

(1) Number of pages 16(2) Date of repair 13.8.42

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	1763	Press ~~Mis.~~
Dated	4-2-	1863.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
4th July 1863.*

Read the following papers:—

No. 74. From E. E. MERRALL, Esq., C. E., to Lieutenant-Colonel S. O. E. LUDLOW, R. E., Deputy Secretary to Government, Public Works Department, dated Coonoor, 2nd June 1863.

SIR,

1. I have the honor to inform you that I am now quite recovered from my late illness, and I request that you will grant me permission to return to duty in the course of the present month.

2. Dr. Leslie, who has just left Coonoor, examined me previous to his departure, and expressed his willingness to grant me a full discharge from medical surveillance, and I hope to have a certificate to that effect from the new Doctor in a few days.

3. In the meantime as I shall require to make some arrangements before leaving here, I request that you will kindly inform me if I shall return to Dowlaiswaram, or be appointed to another station.

No. 75. From J. R. BOYSON, Esq., Government Solicitor, Madras, to Colonel W. I. BIRD-WOOD, R. E., Secretary to Government, Public Works Department, dated Madras, 18th June 1863, No. 392.

SIR,

1. I have the honor to acknowledge the Proceedings of Government, noted in the margin, relative to Mr. Merrall's claim on Government, for exemption from forfeiture of salary, during absence from duty on medical certificate.

2. I have submitted them, with the information subsequently furnished by you at my request, for the consideration of the Advocate General, and have also conferred with him thereon, and I now forward a copy of his opinion.

COPY OPINION.

1. It is much to be regretted that the form of Covenant should have left any opening for such a construction as Mr. Merrall contends for.

2. As there are not wanting strong reasons in support of his contention, it may be convenient to state all that strikes me as capable of being urged for and against his views.

3. It may be said that the specific point of sickness, and what was to be done in its event, was contemplated by the framers of the Covenant; and that by fixing liquidated damages for leaving without a certificate, they have impliedly permitted Mr. Merrall to retain his full pay in event of his leaving *with* a certificate. That they were bound to have stated all they intended in event of sickness; that had the penalty of being mulcted of half pay been presented to Mr. Merrall's mind he might not have entered into the agreement; that on the principles of "*expressum cessare facit tacitum*" and "*expressio unius est exclusio alterius*" the Government is now estopped from maintaining a right to mulct any portion of Mr. Merrall's pay, except in the event of his leaving *without* a certificate; that there is nothing unreasonable in making Civil Engineers, such as is Mr. Merrall, an exception to the ordinary rules and regulations of the Service, seeing that the duties of his profession expose him more than ordinarily to the chance of sickness, and that if the Covenant and the general rules are at variance, the special Covenant must prevail.

4. It may be contended that the Covenant to conform to all rules and regulations of the Department refers simply to all such rules as are strictly and exclusively departmental, an interpretation which is supported by the fact that Mr. Merrall is expressly declared entitled to the benefit of the Pension Rules of the Uncovenanted Service, although these rules are just as much applicable to his Department as the rules for leave; and, finally, that the Government has already once put its own construction on the Covenant by not making any deduction from Mr. Merrall's pay when he was absent on sick certificate in 1855.

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5. On the other hand, the two Latin rules of construction apply only where that which is expressed necessarily excludes that which is not expressed. Here that which is expressed refers only to one particular event, absence without sick certificate. It seems to me hard to say that this excludes a totally different event, which unless it is provided for under the Covenant to conform to regulations of the Department, is not provided for at all. I can scarcely believe that the framers of the Covenant intended to confer on Mr. Merrill so immense an advantage over every other servant of Government, as exemption from a deduction of pay when absent on sick certificate which may extend to three years leave to England. It seems only reasonable that when no duty is being performed, an Officer should not receive the same amount of pay as when he is fully employed. Sickness may not be attributable to causes over which the individual had no control: and if Mr. Merrill claims to be exempted from *this* general regulation, it appears to me that he cannot claim the benefit of the other regulations made for the benefit of the service, in regard to privilege furlough and other leave, and the like.

6. I think that the Covenant, to conform to the rules and regulations of the Department, renders Mr. Merrill liable to lose half his pay when absent on sick certificate. The rules of the Uncovenanted Service apply to the Department of Public Works, and as I am informed to Covenanted Servants in that Department. As a prudent man Mr. Merrill was bound to have inquired what those rules and regulations were, before he signed his Covenant; they were easily accessible, and I think he must be taken to have signed with a knowledge of them, or that he cannot now take advantage of his own neglect. I do not think that the restricted sum can be put on this Covenant; for Mr. Merrill had already covenanted to obey all orders of superiors and the like: so that unless the Covenant to obey all rules and regulations, &c., mean something more than a promise to obey strictly Departmental rules it would seem to be mere useless verbiage. On the other hand, the Covenant must be so read that *all* parts may stand, and that every word may have its apt signification, a condition which is completely and only fulfilled by construing the later Covenants to apply only to the case of absence *without* certificate, while the case of absence with certificate is covered by the earlier Covenant to conform to all rules, &c.

