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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 2704	Press Mis.
205-06	
Dated 11-11-	1870.

Not to be folded or roughly handled

between the expiration of one leave and the grant of another. The Examiner considers that eleven months of service should follow the expiration of one leave before any more is granted, and, in my opinion, the spirit and intention of the rule is one month's leave in each year of service, which would imply a service of eleven months after the first grant of leave before any more is given; but the rules are badly drawn up, vaguely worded, and I must admit are open to much difference of opinion. I have reason to think they are taken from the rules of the Madras Railway Company, which, I understand, are based on the Government Regulations, but they are not nearly so explicit. I here quote the rules in full:—

I.—Leave of absence may be granted by the Manager to each Engineer, and each employé of the Company other than an Engineer, but of similar grade and salary, for one month in each year, on full pay, but without allowances of any kind.

II.—Leave of absence may be granted by the Manager for two months, on full pay, but without allowances of any kind, to each Engineer, and to each employé of the Company other than an Engineer, but of similar grade and salary, who shall not in the preceding year have been absent on leave granted under clause I. or clause III. hereof.

III.—Leave of absence for a period not exceeding two months, without salary or allowance, except as hereinafter provided, may be given by the Manager to each Engineer, and each employé of the Company of equal grade and salary, who shall apply for the same for the arrangement of urgent private affairs, and who shall produce to the Chief Engineer, or Manager, satisfactory evidence that such absence is important and necessary.

8. In requesting the orders of Government on the two points noticed above, I beg to draw attention to the circumstance that the leave was granted when the Chief Engineer could but spare the gentlemen's services: that, as a matter of fact, the loss of their services in the months of May and June was much less to the Company than if the leave had been granted at an earlier period of the year, and as the Agent informs me that "the possibility of any objection being taken to the arrangements never occurred to me, and I conscientiously believe that I have acted in strict conformity to our rules." I would beg that whatever view the Government may take of the case, all have granted up to the present time may be considered in order, and the Examiner be authorized to pass the Engineers' salaries in the accounts.

9. Another matter for consideration, in connection with this leave, is the grant of travelling expenses to the Engineers, from the several stations at which they last resided, to Madras.

10. By his Covenant, an Engineer is entitled, when leaving the service, under certain contingencies, to a free passage to England, and "a fair allowance for conveyance from the locality at which the employé shall be employed, at the expiration of this agreement, to Madras, and the Company shall not be required to make any further payment for expenses of any kind whatever beyond such charges."

The Agent has given "a fair allowance" to the three Engineers mentioned above, as travelling expenses, from the stations at which they were employed on the 1st May and 1st June to Madras. The Examiner of Accounts objects to admit the

charge, because the Engineers were really proceeding to Madras on privilege leave. I concur in the objection, because it appears to me clear that what is provided in the Covenant is re-imbursement of travelling expenses, within certain limits, actually incurred in repairing to Madras for embarkation on termination of service, and that it is not in any way a perquisite, or part compensation for loss of employment. The Agent's explanation is, that although the Engineers were on leave until the 30th June, they must be considered to hold office and *to be employed* in that office wherever it may be, and that he has no right to enquire where an Engineer is while he is on leave of absence, nor to take notice in any way of his locality, and that he was not bound to take any cognizance of his whereabouts; that the fact of *being on leave* cannot divest an employé of his character as such; he has a right to the name and all the privileges which his employment gives him, subject only to those restrictions which are provided by the leave rules. I need scarcely say I dissent entirely from the Agent's view. I do not consider any one reason or argument to be valid, for as Mr. Ross was at Madras on the 30th June when his agreement expired; Mr. Hutchins on the voyage home, possibly in England on the same date; and Mr. East also on the voyage to England, they had not, in my opinion, any claim whatever morally or legally to travelling expenses from the stations at which they were last employed to Madras, simply because, from the circumstance of having left their stations previously on leave, they did not incur the expenses in proceeding to Madras that are contemplated in their Covenants.

To Agent, No. 122, 23rd July 1870.
From do. " 323, 27th " "
To do. " 134, 3rd Aug. " "
From do. " 345, 12th " "
To do. " 161, 25th " "
From do. " 403, 17th Sept. "

11. I believe I have fully detailed all the circumstances of the case, *pro* and *con*, but enclose my correspondence with the Agent as noted in the margin.

From the Acting Consulting Engineer for Irrigation and Canal Company, to the Agent and Manager of the Madras Irrigation and Canal Company, dated Madras, 23rd July 1870, No. 122.

In your return of changes in the Company's establishment for May 1870 Messrs. Ross and Hutchins are reported to have been granted privilege leave for two months from 1st May, and Mr. East for one month from 1st June 1870, and in your letter of 5th January 1870, No. 4, intimation was made to this office that these officers were served with notices, to the effect that their services would be dispensed with from the 30th June last. It would thus appear that the leave granted was of the nature of "preparatory leave," which is not provided for in the rules or the Engineers' Covenants.

