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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	739	(15)	Press
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Dated	17-7-	1877.	

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GOVERNMENT OF MADRAS.
PUBLIC WORKS DEPARTMENT.

17th September 1877, No. 739 W.

General.
Establishment.

Read the following paper :—

No. 120. From Captain A. G. BEGBIE, R.E., Officiating Examiner of Public Works Accounts, to the Secretary to Government, Public Works Department, General Branch, dated Fort St. George, 10th September 1877, No. 99 W.

I HAVE the honor to submit, for the orders of Government, the following particulars relative to a claim for travelling allowance made by Mr. Lyon, Assistant Engineer, and disallowed by this office.

2. The facts may be thus briefly stated. Mr. Lyon, Assistant Engineer, then doing duty in the Bellary District was granted furlough to England on medical certificate in the *Gazette* of 9th March 1875; on 6th August 1876 he reported his arrival at Madras, and in the *Fort St. George Gazette* of the 8th instant he was ordered to proceed to Nellore to join at the public expense.

On this the Examiner of Public Works Accounts pointed out to Government in his No. 164 W, dated 12th August, that the grant of travelling allowance was opposed to the rules in force, and requested that the words to join at the public expense might be cancelled.

3. In the mean time Mr. Lyon, who appears to have ascertained from this Office, probably during a personal interview, that the travelling allowance was inadmissible, referred the matter to the Chief Engineer.

The Secretary to Government then sent an Office Note to Examiner inquiring, 1st, how the case of Mr. Lyon differed from that of other officers, mentioning certain names whose claim for travelling allowances had not been disputed; and, 2nd, why Mr. Lyon was not entitled to travelling allowance under Code IV, III, paragraph 1, (1X).

This office replied, 5th September—

- (1). That in the case of one only of the six officers named had the claim been admitted, and then as an exceptional case and on the distinct understanding that the appointment to which the officer was posted on his return from furlough was a new appointment.
- (2). That the paragraph referred to was cancelled by Government of India in August 1875.
4. To this there has been no reply, and in the mean time this office disallowed the claim.
5. On the other hand correspondence ensued between Mr. Lyon (through the District Engineer, Nellore) and the Chief Engineer, Public Works Department, and also between Mr. Lyon and his District Engineer and the Examiner, which may be thus summarized—

The Chief Engineer, Public Works Department, on the 23rd September, i.e., eighteen days after the issue of Examiner's note before referred to, issued the following

memorandum to the executive officers concerned regarding Mr. Lyon and in reply to his reference:—

"He is considered to be entitled to travelling allowance to join at Nellore under Clause IX paragraph 1, Section II, Chapter IV, of the Travelling Allowance Rules, and the Examiner should either pass them as gazetted or make his objection to Government."

Subsequently the District Engineer, Nellore, although aware that this office had disallowed the claim, wrote as follows to Mr. Lyon:—

"It appears that the opinion of the Examiner is at variance with an express order of the Chief Engineer. In such a case there can be no hesitation. You will pay the amount (Rupees 52) referred to in accordance with the Chief Engineer's order subject to any refund that may be ordered hereafter and charge it to Miscellaneous Advances."

This office has persistently disallowed the claim, pointing out—

- (1), that the matter had been referred to Government;
- (2), that the memorandum of the Chief Engineer was an expression of opinion, and not an order to pay;
- (3), that payment of travelling allowances prior to audit is expressly prohibited;
- (4), that in case of a disallowance not being admitted by an officer of the executive branch, the proper course laid down is for him to refer the matter to Government.

The case thus raises three issues—

- 1st.—Has Mr. Lyon any claim to the allowance?
- 2nd.—Was the District Engineer justified in issuing the order to pay?
- 3rd.—In case of disallowance should the necessary reference to Government be made by the Examiner or by the officer who prefers the claim?

On the first point I may remark that the rule on which the Chief Engineer based his opinion is as follows:—

"If an officer is transferred while on leave, he is allowed travelling allowance to join his new appointment either from his old station or from the place where he receives the order, whichever may be the least expense to Government."

