officer who is guilty of any

insubordination

insubordination, drunkenness or other intemper-
ance or misconduct (as specified in the Covenant)
on shore. This being so I have no doubt that under
the Covenant Government may discharge him
from their service for such misconduct without
a Court Martial and that by such misconduct
and consequent dismissal he forfeits one year's
wages as liquidated damages and that after
six months Government may send him and his
family home at his own expense or he removes
himself and such family as provided in the Covenant.

6. As regards the question put by Government
whether there is anything in the terms of the
"agreement to prevent the Government from subjecting
a party to such a covenant to stoppage of pay
and other minor punishments without the
sentence of a Court Martial" the question
really is whether there is anything in the
"agreement to empower the Government to do so"
and I am clearly of opinion that there is
not and without authority either express
and direct in the Covenant itself, or
indirectly by its subjecting the Engineer to
the Rules of some department which he
contains a regulation to that effect, I am
clear that Government cannot legally
do so.

7. The order of Government 24th December

refers

refers to Para 5 of my former Opinion. but
probably Paras 3 and 4 were the passages
intended.

Signed, Thos Sydney Smyth
Advocate General

January 12 1860

(True copy)

Chas. J. Smyth

Govt Secy

From
To.
No. 39.
The Government Solicitor, Madras.
The Secretary to Government.
D. P. W.

Madras 15th January 1860.

1. I have the honor to acknowledge the Proceedings of Government in its P. W. Dept. Proceedings of Government No. 2992. Dated 24th December 1859. I noted in the margin.
2. Having obtained the papers relating to this matter, which were submitted to the Advocate General in November last, I again laid them with the proceedings above noted before him on his return to Madras for his further consideration, and I subsequently conferred with him thereon.
3. I now forward a copy of his Opinion and

I have the honor to be
Sir
Your Most Obedient Servant.

M. J. S. J.
Govt. Secy.

180 & 181
31 Jan 1860

The legality of the following
with unacted laws in
dealing with the Government
Engineers under Government
in the property, Indian
services which having been
examined by the Government
of the Indian Navy, are
referred to the Admiralty
to that they accordingly
the Admiralty and the
and Civil Regulations.
(Copy) P. W. S. J.
Opinion of the Advocate
General.
The 39 from Govt. Secy. to Govt.
Dated 15th Jan 1860

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The Secretary of the

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Received 17 1880

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