2. It certainly was not the intention that the indulgence of privilege leave should be granted where gentlemen in the Company's service have left the employment with the avowed intention of not returning to it, but of finally leaving the service in conformity with notice given to them six months previously. Moreover, Mr. East having been on privilege leave from 24th August to 12th October 1869 was not, under any circumstances, entitled to privilege leave.

3. I have accordingly to request that you will favour me with your explanation of the circumstances, and that you will inform me to what dates each of the three gentlemen named above drew salary, and when they left this country for England.

From the Agent and Manager of the Madras Irrigation and Canal Company, to the Consulting Engineer for Irrigation and Canal Company, dated Madras, 27th July 1870, No. 323.

The objection you raise in your letter of the 23rd instant, No. 122, to the leave granted to Messrs. Hutchins, Ross, and East has taken me completely by surprise, as a doubt never for

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one moment arose in my mind that the Chief Engineer and myself were acting in strict conformity with our rules.

2. And I must first ask you to divest your mind of any influence that might be exercised over your judgment by a reference to the *Military Rules*—with those we have nothing to do, and, indeed, know nothing of them. I am altogether ignorant of the nature of the "*preparatory leave*" to which you refer.

3. The rules laid down for my guidance are very simple and perfectly clear.

I.—"Leave of absence may be granted by the Manager to each Engineer for one month in each year on full pay, but without allowances of any kind."

II.—"Leave of absence may be granted for two months on full pay, but without allowance, to each Engineer who shall not, in the preceding year, have been absent on leave granted under clause I. and clause III.

Now Mr. Hutchins (who, I may mention, has suffered very severely in his health from exposure on the Company's works,) had applied for two months' leave due to him from the 15th March to the 14th May, and upon the Chief Engineer's recommendation I granted it. Mr. Hutchins, however, was at the time employed on the Pennar Anicut, where the work was in full operation, and it would have been, to a certain extent, detrimental to the Company's interest to lose his services then, though knowing his state of health and what the climate of Adamapully is in those months, I did not feel that I should be justified in rejecting Mr. Latham's recommendation and in refusing the leave. I therefore very gladly acquiesced in a proposal subsequently made to transfer his leave from those two working months to the months of May and June, when it seemed probable that the work would be stopped by the floods. Mr. Hutchins embarked at Madras on the 26th May.

With regard to Mr. East. His case is a peculiarly hard one. He has served the Company for nearly seven years, and, on the 4th of August 1870, would have been entitled to his year's furlough; the business he was engaged upon was being wound up, and the subordinates dismissed, and no doubt the Chief Engineer, who recommended him for leave, considered that he could well be spared. Had he been ordered to another division, I apprehend his services would have been lost to the Company quite as much as they were by the leave to which I considered him fairly entitled under our rules. Mr. East embarked on the 10th June.

Mr. Ross had important private business to attend to before leaving India, and upon the Chief Engineer's recommendation he also, for the first time since he has been in the Company's service, was permitted to enjoy the privilege which our rules provide. He embarked on the 22nd of July.

The possibility of any objection being taken to these arrangements never occurred to me, and I conscientiously believe that I have acted in strict conformity to our rules. Leave of absence and a notice to quit are two subjects which appear to me to have no bearing upon each other, no connection whatever. And to refuse a man the privilege of leave provided by the rules, because I am depriving him of his bread by dismissal for no fault of his, does appear to me to be a harsh proceeding, which I cannot reconcile with my sense of justice or with the honourable discharge of my duty.

But at this most anxious period it is of the utmost importance to me to avoid every subject of dispute, and to enter into no correspondence or discussion that I can by any possibility evade.

I have, therefore, pending your reconsideration of the subject, cancelled a leave of absence which I had, under somewhat similar circumstances, granted to Mr. Holmes who, I am assured, is very deserving of the indulgence.

I trust, however, that, upon a reconsideration of our rules, you will arrive at the conclusion that the course I have adopted is perfectly reasonable and justifiable, and indeed in strict accordance with those rules.

I have omitted to notice your observations that Mr. East had leave in September 1869, but our rules provide for leave being granted in each year, therefore he was entitled to a month's leave in 1870.

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With Mr. Ross embarked also Mr. Schwartz and Mr. Sutherland, the latter in a state of extreme debility. Both these gentlemen did, I believe, look forward to obtaining the indulgence of leave, never, if I recollect right, having been able to avail themselves of leave since they have been in the service, but they could not be spared. Mr. Wade was, in like manner, kept at work to the last moment; and I think the Company is indebted to these gentlemen for their assiduity and for waiving a claim which it seems to me was, under the rules, a valid one.

From the Acting Consulting Engineer for Irrigation and Canal Company, to the Agent and Manager of the Madras Irrigation and Canal Company, dated 3rd August 1870, No. 134.

I HAVE the honour to acknowledge your letter, No. 323 of the 27th ultimo, and regret that I differ too widely from the view you take of the eligibility of Engineers to leave under the rules of the Company.