This rule has been cancelled and the following substituted:—

"If the appointment of an officer is changed during furlough or special leave out of India, or upon his reporting his return he must join his new appointment within the subsidiary leave allowed him. Nothing in excess of the allowances admissible for subsidiary leave can be passed to him until he joins his new office."

And I may add that in February 1877 the Accountant-General, Public Works Department, replying to a reference on a similar case from this office stated that such claims were inadmissible; I respectfully submit therefore that this office is entirely precluded from admitting the claim. Next, and this is by far the most important issue, is the District Engineer justified under the circumstances in ordering Mr. Lyon to disburse himself the claim? The disbursement of travelling allowance before audit is strictly prohibited, *vide* paragraph 3 of Government of India Circular No. 37 of 1872, communicated to the department under G.O. No. 2,419 of 15th October 1872.

It may be that the District Engineer, Nellore, looked upon the Chief Engineer's memorandum as an authority to pay, and that in communicating the memorandum to this office he was also of the opinion that the audit office should be equally bound by it; but he should have been aware that whether the Examiner's decision were right or wrong, nothing short of an order of Government could justify a disbursement on account of a claim to which audit had been distinctly refused. Were this rule neglected, the authority of this office as an audit office would be completely nullified, and the door opened to innumerable irregularities.

But in this particular instance, I cannot trace in the memorandum the slightest order to pay: it was purely an expression of opinion differing from that of the Examiner, not only on the validity of the claim, but also as regards the manner in which the question should be referred to Government.

On this latter point G.O., No. 944, dated 23rd March 1866, implies that where District Engineers are dissatisfied with the decision of the Examiner, it is the duty of the District Engineer to bring the matter to the notice of Government.

This is manifestly the more convenient course, as with the onus of the reference to Government resting with the claimant, it may be reasonably supposed that the claims will be more fully considered before they are advanced, than if the Examiner were required in every case to make the reference. It should be added that this office fully pointed out to the District Engineer, Nellore, the irregularity of his proceeding, and invited him to cancel his order. This he has apparently refused to do, and Mr. Lyon has been informed that audit to his travelling allowance bills will be deferred until he reports the refund of the Rupees 52 which he illegally disbursed to himself.

In conclusion, I have the honor to request that the Notification in the *Gazette* of 8th August 1876, relative to Mr. Lyon's posting to Nellore may be modified as suggested in this office No. 164 W of 12th August 1876, and that such orders may be issued on the action of the District Engineer, Nellore, as it will make it clear to all officers of the department that—

- (1). In all cases of allowances which require pre-audit, nothing short of an order of Government can justify an officer disbursing the allowance prior to audit by the Examiner.
- (2). That when any allowance actually drawn is subsequently disallowed by the Examiner, it must be immediately refunded, whether the validity of the Examiner's disallowance be disputed or not.
- (3). That when an officer disputes the propriety of the Examiner's disallowance it rests with the aggrieved officer to refer the case to Government.

ORDER THEREON, 17th September 1877, No. 739 W.

No. 121.

THE disallowance of Mr. Lyon's travelling expenses by the Examiner is confirmed, the claim preferred having been inadmissible under the rules.

2. Mr. Lyon was out of order in disbursing, and Mr. O'Shaughnessy in authorizing payment in anticipation of the Examiner's audit. The amount will be refunded. His Grace the Governor in Council trusts that irregularities of this nature will not be repeated.

(True Extract.)

Colonel, R.E.

Secretary to Government, P.W.D.

To the District Engineer, Nellore.
Examiner of Public Works Accounts.

Encl. B. C. Shunker.
Spare Copies

4881
FROM THE EXAMINER,

P.W.ACCTS., MADRAS.

TO THE SECRETARY TO GOVERNMENT,

PUBLIC WORKS DEPARTMENT,

GENERAL BRANCH.

NO. 99. W.

