

- (1) பக்கங்களின் எண்ணிக்கை 4
 (2) புதுக்கித் திருப்பிய நாள் 9/9/
 (3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் dy

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

பூத துறை

அரசாணை எண். மு. கோப்புத் தாள் எண்.	2924	அச்சகம் பலவகை
நாள் :	21.10.1892	198.

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

2 Sheets

ஆவண. கா-1-18,008-15-6-87.

Signature

GOVERNMENT OF MADRAS.
MILITARY DEPARTMENT.

Judicial.

Read the following papers :—

- No. *From the Controller of Military Accounts ; dated 25th September 1891, No. 661-G.*
- No. *To the Secretary to the Government of India, Military Department ; dated 3rd October 1891, No. 5477.*
- No. *From the Secretary to the Government of India, Military Department ; dated 27th January 1892, No. 212-C.*
- No. *To the Controller of Military Accounts ; dated 5th February 1892, No. 839.*
- No. *From the Secretary of State for India, to His Excellency the Most Honorable the Governor-General of India in Council ; dated India Office, London, the 23rd June 1892, No. 81 (Military).*

I have to acknowledge the receipt of your Excellency's Military Despatch No. 57, dated 4th May 1892, asking for information on the question whether claims by Government against an officer in respect of subscriptions to service or regimental funds, or recoveries on account of advances of pay, should take

Question whether claims by Government against an officer's pay can take precedence of orders of Civil Courts.

M 5003.

precedence of an order of a Civil Court for the attachment of a moiety of an officer's pay.

2. Your despatch refers, first, to subscriptions and donations to service and regimental funds, and public claims, such as retrenchments and disallowances by the Accounts Department. As to these, I am advised that the Advocates-General of Bombay and Bengal are correct in their view that, by the combined operation of sections 136 and 151 (3) of the Army Act, 1881, they cannot be deducted or taken into account in ascertaining the amount of any officer's pay, one-half of which is attachable by a Civil Court under the latter section, unless in the case of any such deduction it be authorised by Act of Parliament or by Royal Warrant.

3. Somewhat different considerations apply to advances of pay. The claims considered in the preceding paragraph are in the strictest sense deductions from pay, that is to say, sums never paid but kept back. Advances are sums already

paid, and are therefore not paid a second time. Under the rules governing advances of pay, the effect of such an advance is that it is a prepayment, to the extent of one-fifth of its amount, of the officer's pay for each of the five months during which the advance is to be recoverable. And, having regard to the whole language of section 151 (3), and particularly the use of the word "stopped" at its close, I am advised that, although the "pay or other public money payable to the debtor" means his whole pay, still, what can be attached in the hands of Government is what they can stop, that is, the unpaid balance of that pay. The effect of this would be that, when an order is made against half the pay of an officer under instalment of the advance for any month provided for by the rules should be deducted, and the attachment would operate, not upon half the balance, but upon the balance to the extent of half the entire pay, if the balance were more than half that pay, and upon the whole balance if not more than half the pay.

4. It is, of course, impossible to say what view a Court of law might take of the matter, and it is one which might come before the Courts in India at any time, but the view above expressed is the one on which I think your Government might act, unless and until some other rule is judicially laid down.

From the Secretary to the Government of India, to the Secretary of State for India; dated Simla, the 4th May 1892, No. 57.

We have the honour to forward, for your Lordship's consideration, the papers noted in the accompanying schedule, in which the Government of Madras have raised the question whether a claim by Government against an officer on account of an advance of pay should take precedence of an order of a Civil Court for the attachment of one-half of the officer's pay.

2. This question has been raised in connection with the case of a military officer, who, on returning to India from furlough in England, received an advance of pay from the India Office. While the advance was in course of liquidation in this country by monthly stoppages from the officer's pay, a decree of a Civil Court was issued to stop one-half of the officer's receipts in satisfaction of debts contracted by him, and the question is what those receipts should be held to be.

3. We are advised that the decree of the Civil Court has a priority of claim against a moiety of the officer's pay, and that, under the provisions of section 151 (3) of the Army Act, 1881, no claim of Government can be considered as against that moiety until the decree of the Civil Court has been satisfied.