2. My letter was founded on the printed rules which were approved of by Board of Directors, and the opinion I had formed is unaltered by your explanation of the principles which guided you, for, whilst giving you the fullest credit for having acted in the best faith, it seems to me that you lost sight of the principle laid down for your guidance in the 5th paragraph of Appendix D. of the Rules, which provides that the one month's leave of absence in each year shall be granted as an indulgence and not demanded as a right; but your acts, and the whole tenor of your letter under reply, convey the idea that you regard this leave as a right, a claim to be complied with, unless positively injurious to the Company's service.

3. Whether it was reasonable and proper, in the present condition of the Company's finances, to grant this leave as liberally as you have done, during the past six months, and especially to gentlemen whose employment was about to terminate, is a point upon which I have not expressed an opinion, nor is there anything in my former letter to suggest the idea, which you have adopted, that I considered privilege leave should be refused, because the Engineers had received notice to quit; what I took exception to was granting this kind of leave to gentlemen who had left their stations with the avowed intention of not returning to their employment on the expiration of their leave, but of finally quitting the service. If the leave had really been obtained with the object for which the rule was established, for relaxation after a period of work, and that they might return with renewed vigour to their duty even for a short time, I would admit that you had acted in accordance with your rules; but I cannot allow that it was reasonable or proper to consider Mr. Hutchins on privilege leave for two months from the 1st May seeing that he embarked for England on the 26th of that month; or that Mr. East could properly be granted leave for one month from 1st June, when he embarked for England on the 10th of that month; and it is incomprehensible to me how you can consider a man properly on privilege leave who at the same time is en route to England on a passage provided by the Company on his leaving the service, and who does not mean to, and could not, return to his employment at the end of his leave.

4. Mr. Ross' case is somewhat different, as it appears he really was on leave for the whole two months, and did not quit the country until after the 30th June.

5. I also dissent entirely from your reading of paragraphs 1 and 2, Appendix D., pages 26 and 27 of the Rules.

I believe the spirit and intention of those rules to be that an Engineer may, as an indulgence, be granted one month's leave in each year of his service, and not, as your closing paragraph implies, that a man who joined in November 1869 could claim, and has a right to, leave for the month of December 1869, and also for January 1870, because they are different calendar years, and Mr. East was not, in my opinion, eligible for privilege leave according to your rules until September 1870, having been on leave in September 1869.

6. As regards Mr. Holmes' case, and similar ones, I am of opinion that, provided he is eligible from length of service to privilege leave, it is competent for you to grant it only on condition of his rejoining his station, or joining such other station as you may appoint him to, on the expiration of his leave, and before the date on which his engagement with the Company terminates in conformity with such notice to leave the service as you may have given him.

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From the Agent and Manager of the Madras Irrigation and Canal Company, to the Consulting Engineer for Irrigation and Canal Company, dated Madras, 12th August 1870, No. 345.

I HAVE the honour to acknowledge receipt of your letter, No. 134, of 3rd August 1870.

2. I can only express my regret at the difference of opinion which exists between us, and repeat that the objection you have raised has caused me the utmost surprise.

3. I cannot adopt your views, but I do and have done all that I possibly can do by acting in accordance with them and against my own judgment, as I have already informed you, under your authority, and surrendering my own discretion and responsibility altogether, I have determined to grant no leave at all, except under medical certificate.

4. In the case of Mr. Hutchins I think you have overlooked my explanation. Leave of absence had been granted to him for March and April. I do not understand you to take any objection to that act.

5. For the benefit of the Company, and because his services were more valuable to the Company in March and April than they were likely to be in May and June, the leave granted was transferred to the latter months. And to this, if I understand you right, there would have been no objection, provided he had returned to Adamapully on the 1st July. But his agreement with the Company came to an end on the 30th June. Therefore, had I compelled him to present himself there on that day, I should virtually and legally have re-engaged him and rendered the Company liable for his entertainment. I fail to see how the Company would benefit by an Engineer performing the mere ceremony of rejoining.

6. I have not lost sight of the paragraph to which you refer, which provides that leave of absence shall be granted as an indulgence, but during my thirty years' experience of official life I have always considered it incumbent upon me to administer all discretionary laws and regulations equally, fairly, and according to fixed principles, and not arbitrarily or according to mere expediency. You are doubtless aware that it is the Chief Engineer who decides at what time an Engineer can be spared from his work, and who recommends him for leave, and although I have, on some rare occasions, deemed it my duty to demur to that officer's recommendation when leave has been recommended to several Engineers at the same time, but (as subsequently explained) wisely and for good reasons, I should think I was treating him with scant courtesy if I refused them except upon very strong grounds. I never grant leave without such recommendation.

7. If leave has been granted "liberally" during the last six months, the reason is obvious—it is that extraordinary exertions have been made by Engineers (some of whom have never enjoyed the indulgence of leave,) in order to complete the canal, and the result has been, I presume, in the opinion of the Chief Engineer, to entitle them to the indulgence.

8. Mr. Hutchins was employed in the Pernair Division, which is the one division which has occasioned me the most anxiety in regard to its completion. The monthly reports that I have received of its progress show the following results:—

9. On the 1st January there remained 45,237 cubic yards of masonry to be done.

The work done in January was 1,531 cubic yards.