FORT ST. GEORGE, 10TH. SEPT. 1877.

SIR,

I HAVE THE HONOR TO SUBMIT FOR THE ORDERS OF GOVERNMENT THE FOLLOWING PARTICULARS RELATIVE TO A CLAIM FOR TRAVELLING ALLOWANCE MADE BY MR. LYON ASSISTANT ENGINEER, AND DISALLOWED BY THIS OFFICE.

2. THE FACTS MAY BE THUS BRIEFLY STATED. MR. LYON ASSISTANT ENGINEER THEN DOING DUTY IN THE BELLARY DISTRICT WAS GRANTED FURLO' TO ENGLAND ON MEDICAL CERTIFICATE IN THE GAZETTE OF 9TH. MARCH 1875. ON 6TH. AUGUST 1876 HE REPORTED HIS ARRIVAL AT MADRAS, AND IN THE FORT ST. GEORGE GAZETTE OF THE 8TH. INSTANT HE WAS ORDERED TO PROCEED TO NELLORE, TO JOIN AT THE PUBLIC EXPENSE.

ON THIS THE EXAMINER, P.W. ACCOUNTS, POINTED OUT TO GOVERNMENT IN HIS NO. 164. W., DATED 12TH. AUGUST THAT THE GRANT OF TRAVELLING ALLOWANCE WAS OPPOSED TO THE RULES IN FORCE AND REQUESTED THAT THE WORDS TO JOIN AT THE PUBLIC EXPENSE MIGHT BE CANCELLED.

3. IN THE MEAN TIME MR. LYON WHO APPEARS TO HAVE ASCERTAINED FROM THIS OFFICE, PROBABLY DURING A PERSONAL INTERVIEW, THAT THE TRAVELLING ALLOWANCE WAS INADMISSIBLE REFERRED THE MATTER TO THE CHIEF ENGINEER.

THE SECRETARY TO GOVERNMENT THEN SENT AN OFFICE NOTE TO EXAMINER, ENQUIRING 1ST. HOW THE CASE OF MR. LYON DIFFERED FROM THAT OF OTHER OFFICERS MENTIONING CERTAIN NAMES WHOSE CLAIM FOR TRAVELLING ALLOWANCES HAD NOT BEEN DISPUTED AND 2ND. WHY MR. LYON WAS NOT ENTITLED TO TRAVELLING ALLOWANCE UNDER CODE IV. III. PARA 1. (IX)

THIS OFFICE REPLIED, 5TH. SEPTEMBER.

1. THAT IN THE CASE OF ONE ONLY OF THE 6 OFFICERS NAMED HAD THE CLAIM BEEN ADMITTED, AND THEN AS AN EXCEPTIONAL CASE AND ON THE DISTINCT UNDERSTANDING THAT THE APPOINTMENT TO WHICH THE OFFICER WAS POSTED ON HIS RETURN FROM FURLOUGH WAS A NEW APPOINTMENT.
2. THAT THE PARA REFERRED TO WAS CANCELLED BY GOVT OF INDIA IN AUGUST 1875.
4. TO THIS THERE HAS BEEN NO REPLY, AND IN THE MEANTIME THIS OFFICE DISALLOWED THE CLAIM.
5. ON THE OTHER HAND CORRESPONDENCE ENSUED BETWEEN MR. LYON, (THRO. THE DISTRICT ENGINEER, NELLORE,) AND THE CHIEF ENGINEER, P.W. DEPARTMENT; AND ALSO BETWEEN MR. LYON AND HIS DISTRICT ENGINEER AND THE EXAMINER WHICH MAY BE THUS SUMMARIZED.

THE CHIEF ENGINEER, P.W. DEPT. ON THE 22ND. SEPTEMBER, I.E. 18 DAYS AFTER THE ISSUE OF EXAMINER'S NOTE BEFORE REFERRED TO, ISSUED THE FOLLOWING MEMO TO THE EXECUTIVE OFFICERS CONCERNED REGARDING MR. LYON, AND IN REPLY TO HIS REFERENCE.