4. At the same time we have some doubt regarding the meaning of the term "pay" used in the section of the Army Act referred to, one-half of which may be attached to meet the award of a Civil Court. The expression used is "any pay or other public money payable to the debtor;" but in the case of a Staff officer drawing staff pay, or of an officer serving with a Native regiment, it does not seem to be clear whether staff pay and allowances are included in this definition, or only "regimental pay," i.e., in the case of a Staff Corps officer staff corps pay of rank.

5. It also appears to us to be a point for consideration whether any, and if so what, deductions should be made from the "pay and public money" above referred to, before it is halved to satisfy the decree of a Civil Court.

6. It will be seen from the earlier papers which are forwarded with the case, that in 1876 a question was raised as to the interpretation to be put upon the term "half of his pay coming to" a military officer against whom a decree has been obtained, as used in article 99 of the Mutiny Act of 1875, and the Government of India were then advised by the Advocate-General, Bengal, that the words quoted meant the half of an officer's pay after deducting therefrom his subscriptions or donations to service or regimental funds, or recoveries from his pay made compulsory by Indian regulations.

7. Subsequently, however, the Government of India were advised that, according to the terms of section 136 of the Army Act, 1881, the pay of an officer, half of which may be stopped to meet the decree of a Civil Court under the provisions of section 151 (3) of the Act, only, and that no deduction should be made on account of subscriptions or donations to service or regimental funds, or compulsory recoveries made by regulation, but not authorised by the Army Act itself, or by any other Act, or by Royal Warrant for the time being.

8. We shall be glad, therefore, to be informed what these authorised deductions are, and whether they include subscriptions and donations to service and regimental funds, and public claims, such as retrenchments and disallowances by the Accounts Department, and recoveries of advances.

No. 1653-C.

Judicial.

Copy of the above, with a copy of the Despatch to the Secretary of State, No. 57, dated the 4th May 1892, forwarded to the Secretary to the Government of Madras,* Military Department, for the information of the Governor in Council.

(By Order.)

SIMLA,
19th August 1892.

(Signed) E. DEBRATH,
Asst. Secy. to the Govt. of India.

No. ORDER THEREON, 12th October 1892, No. 6461

Ordered that the decision of the Secretary of State be communicated to Military Departments generally, and to the several departments of the Secretariat.

(True Extract.)

Brigdr.-Genl.,
Secretary to Government.

To the Adjutant-General.

- " Quarter Master General.
- " Commissary-General.
- " Inspector-General of Ordnance.
- " Superintendent, Army Clothing.
- " Superintendent of Pensions.
- " Superintendent, Reserve Remount Depot, Hosur.
- " Principal Medical Officer, Madras Army.
- " Surgeon-General with the Government of Madras.
- " Military Secretary to the Right Honorable the Governor.
- " Military Secretary to His Excellency the Commander-in-Chief.
- " Controller of Military Accounts.
- " Public, &c., Departments.
- " Revenue Department.
- " Public Works Department.

Exd. T. K. Narayana Aiyangar.

Public works Dept.

P. W. CURRENT No. 10374

Govt. of (1892) Madras.
MILITARY.

To THE ADJUTANT-GENERAL,
&c., &c., &c.

Dated October,

Issued

Recd. Encl.
Repts: 17-10-92

G.O., 12th October 1892, No. 6461

OCTOBER.
Nos. 136-41

Judicial.

Attachment.—Decision of the Secretary of State regarding the question whether certain claims by Government against an officer should take precedence of an order of a Civil Court for the — of a moiety of his pay, communicated to Military Departments generally and to the several departments of the Secretariat.

In the order

18-X-92
9-1-24 B117 ✓
N^o 2924 Wd/21st October 1892

Communicated to
officers of the Public
Works Department.

OCM
15-10-92

C. E. J. ✓
C. E. J. ✓
S. E. J. ✓
C. A. ✓
S. E. J. ✓
E. P. J. ✓
E. R. J. ✓
keep 21/10/92

2 copies to 20/10/92

C.S. 26/10
2.C. 26/10
21-10-92
m 14-10