February	4,590	"	"
March	6,270	"	"
April	5,792	"	"
May	4,865	"	"
June	2,496	"	"

And on the 1st July there remained only 12,890 cubic yards to be finished. Of earth-work there remained on the 1st January 737,580 cubic yards.

The work done in January was 59,547

February	59,088
March	104,086
April	116,746
May	106,155
June	45,864

Leaving on the 1st July only 245,383 cubic yards to be completed.

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10. Nor must it be forgotten that every Engineer is, by his agreement, entitled to six months notice. It will be admitted that it was not an easy matter for the Chief Engineer to calculate the exact amount of work each Engineer would execute in six months, so as to fix the exact date on which it would be safe to serve the notices, though the matter had long been the subject of our consideration and consultation. If, after receiving such notice, Engineers redoubled their exertions, as I know some of them did, I cannot admit that it would have been either just or honest, nor indeed profitable to the Company, to refuse indulgences which had been well earned. At least we save the allowances.

11. As to the question whether it was reasonable or proper to transfer Mr. Hutchins' leave from one period to another, from a busy period to that which was expected to be a slack season on account of the rains, that is of course one of judgment, discretion, and reason. According to my judgment I did the very best thing I could do for the Company's interests, believing it impossible that any objection could be taken to the course I have pursued, and as to the question of allowing an Engineer to enjoy the indulgence at the end of his period of service, the principle is, I believe, supported by the practice of the Government. I do not profess to know or understand the regulations of the public service in India, but I have on several occasions been told "Colonel so and so has gone home on two years' leave, but he will never return. When his leave is out he will retire."

12. I append a return of leave granted since January 1867—three years and a half. A glance at which shows me not only that the indulgence has not been granted liberally, but that great credit is due to the Engineers who refrained from asking for leave so long as they thought the work required their presence. The return is not complete, because it lacks the names of two Engineers who sacrificed their lives in the Company's service. You will see that nearly half the Engineers have not had any leave at all.

Amount of Privilege Leave granted to Engineers since 1st January 1867.

Name.	Date of Appointment.	1867.		1868.		1869.		1870.	
		Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.
J. H. Latham	{20th Dec. 1859 *16th Sept. 1863	1	....	....	....	2	....	....	....
G. Gordon	{20th Dec. 1859 †27th July 1863	....	....	2	....	....	....	2	....
F. East	4th Aug. 1863	....	....	....	....	1	19	1	....
A. J. Dodson	{4th Nov. 1862 †12th Nov. 1866	....	....	....	....	....	....	2	....
A. Browning	4th Feb. 1867	....	....	....	....	2	....	....	....
J. Carruthers	20th Jan. 1867	....	....	....	....	....	....	2	....
L. E. Ross	20th March 1867	....	....	....	....	....	....	2	....
H. P. Higginson	20th Jan. 1867	....	....	....	....	....	....	2	....
W. Ridley	20th Jan. 1867	....	....	....	....	2	....	....	....
J. F. Schwartz	20th Feb. 1867	....	....	....	14	....	....	....	....
C. H. Wilks	4th Aug. 1863	....	....	....	....	....	....	2	....
C. B. Knorpp	16th April 1861	....	....	Furlough		....	....	....	....
W. D. Haskell	4th Sept. 1869	....	....	....	....	....	....	....	....
E. D. Mathews	4th Sept. 1869	....	....	....	....	....	....	....	....
L. D. A. Jackson	26th Dec. 1868	....	....	....	....	....	....	....	....
F. G. Stoney	1st Dec. 1868	....	....	....	....	....	....	....	....
J. H. Cox	20th Oct. 1867	....	....	....	....	....	....	2	....
W. H. Crawford	12th Oct. 1863	....	....	2	....	....	....	....	....
Hector Shaw	26th Jan. 1869	....	....	....	....	....	....	....	....
S. Horsley	20th Oct. 1867	....	....	....	....	....	....	....	....
G. A. Hutchins	20th Oct. 1867	....	....	....	....	....	....	2	....
A. B. Bradbury	15th Oct. 1863	....	....	....	....	2	....	....	....
J. A. H. Holmes	{20th Dec. 1862 †20th Oct. 1867	....	....	....	....	....	....	....	....
J. Rice	5th Oct. 1868	....	....	....	....	....	....	1	....
G. Wade	17th April 1869	....	....	....	....	....	....	....	....
D. D. Sutherland	1st May 1869	....	....	....	....	....	....	....	....
A. E. Pfennigworth	14th Oct. 1869	....	....	....	....	....	....	....	....
A. G. Frericks	5th Aug. 1867	....	....	....	....	....	....	1	....
J. H. Dawson	6th Feb. 1867	....	....	2	....	....	....	....	....
E. S. Grahame	27th April 1869	....	....	....	....	....	....	....	....
A. D. Goodsir	1st June 1869	....	....	....	....	....	....	....	....
A. M. Shaw	7th June 1869	....	....	....	....	....	....	....	....
A. B. Cruise	5th March 1869	....	....	....	....	....	....	....	....
J. H. Wait	6th Nov. 1866	....	....	....	....	....	....	....	....

* Re-appointed.