7. The proviso with respect pension may well have been specifically introduced to give Mr. Merrill, a Covenanted servant, the benefit of the Uncovenanted Pension Rules, and to prevent any question being raised as to his title to pension on the footing of a Covenanted servant.

8. Government may have acted erroneously in not deducting Mr. Merrill's half pay on the former occasion, but this cannot preclude them from insisting on the true construction of the contract on the present occasion.

9. On the whole, I incline to think that Mr. Merrill's contention cannot be supported, and I must advise the Government to decline adopting any departure from the ordinary Sick Certificate Rules in his case.

MADRAS,
17th June 1863.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

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

No. 76.

ORDER THEREON, 4th July 1863, No. 1,763.

1. Mr. Merrill in his letter dated — May 1863, submitted by the Superintending Engineer 1st Division on the 15th idem, requests to be made acquainted

No. 18.

with the decision of the Secretary of State on the question of the salary to which he is entitled during sickness, and if the decision has been given against him he asks permission to return to duty from the leave granted to him in G. O. 22nd April 1863, No. 997. Mr. Merrill will be informed in reply to this enquiry that the Secretary of State desired to be furnished with a copy of the Regulations under which the

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4th July 1863.*

stoppage of half salary is ordered on the production of a Medical Certificate, and that a copy thereof was furnished on the 20th February last, since which date no further Despatch has been received from the Home Government on the subject.

2. Under the opinion given by the Advocate General in the paper accompanying Mr. Boyson's letter recorded at the head of these Proceedings, the Government see no reason for authorizing any departure from the ordinary Sick Certificate Rules in Mr. Merrill's case, or for assenting to the conditions* on which he seeks to effect a compromise in the matter.

* Paragraph 5 of letter recorded in
Procs. 9th June 1863, No. 1,474.

3. Copies of the Advocate General's paper containing his opinion on Mr. Merrill's case will be forwarded to all Superintending Engineers for information and guidance.

(Signed) W. I. BIRDWOOD, Colonel, R. E.,
Secretary to Government.

N^o 392.

Madras June 18th 1863.

From,

John Robert Boyson.
Government Solicitor - Madras.

To,

Col^l W. J. Birdwood. R. E.
Secretary to Government - P. W. D. Public - Madras.

Sir,

Dated 9th June 1863. }
N^o 1474 P. W. D. Public }

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, relative to Mr. Miralles' claim on Government for exemption from forfeiture of salary during absence from duty on Medical Certificate. -

2. I have submitted them, with the information subsequently furnished by you at my request, for the consideration of the Advocate General and have also conferred with him thereon and I now forward a copy of his opinion. -

I have the honor to be,

Sir,

Your most obedient Servant,

J. R. Boyson

Govt. Sol^r.

No.

To: Col S. O. E. Ludlow - R. O.
Deputy Secretary to Government
Public Works Department.

Sir
I have the honor to inform you
that I am now quite recovered from
my late illness - and I request that
you will grant me permission to return
to duty in the course of the present
month. —

Dr Leslie - who has just left London
examined me previous to his departure
and expressed his willingness to grant
me a full discharge from medical
surveillance - and I hope to have a
certificate to that effect from the
new Doctor - in a few days. —

In the mean time as I shall
require to make some arrangements before

Recd June 16 1863

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leaving here - I request that you will
kindly inform me if I shall return
to Downswarm or be appointed to
another Station. -

I have the honor
to remain - Sir

Yours L. L.

E. E. Merrell - C. E.

Cornwall.

June 2^d 1863

LINE

No. 1760.

Q. M. Department 3

to be furnished with a copy

Pro 9 June 1863-194
 No 1762 Dep't
 of Govt for duty
 from No 1986
 E. E. Merrill. C. E.

To
 Col. Ludlow. R. E.
 K. K. K.

Date June 22 1863.
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Requests permission
 to return to duty

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Sum

Put the letter
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No 1762-4 July

E. E. Merrill

No 74

Proceedings of the Madras Government
 Under date the 4th July 1863
 Read the following papers.
 From E. E. Merrill C. E.
 Requests permission to return to duty
 July 2nd June 1863 at No.

From the Government Secretary

I enclose copy of Advocate General's
 opinion on a Mr. Merrill's claim for
 exemption from forfeiture of salary during
 absence from duty on leave.

From E. E. Merrill C. E.

I enclose a letter to Govt and re-
 quest that it may be submitted
 to the Council as early as possible

July 2nd June 1863 at No. 392.

July 2nd June 1863 at No.

No 18

Mr. Merrill in his
 letter of May 1863 submitted
 by the Supg Engineer 1st Division
 in the 15th idios, Requests to be
 made acquainted with the decision
 of the Secretary of State on the
 question of the salary to
 which he is entitled during
 absence, & if the decision has
 been given against him he asks
 permission to return to duty
 from the leave granted to him
 on 22nd April 63 to 997.
 Mr. Merrill will be informed in
 reply to this inquiry that
 the Secretary of State decided
 to be furnished with a copy

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