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HE IS CONSIDERED TO BE ENTITLED TO TRAVELLING ALLOWANCE TO JOIN AT NELLORE UNDER CLAUSE IX PARA I. SEC. II. CHAP. IV. OF THE TRAVELLING ALLOWANCE RULES AND THE EXAMINER SHOULD EITHER PASS THEM AS GAZETTED OR MAKE HIS OBJECTION TO GOVERNMENT.

SUBSEQUENTLY THE DISTRICT ENGINEER, NELLORE, ALTHO' AWARE THAT THIS OFFICE HAD DISALLOWED THE CLAIM WROTE AS FOLLOWS TO MR. LYON.

IT APPEARS THAT THE OPINION OF THE EXAMINER IS AT VARIANCE WITH AN EXPRESS ORDER OF THE CHIEF ENGINEER. IN SUCH A CASE THERE CAN BE NO HESITATION. YOU WILL PAY THE AMOUNT (RS. 52) REFERRED TO IN ACCORDANCE WITH THE CHIEF ENGINEER'S ORDER SUBJECT TO ANY REFUND THAT MAY BE ORDERED HEREAFTER AND CHARGE IT TO MISCELLANEOUS ADVANCES.

THIS OFFICE HAS PERSISTENTLY DISALLOWED THE CLAIM. POINTING OUT

1. THAT THE MATTER HAD BEEN REFERRED TO GOVERNMENT.
2. THAT THE MEMO OF THE CHIEF ENGINEER WAS AN EXPRESSION OF OPINION, AND NOT AN ORDER TO PAY.
3. THAT PAYMENT OF TRAVELLING ALLOWANCES PRIOR TO AUDIT IS EXPRESSLY PROHIBITED.
4. THAT IN CASE OF A DISALLOWANCE NOT BEING ADMITTED BY AN OFFICER OF THE EXECUTIVE BRANCH, THE PROPER COURSE LAID DOWN IS FOR HIM TO REFER THE MATTER TO GOVERNMENT.

THE CASE THUS RAISES THREE ISSUES.

1ST. HAS MR. LYON ANY CLAIM TO THE ALLOWANCE ?
2ND. WAS THE DISTRICT ENGINEER JUSTIFIED IN ISSUING THE ORDER TO PAY ?

3RD. IN CASE OF DISALLOWANCE SHOULD THE NECESSARY REFERENCE TO GOVERNMENT BE MADE BY THE EXAMINER OR BY THE OFFICER WHO PREFERS THE CLAIM ?

ON THE FIRST POINT I MAY REMARK THAT THE RULE ON WHICH THE CHIEF ENGINEER BASED HIS OPINION IS AS FOLLOWS:-

IF AN OFFICER IS TRANSFERRED WHILE ON LEAVE, HE IS ALLOWED TRAVELLING ALLOWANCE TO JOIN HIS NEW APPOINTMENT EITHER FROM HIS OLD STATION, OR FROM THE PLACE WHERE HE RECEIVES THE ORDER WHICHEVER MAY BE THE LEAST EXPENSE TO GOVERNMENT.

THIS RULE HAS BEEN CANCELLED AND THE FOLLOWING SUBSTITUTED

'IF THE APPOINTMENT OF AN OFFICER IS CHANGED DURING FURLOUGH OR SPECIAL LEAVE OUT OF INDIA, OR UPON HIS REPORTING HIS RETURN HE MUST JOIN HIS NEW APPOINTMENT WITHIN THE SUBSIDIARY LEAVE ALLOTTED HIM. NOTHING IN EXCESS OF THE ALLOWANCES ADMISSIBLE FOR SUBSIDIARY LEAVE CAN BE PAID TO HIM UNTIL HE JOINS HIS NEW OFFICE.'