† Do.

‡ Do.

|| From 1st July 1863 to 14th August 1869.

¶ Re-appointed.

the commencement of this year the
Plank

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From the Acting Consulting Engineer for Irrigation and Canal Company, to the Agent and Manager of the Madras Irrigation and Canal Company, dated 25th August 1870, No. 161.

I HAVE the honour to acknowledge your letter, No. 345, of the 12th instant, and to inform you that it must remain for the Government to decide whether the salaries passed to Engineers, who are styled as on privilege leave after they had left the country and returned to England on passages provided by the Company, shall be disallowed as charges against the Capital Account; or whether, under your explanation of the grounds on which the leave was recommended by the Chief Engineer at the particular time in question, and the principles which guided you in granting it, the charges shall be admitted in the accounts. My chief object in addressing you on the subject at the time I did was to prevent a continuance of the practice; but, in reference to the third paragraph of your letter under reply, I must distinctly deny that I authorized or even suggested to you to grant no leave at all except under medical certificate. I have carefully looked over my letters to you, and I cannot find any remark that I think can bear such construction.

From the Agent and Manager of the Madras Irrigation and Canal Company, to the Consulting Engineer for Irrigation and Canal Company, dated Madras, 17th September 1870, No. 403.

I HAVE the honour to acknowledge receipt of your letter of the 14th instant, requesting me to furnish you with the fullest information regarding passing travelling expenses to gentlemen who, on the date their engagements terminated, were either in Madras or on the voyage to England.

2. I am sorry to say that I am not aware of any information that I can give beyond that which is already in your possession.

3. When this Company engages an Engineer in England it enters into an agreement with him by which it binds itself, among other things, "to pay for his passage to India, and a fair allowance for conveyance from Madras to the locality to which he shall be directed by the Manager to proceed," and also "to pay him a fair allowance for conveyance from the locality at which he shall be employed, at the expiration of his agreement, to Madras, and for his passage from India to England upon the determination of his employment by notice on the part of the Company."

4. When, therefore, the engagements of Messrs. Ross, East, and Hutchins terminated, I was bound to fulfil that condition of the agreement under which they were employed.

5. You have raised an objection, wholly unexpected by me, that because they were *on leave* at the time of the termination of their employment, therefore they were not entitled to put that clause in force. I can only say that I not only dissent entirely from such a doctrine, but that I could not anticipate or imagine such an objection.

6. I have no right to enquire *where* an Engineer is *while he is on leave* of absence, nor to take notice in any way of his locality. An officer "*on leave*" is still considered to hold his office, and *to be employed* in that office whatever it may be. Take the case of a Secretary to Government who takes a month's leave or two years' furlough, he is still Secretary, and is correct in saying "*I am employed as a Secretary to Government at Madras, though at this moment I am at Calcutta or in London.*" So I considered Mr. Ross to be *the Executive Engineer employed at Nundial* while he was on leave, although some one else was performing his duties for him, and had his *locum tenens* remitted to him (at Madras, Kurnool, Beypoor or Calcutta) the money to pay for his conveyance to Madras I really do not see how I could have questioned the transaction. He was not bound to present himself to me, nor was I bound nor indeed had I any authority to take cognizance of his whereabouts. It seems to me that if I had the power of saying to an Engineer whom I happened to find in Madras, he having advanced the money to pay his expenses down, "now that you have reached Madras I decline to pay your expenses." I might with equal justice say to one who had paid a contractor out of his own pocket, "I find this contractor is already paid, therefore I will not pay the money;" or supposing any Engineer had paid his passage to England himself, and then asked the Secretary in London to reimburse him, could the latter have refused. I look upon the leave of absence and the payment of travelling expenses as two totally distinct things, having no connection with, nor bearing upon each other, for the fact of *being on*

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leave does not and cannot divest an employé of his character as such employé. He has a right to the *name* and all the privileges which his employment gives him, subject only to those restrictions which are provided by the leave rules. In the case of Mr. Ross, he was *in fact* employed in winding up transactions connected with his division to the last. And here it seems to me to be necessary that I should endeavour to explain more clearly than I have done before my views as to *leave of absence*.

7. The same *agreement*, to which I have already adverted, contains a clause binding the Engineer to abide by the Company's rules, and in common fairness they must operate upon both contracting parties; the printed rules are put into his hands, he opens those rules and finds that, under certain conditions, he is entitled to one or two months' leave of absence, according to circumstances.

8. I say "*entitled*," because I have always held it to be a rule of law that permissive words in a Statute or Deed are obligatory, unless good cause can be shown to the contrary.

9. I remember a case in which Church Wardens were *indicted* for not having made a rate to reimburse a constable; they pleaded that the Statute only put it in their *power* by the word *may* to make the rate, but did not *require* the thing to be done, but it was decided that they were wrong. So a certain Statute says the Sheriff *may* take bail, but it has been ruled that he *must*. So the Company's rules provide that the Manager *may* give leave of absence, though such leave is granted as an indulgence and may not be demanded *as a right*. Had I refused to act under that rule *at all*, I might perhaps have defended the refusal. But having once exercised the power of granting leave, I consider the Manager bound to continue the exercise of that power *in a fair, just, and equal manner*. He has no right to grant the leave to Smith and refuse it to Jones without good cause, nor has he any right to grant it in April and refuse it in June without equally good cause.

10. Although we have no rule of any kind relative to "*rejoining*," I think that you have been in some degree influenced by the fact that in the public service there *are* some such rules, and that if I had granted leave from the 29th April to the 29th June, no objection could have been taken to the act, although the presence of the Engineer at his station *on the 30th June* could not have been of any earthly use to the Company, or the Government, or any one else.

11. Now, in the case of Mr. Hutchins, as I have already explained, his services were *much more valuable* to the Company in March and April than in May and June, and yet, if I understand your theory right, my course *ought* to have been to sacrifice the interests of the Company by making Mr. Hutchins take his leave at the time originally fixed, March and April, or to deprive him of it altogether. By transferring his leave to May and June I was unquestionably consulting the Company's interest. By *refusing* the leave altogether I should have violated my own sense of justice.

12. There is another condition of the leave rules which must not be lost sight of. *I have no power* to grant any leave to an Engineer, unless it be first recommended by the Chief Engineer. And this recommendation, in my opinion, really relieves me from any responsibility in the matter; and it certainly strengthens the operation of that rule of law that a permissive power *must* be exercised unless good cause be shown to the contrary. Now I cannot understand upon what principle of law, or justice, or equity, I was debarred from exercising the duty imposed upon me by the Company's rules, *because* the engagement of these gentlemen was about to expire. On the contrary they were about to suffer a severe loss—to be, in fact, deprived of their bread; had they been in private employ they would probably not have been suffered to depart without some gratuity according to their personal value. It did not occur to me that it could possibly be my duty to seek out excuses for aggravating their loss.

No. 206.

ORDER THEREON, 11th November 1870, No. 2,704.

IRRIGATION, No. 11.

THE Government learn with regret from these papers that the Agent and Manager of the Madras Irrigation and

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Canal Company has misapprehended the scope of the rules prescribed for the grant of privilege leave, and sanctioned that indulgence for periods of one and two months respectively to Engineers, who, owing to the termination of their engagements with the Company on the 30th June last, had no intention of rejoining their appointments on the expiration of the leave accorded to them.

2. As, in the public service (and the leave rules of the Company are based on those obtaining there) the grant of privilege leave is made to enable an officer who has worked uninterruptedly for a certain period to recruit his health for future work, and is not, as the Agent apparently apprehends, conferred as a reward for past services, it is considered necessary by the Government that, at the conclusion of leave of this description, the rejoining of appointment should be insisted upon. With a view to enforcing this condition it has been prescribed by the Governor-General in Council that an officer, when applying for privilege leave, should "be required to declare that he has no present intention of retiring from the service within six months after the expiry of his privilege leave." In the case of these Engineers the resumption of their charges was not contemplated either by the Agent or themselves, for it would appear that two of them, Messrs. Hutelins and East, were at the close of their leave either in, or en route to England, while Mr. Ross, though he remained in the country was, as already explained, precluded from again taking up his duties. The Government cannot therefore admit the validity of the reason now adduced in support of the course taken by the Agent. Looking, however, to the circumstances explained by the Acting Consulting Engineer, and on that officer's recommendation, the Examiner is authorized, as a special case, to pass the pay of the Engineers referred to.

3. The opinion of the Government Examiner, which is also that of the Acting Consulting Engineer, namely that eleven months of service should follow the first grant of privilege leave before any more is given, is clearly the correct one.

4. With regard to the point referred for the consideration of Government in paragraph 10, His Excellency in Council concurs with the Acting Consulting Engineer and the Government Examiner in thinking that, as the Engineers were on leave while travelling to Madras, they have no claim to the grant of the conveyance allowance provided for in their Covenants, and he accordingly directs that the disbursement of that charge shall not be admitted as a debit against the capital accounts of the Company.

5. His Excellency the Governor in Council trusts that the rules laid down for guidance in regard to the granting of privilege leave will, in future, be administered by the Agent and Manager of the Madras Irrigation and Canal Company in accordance with the intentions of Government which cannot hereafter be liable to misapprehension.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R.E.,
Secretary to Government.

To the Consulting Engineer for Irrigation and Canal Company.

u Agent & Manager

Exd. S. T. Augustin.

*3 letters in orig. from Agent.
2 in orig. from Agent.
1 copy in orig. from Agent.
6*

*Consulting Engineer's Office
Irrigation and Canal Company
Madras, 19th Sept. 70.*

*No 71.
Mr. Colonel, R. E. Orr, R.E.
Agent for S. T. Co.
The Secretary to Government
Public Works Department.*

*I have the honor to refer for the
consideration of Government certain points
in connection with the grant of what is usually
termed Privilege Leave to the Engineers in
the Madras Irrigation and Canal Company's
service.*

*2. The Company's rules provide that the
Agent may grant each Engineer leave for
one month in each year on full pay but
without allowances of any kind, and that leave
may be similarly granted for two months
to an Engineer who shall not in the preceding
year have had the one month's leave.*

*3. At the commencement of this year the
Agent*

Agent gave notice to certain Engineers that their services would be dispensed with from 30th June among whom were Messrs Ross, Hutchins, and East.