AND I MAY ADD THAT IN FEBRUARY 1877 THE ACCOUNTANT GENERAL, P.W.DEPARTMENT, REPLYING TO A REFERENCE ON A SIMILAR CASE FROM THIS OFFICE STATED THAT SUCH CLAIMS WERE INADMISSIBLE. I RESPECTFULLY SUBMIT THEREFORE THAT THIS OFFICE IS ENTIRELY PRECLUDED FROM ADMITTING THE CLAIM. NEXT, AND THIS IS BY FAR THE MOST IMPORTANT ISSUE, IS THE DISTRICT ENGINEER JUSTIFIED UNDER THE CIRCUMSTANCES IN ORDERING MR. LYON TO DISBURSE HIMSELF THE CLAIM? THE DISBURSEMENT OF TRAVELLING ALLOWANCE BEFORE AUDIT IS STRICTLY PROHIBITED VIDE PARA 3 OF GOVERNMENT OF INDIA CIRCULAR 37 OF 1872 COMMUNICATED TO THE DEPARTMENT UNDER G.O. NO. 2419 OF 15TH. OCTOBER 1872.

IT MAY BE THAT THE DISTRICT ENGINEER, NELLORE, LOOKED UPON THE CHIEF ENGINEER'S MEMO, AS AN AUTHORITY TO PAY, AND THAT IN COMMUNICATING THE MEMO TO THIS OFFICE HE WAS ALSO OF THE OPINION THAT THE AUDIT OFFICE SHOULD BE EQUALLY BOUND BY IT; BUT HE SHOULD HAVE BEEN AWARE THAT WHETHER THE EXAMINER'S DECISION WERE RIGHT OR WRONG, NOTHING SHORT OF AN ORDER OF GOVERNMENT COULD JUSTIFY A DISBURSEMENT ON ACCOUNT OF A CLAIM TO WHICH AUDIT HAD BEEN DISTINCTLY REFUSED. WERE THIS RULE NEGLECTED, THE AUTHORITY OF THIS OFFICE AS AN AUDIT OFFICE WOULD BE COMPLETELY NULLIFIED, AND THE DOOR OPENED TO INNUMERABLE IRREGULARITIES.

BUT IN THIS PARTICULAR INSTANCE, I CANNOT TRACE IN THE MEMO THE SLIGHTEST ORDER TO PAY: IT WAS PURELY AN EXPRESSION

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OF OPINION DIFFERING FROM THAT OF THE EXAMINER NOT ONLY ON THE VALIDITY OF THE CLAIM, BUT ALSO AS REGARDS THE MANNER IN WHICH THE QUESTION SHOULD BE REFERRED TO GOVERNMENT.

ON THIS LATTER POINT G.O. NO. 944, DATED 23RD. MARCH 1866 IMPLIES THAT WHERE DISTRICT ENGINEERS ARE DISSATISFIED WITH THE DECISION OF THE EXAMINER, IT IS THE DUTY OF THE DISTRICT ENGINEER TO BRING THE MATTER TO THE NOTICE OF GOVERNMENT.

THIS IS MANIFESTLY THE MORE CONVENIENT COURSE, AS WITH THE ONUS OF THE REFERENCE TO GOVERNMENT RESTING WITH THE CLAIMANT, IT MAY BE REASONABLY SUPPOSED THAT THE CLAIMS WILL BE MORE FULLY CONSIDERED BEFORE THEY ARE ADVANCED, THAN IF THE EXAMINER WERE REQUIRED IN EVERY CASE TO MAKE THE REFERENCE. IT SHOULD BE ADDED THAT THIS OFFICE FULLY POINTED OUT TO THE DISTRICT ENGINEER, NELLORE, THE IRREGULARITY OF HIS PROCEEDING, AND INVITED HIM TO CANCEL HIS ORDER. THIS HE HAS APPARENTLY REFUSED TO DO, AND MR. LYON HAS BEEN INFORMED THAT AUDIT TO HIS TRAVELLING ALLOWANCE BILLS WILL BE DEFERRED UNTIL HE REPORTS THE REFUND OF THE RS. 52 WHICH HE ILLEGALLY DISBURSED TO HIMSELF.