4. The monthly returns of changes in the Company's Establishment shews that Messrs Ross and Hutchins were granted privilege leave for two months from the 1st May, and Mr East one month from 1st June. The Government Examiners of accounts objected to the leave because the evident intention was that those gentlemen should not rejoin their appointments but embark for England, and on enquiry it appears that Mr Hutchins embarked at Madras on the 26th May and yet he is on leave and draws salary to 30th June; Mr East embarked on the 10th June but is on leave until the 30th of that month; and Mr Ross who remained at Madras until after the expiration of his leave embarked on the 22nd July.

5. The Agent's explanation is that the Chief Engineer recommended the leave when he could not spare the Engineers services, viz: at the close of their engagements; that in Mr Hutchins' case two months leave had actually been granted to him from

from the 15th March to 14th May, but as he could not be spared from where he was employed, the leave was transferred to two months from 1st May, and that he (the Agent) cannot see how the Company would benefit by the Engineers performing the mere ceremony of re-joining his station on the expiration of his leave. With regard to Mr East's one month's leave, the Agent observes that the business upon which he was engaged (in Bellary) was being wound up, and the subordinates dismissed, and that had Mr East been ordered to another division his services would have been lost to the Company quite as much as they were by his being on leave.

6. I entirely concur in the Examiners' objection, and consider it never was intended that this leave should be granted as has just been done, whereby certain Engineers are on privilege leave drawing salary, and at the same time on the voyage to England on passages provided by the Company on the termination of the Engineers engagements.

7. Another point upon which the Examiners and I differ from the Agent is the meaning of the

~~under~~ the expression, leave of absence for one month or for two months in each year. The Agent takes it literally, and maintains that leave is allowed for one month in each Calendar year without regard to length of service, or the interval between the expiration of one leave and the grant of another. The Examiner considers that eleven months of service should follow the expiration of one leave before any more is granted, and in my opinion the spirit and intention of the rule is one month's leave in each year of service, which would imply a service of eleven months after the first grant of leave before any more is given - but the rules are badly drawn up: vaguely worded: and I must admit are open to much difference of opinion. I have reason to think they are taken from the rules of the Madras Railway Company which I understand are based on the Government Regulation, but they are not nearly so explicit. I here quote the rules in full. -

1. Leave of absence may be granted by the Manager & each Engineer, and each employe of the Company other than an Engineer

Engineer but of similar grade; and salary, for one month in each year, on full pay, but without allowances of any kind. - 15

II. Leave of absence may be granted by the Manager for two months, on full pay, but without allowances of any kind, to each Engineer, and to each employe of the Company other than an Engineer, but of similar grade and salary, who shall not in the preceding year have been absent on leave granted under clause I or clause III hereof. -

III. Leave of absence for a period not exceeding two months without salary or allowance, except as hereinafter provided, may be given by the Manager to each Engineer, and each employe of the Company of equal grade and salary, who shall apply for the same for the arrangement of urgent private affairs, and who shall produce to the Chief Engineer or Manager satisfactory evidence that such absence is important and necessary. In requesting the orders of Government on the two points noticed above I beg to draw attention to the circumstance that the leave was granted when the Chief Engineer

ends
on

could but spare the gentlemen's services: that as a matter of fact the loss of their services in the months of May and June was much less to the Company than if the leave had been granted at an earlier period of the year: and as the Agent informs me that "the possibility of any objection being taken to the arrangements never occurred to me, and I conscientiously believe that I have acted in strict conformity to our rules" I would beg that whatever view the Government may take of the case, all leave granted up to the present time may be considered in order, and the Engineer be authorized to pass the Engineers salaries in the accounts. —

9. Another matter for consideration in connection with this leave is the grant of travelling expenses to the Engineers from the several stations at which they last resided to Madras. —

10. By his Covenant, an Engineer is entitled when leaving the service, under certain contingencies, to a free passage to England and "a fair allowance for conveyance from the locality at which the employee shall be employed

"at the expiration of this Agreement to Madras, and the Company shall not be required to make any further payment for expenses of any kind whatever beyond such charges."

The Agent has given a fair allowance to the three Engineers mentioned above as travelling expenses from the stations at which they were employed on the 1st May and 1st June to Madras. — The Examiners of accounts objected to admit the charge because the Engineers were really proceeding to Madras on privilege leave. I concur in the objection, because it appears to me clear that what is provided in the Covenant is reimbursement of travelling expenses, within certain limits, actually incurred in repairing to Madras for embarkation or termination of service, and that it is not in any way a perquisite or part compensation for loss of employment. — The Agent's explanation is: that although the Engineers were on leave until the 30th June they must be considered to hold office and to be employed in that office wherever it may be, and that he has no right to require where an Engineer is while he is on

on leave of absence, nor to take notice in any way of his locality, and that he was not bound to take any cognizance of his whereabouts, that the fact of being on leave cannot divest an employe of his character as such; he has a right to the name and all the privileges which his employment gives him subject only to those restrictions which are provided by the leave rules. - I need scarcely say I dissent entirely from the Agent's view. I do not consider any one reason or argument to be valid, for as Mr. Ross was at Madras on the 30th June when his agreement expired: Mr. Hutchins on the voyage home - possibly in England on the same date: and Mr. East also on the voyage to England: they had not in my opinion any claim whatever, morally or legally to travelling expenses from the stations at which they were last employed to Madras, simply because, from the circumstances of having left their stations previously on leave, they did not incur the expenses in proceeding to Madras that are contemplated in their Covenants. - I believe I have fully detailed all the circumstances of the case pro: and con, but:

Public Works Department
No 2704.
Proceedings of the Madras Government
Under date the 11th November 1870.
Read the following
From the Ag. Cons. Engr. for J.H.E. No 717/19 to Sept 1870/
L & C. Co.

I think the working of this is rather strong. This may put the matter in a different light. I think the matter is not further in front further.

The Government learn with ^{regret} ~~surprise~~ from these papers that the Agent and Manager of the Madras Irrigation and Canal Company ~~has~~ ^{has} misapprehended the scope of the rules prescribed for the grant of privilege leave ~~and~~ ⁱⁿ sanctioned that indulgences for periods of one and two months respectively to Engineers, who, owing to

with the termination of their
engagements with the
Company on the 30 June
last had no intention
of rejoining their appoint-
ments on the expiration
of the leave accorded to them.

No, in the public
service (and the leave rules
of the Company are
based on those obtaining
there) the grant of privilege
is made to enable

an officer who has been
interrupted by for a

certain period to rejoin

his health for future ser-

vice is not, in the spirit of

the rules, a reward for past

service. It is only
necessary.

the health of the officer is
sufficiently good to enable him to
rejoin his service.

O. M. S. D. Aug 14 data 1871
August no 1807/1871

1871 Sept 19
From the
The Adjutant General's Office
To the Secretary of War

Dated 19th Sept 71
Recd: 21st 3

No 2804 Eng 10 September 71
Submits for the consideration of Govt certain points in connection with the grant of Privilege Leave to the Engineers in the service of the M. & C. Co. regarding which there is a difference of opinion between the Adjutant & the Commanding Engineer.

1871
Sept 19

necessary by the Govt that, at the conclusion of leave of this description, the rejoining of appointment should be insisted upon. With a view to enforcing this condition it has been prescribed by the Governor General in Council that an officer when applying for privilege leave should be required to declare that he has no present intention of retiring from the service within six months after the expiry of his "privilege leave". In the case of these Engineers the resumption of their charges was not contemplated either by the Regu.

or themselves, for it would
appear that two of them,
Messrs Hutchins and East
were at the close of their
leave either in, or en route
to England, while Mr Pass,
though he remained in
the country was, as already
explained precluded from
again taking up his
duties. ~~The Govt must~~
~~therefore consider the~~
~~reasons now adduced~~
~~in support of the Agents~~
~~proceedings to be most~~
~~unsatisfactory.~~ Looking
however, to the circum-
stances explained by
the Acting Cong Engineer,
and on that officer's
recommendation, the
Examiner

The Govt cannot
therefore admit the
validity of the reasons
now adduced in
support of the course
taken by the Agent.

25

Examiner is authorized,
as a special case, to pass
the pay of the Engineer
referred to.

The opinion of the
Govt Examiner, which
is also that of the Acting
Cong Engineer, viz: that
eleven months of service
should follow the first
grant of privilege leave
before any more is given,
is clearly the correct one.

With regard to the
point referred for the
consideration of Govt
in para 10, His Excellency
in Council concurs
with the Acting Cong
Engineer and the Govt
Examiner in thinking
that

that, as the Engineers were
on leave while travelling
to Madras, they have no
claim to the grant of the
conveyance allowance
provided for in their
contracts, and he ac-
cordingly directs that
the disbursement of that
charge shall not be
admitted as a debit
against the Capital
accounts of the Company.

His Excellency the
Governor in Council trusts
(hopes) that the rules
laid down for guidance
in regard to the granting
of privilege leave will,
in future, be adminis-
tered by the Agent,
and

27

and Manager of the Madras
Irrigation and Canal
Company in accordance
with the intentions
which Govt. (have clearly
and distinctly expressed
in framing them.)

Wb

28

The Comd Engineer for the
M. S. & C. Co. Vista Big Bunk.
" Agent & Manager for W. S. S."

Decr. 14/11/20.

P. W. L. to Anglo et al. 16. ed. 1871

C/ 3730

Govt. of 1870 Madras.

PUBLIC WORKS.

To The Consulting Engineer for
Irrigation and
Canal Company

Dated

Recd.

Ex.

G. O. 11 Nov. 70, No. 2704.

No. 2084206

Privilege leave. Papering orders re
~~papers~~ Correspondence report-
ing the grant of Privilege leave
to Officers of the Madras S. P. Co.