IN CONCLUSION, I HAVE THE HONOR TO REQUEST THAT THE NOTIFICATION IN THE GAZETTE OF 8TH. AUGUST 1876 RELATIVE TO MR. LYON'S POSTING TO NELLORE MAY BE MODIFIED AS SUGGESTED IN THIS OFFICE NO. 164. W. OF 12TH. AUGUST 1876 AND THAT SUCH ORDERS MAY BE ISSUED ON THE ACTION OF THE DISTRICT ENGINEER NELLORE, AS IT WILL MAKE IT CLEAR TO ALL OFFICERS OF THE DEPARTMENT THAT

1. IN ALL CASES OF ALLOWANCES WHICH REQUIRE PREAUDIT, NOTHING SHORT OF AN ORDER OF GOVERNMENT CAN JUSTIFY AN OFFICER DISBURSING THE ALLOWANCE PRIOR TO AUDIT BY THE EXAMINER.
2. THAT WHEN ANY ALLOWANCE ACTUALLY DRAWN IS SUBSEQUENTLY DISALLOWED BY THE EXAMINER, IT MUST BE IMMEDIATELY REFUNDED, WHETHER THE VALIDITY OF THE EXAMINER'S DISALLOWANCE BE DISPUTED OR NOT.
3. THAT WHEN AN OFFICER DISPUTES THE PROPRIETY OF THE EXAMINER'S DISALLOWANCE IT RESTS WITH THE AGGRIEVED OFFICER TO REFER THE CASE TO GOVERNMENT.

I HAVE THE HONOR TO BE

SIR,

YOUR MOST OBLIGED SERVANT,

A. B. Beatty

CAPTAIN .R.E.
OFFG. EXAMINER, P. W. ACCOUNTS.

2023-3-66 kg 944.
14-4-69. 1224.
15-10-72. 2419.

Ch. 5481/76.

4831-8-76 kg 2317.

- 13-10-76. 2745. orig.

Mem. 1255-821-5-76.

- 1417 - 23-5-76.

FROM THE EXAMINER,

P.F. ACCOUNTS, MADRAS.

TO THE SECRETARY TO GOVERNMENT,

PUBLIC WORKS DEPARTMENT.

GENERAL BRANCH.

NO. 99. W.

DATED 10TH. SEPTEMBER 1877.

RECL.

OFFERING CERTAIN REMARKS ON
THE TRAVELLING ALLOWANCE BILLS OF
MR. LYON, AND REQUESTING GOVERNMENT
TO ISSUE DISTINCT ORDERS FOR THE
FUTURE AUDIT OF SIMILAR CLAIMS.

4017: Sept. 75. No. 120

Ch. 14-5-77

No. 4398.

Public Works Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the

Read the following:—

From,

The Examiner of
P.F. Accts.

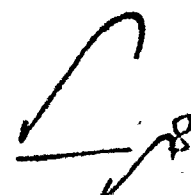
The disallowance of
Mr. Lyon's travelling
expenses by the Examiner
is confirmed; the claim
preferred having been
inadmissible under the rules.

Mr. Lyon was out of
order in disbursing and
Mr. O'Shaughnessy in
authorizing payment
in anticipation of the
Examiner's audit. The
amount will be refunded.

His

His Grace the Governor
in Council trusts that
irregularities of this
nature will not be
repeated.

Oct 14/9

D. C. Bellone 
Exr. P. H. Accts. 5 17

DISP^d 24-9-77

Noted
Cir 14-9-77

148
No 8827
Gobi. of 1877 Madras.
PUBLIC WORKS.

To

D. S. S. S.

Dated

Issued

Recd.

Encl.

G. O., 17th Sep 1877, No. 7396

Nos. 120-121

Mr. Dyar's travelling expenses
The disallowance by the Examiners
of — confirmed and ^{the} amount ordered to be refunded

*Intd. in Bep.
26.9.77.*